

Electronically Filed

Tracie K. Lindeman

VS.

Case No: C154293-2
SC No: 58579

Docket 58579 Document 2011-24410

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY EXAMINATION REQUEST**

Requested By T. THOWSEN		Date 7-23-98	Court Date (If Known) _____	Agency LUMPD	Primary Event/Case # 980717-0541
Detail/Bureau HOMICIDE	Phone # 229-2700	<input type="checkbox"/> Justice <input type="checkbox"/> District		Has there been a previous request submitted on this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Incident MURDER
Suspect(s) 1. NASBY, BRENDAN					Suspect(s) in Custody <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Victim(s) BEASLEY, MICHAEL					

DRUGS	<input type="checkbox"/> Controlled Substances List items that need to be analyzed below. Indicate the drug suspected in "Description of Evidence" below.	TOX	Was a VALID Breath Test given? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Alcohol (Submit Blood Alcohol Kit. Blood in gray top tubes) <input type="checkbox"/> Drug Screen <input type="checkbox"/> Urine <input type="checkbox"/> Blood			
Drug Suspected _____				

PRINTS	<input checked="" type="checkbox"/> Latent Print Comparison → List items to be processed below.	NAME	I.D. NUMBER	SPC'S
	<input type="checkbox"/> Latent Print Processing List items to be processed below. <input type="checkbox"/> Other _____ Describe on back if necessary	NASBY, BRENDAN	1517690	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		BURNSIDE, TOMMIE	1591578	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
		_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
		_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
		_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

<input type="checkbox"/> Hand-writing/Hand-printing Comparison (Submit Exemplars)	<input type="checkbox"/> Altered Documents	<input type="checkbox"/> Other _____ (Describe on back if necessary)
List all items to be examined below.		

FIREARM	<input checked="" type="checkbox"/> Bullet Comparison <input type="checkbox"/> Toolmark Exam <input checked="" type="checkbox"/> Drug Fire Entry	<input checked="" type="checkbox"/> Cartridge Case Comparison <input type="checkbox"/> Firearm Examination <input type="checkbox"/> Serial Number Restoration	<input type="checkbox"/> Gunshot Residue <input checked="" type="checkbox"/> Other <u>EXAMINE FOR CAL</u> (Describe on back if necessary)
	List all items to be examined below. Reference any associated Event #'s (other than primary #) below.		

EVIDENCE TO BE EXAMINED				
PKG #	ITEM #	BOOKED BY	DESCRIPTION OF EVIDENCE	DESCRIBE REQUESTED ANALYSIS <small>LIST EVENT #'S OTHER THAN PRIMARY ONE HERE</small>
5410-2	2	NEIL 5410	CARTRIDGE CASE, HS 9MM LUGER	ARE THESE FROM THE ?
	3	" "	" " "	SAME GUN?
	4	" "	" " "	" "
B110/6	13	NORMAN 3110	BULLET FRAGMENT	WHAT TYPE OF GUN
	14	" "	BULLET FRAGMENTS	FIRED THIS BULLET?
	15	" "	BULLET	" "
	16	" "	BULLET + FRAGMENT	

**LIST PERTINENT INFORMATION AND/OR BRIEFLY DESCRIBE DETAILS OF CASE ON THE REVERSE SIDE.
DNA AND TRACE EVIDENCE ON REVERSE.**

Evid request 8-14-98

TRACE

- ☐ Headlight Examination
☐ Shoe Print Comparison
☐ Tire Impressions
☐ Arson Analysis
☐ Other _____

- Hair: ☐ Head ☐ Pubic (Submit Knowns in Serology Standards Kit)
 Fiber: ☐ Identify ☐ Comparison (Submit Known Standards)
 Paint: ☐ Victim Vehicle Impact Point ☐ Victim Vehicle Known
☐ Suspect Vehicle Impact Point ☐ Suspect Vehicle Known

List all items to be examined below.

LIST ALL KITS COLLECTED—CHECK • / • TO REQUEST ANALYSIS

DNA	SEROLOGY STANDARDS KIT(S) and/or BUCCAL SWABS*	✓	SEXUAL ASSAULT KIT(S)	✓	MEDICAL EXAMINERS KIT(S)	✓
	Suspect(s)		Victim(s)		Victim(s)	

*NOTE: SEROLOGY STANDARDS KITS OR BUCCAL SWABS MUST BE OBTAINED FROM SUSPECTS PRIOR TO DNA ANALYSIS.

LIST ALL ITEMS TO BE EXAMINED BELOW. PLEASE PRIORITIZE THE ITEMS WHICH WOULD BE MOST
USEFUL IN MAKING YOUR CASE. LIST ITEMS INDIVIDUALLY.

EVIDENCE TO BE EXAMINED

PKG #	ITEM #	BOOKED BY	DESCRIPTION OF EVIDENCE	DESCRIBE REQUESTED ANALYSIS LIST EVENT 1'S OTHER THAN PRIMARY ONE HERE

DETAILS/PERTINENT INFORMATION

THE VICTIM WAS SHOT TWICE. THE BULLETS WERE RECOVERED FROM HIS BODY. THE CARTRIDGE CASES WERE RECOVERED NEAR THE BODY.

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY EXAMINATION REQUEST**

Requested By **J. BUCZEK** Date **081198** Court Date (If Known) _____ Agency **LVMPD** Primary Event/Case # **980717-0541**

Detail/Bureau **ISD/HOMICIDE** Phone # **229 3607** ☐ Justice ☐ District ☐ Has there been a previous request submitted on this case? ☐ Yes ☒ No Incident **MURDER W/DW**

Suspect(s) **BRENDAN NASBY** Suspect(s) in Custody ☐ Yes ☐ No

Victim(s) **MICHAEL L. BEASLEY**

DRUGS ☐ **Controlled Substances** List items that need to be analyzed below. Indicate the drug suspected in "Description of Evidence" below.

TOX Was a VALID Breath Test given? ☐ Yes ☐ No
☐ **Alcohol** (Submit Blood Alcohol Kit. Blood in gray top tubes)
☐ **Drug Screen** ☐ Urine ☐ Blood Drug Suspected _____

PRINTS ☐ **Latent Print Comparison** → ☐ **Latent Print Processing** List items to be processed below.
☐ **Other** Describe on back if necessary

NAME	ID. NUMBER	SPC'S
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
AUG 11 1998		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

QD ☐ **Hand-writing/Hand-printing Comparison** (Submit Exemplars) ☐ **Altered Documents** ☐ **Other** (Describe on back if necessary)

List all items to be examined below.

FIREARM ☒ **Bullet Comparison** ☐ **Cartridge Case Comparison** ☐ **Gunshot Residue**
☐ **Toolmark Exam** ☐ **Firearm Examination** ☐ **Other**
☒ **Drug Fire Entry** ☐ **Serial Number Restoration** (Describe on back if necessary)

List all items to be examined below. Reference any associated Event #'s (other than primary #) below.

EVIDENCE TO BE EXAMINED				
PKG #	ITEM #	BOOKED BY	DESCRIPTION OF EVIDENCE	DESCRIBE REQUESTED ANALYSIS LIST EVENT #'S OTHER THAN PRIMARY ONE HERE
3326-3	11	MCPHAIL 3326	BROWNING 9mm HANDGUN S# 4CH1969	COMPARE TO SEE IF GUN EJECTED SHELL CASINGS LISTED AND FIRED THE PROJECTILE LISTED. PLACE IN DRUG FIRE
5410-2	2	NEIL 5410	CARTRIDGE CASE 45 9mm L&W	WAS THIS FIRED FROM ABOVE EJECTED FIRE ARM
	3	" "	" " "	" " "
	4	" "	" " "	" " "
3110-6	13	NORMAN 3110	BULLET	WAS THIS FIRED FR. ABOVE FIREARM
	14	" "	BULLET FRAGMENTS	" "
	15	" "	BULLET	" "

LIST PERTINENT INFORMATION AND/OR BRIEFLY DESCRIBE DETAILS OF CASE ON THE REVERSE SIDE.
DNA AND TRACE EVIDENCE ON REVERSE

Event #

980717-0541

TRACE

- ☐ Headlight Examination
☐ Shoe Print Comparison
☐ Tire Impressions
☐ Arson Analysis
☐ Other _____

- Hair: ☐ Head ☐ Pubic (Submit Knowns in Serology Standards Kit)
 Fiber: ☐ Identify ☐ Comparison (Submit Known Standards)
 Paint: ☐ Victim Vehicle Impact Point ☐ Victim Vehicle Known
☐ Suspect Vehicle Impact Point ☐ Suspect Vehicle Known

List all items to be examined below.

LIST ALL KITS COLLECTED—CHECK - ✓ - TO REQUEST ANALYSIS

SEROLOGY STANDARDS KIT(S) and/or BUCCAL SWABS*	✓	SEXUAL ASSAULT KIT(S)	✓	MEDICAL EXAMINERS KIT(S)	✓
Suspect(s)		Victim(s)		Victim(s)	

DNA

*NOTE: SEROLOGY STANDARDS KITS OR BUCCAL SWABS MUST BE OBTAINED FROM SUSPECTS PRIOR TO DNA ANALYSIS.

LIST ALL ITEMS TO BE EXAMINED BELOW. PLEASE PRIORITIZE THE ITEMS WHICH WOULD BE MOST
USEFUL IN MAKING YOUR CASE. LIST ITEMS INDIVIDUALLY.

EVIDENCE TO BE EXAMINED



PKG #	ITEM #	BOOKED BY	DESCRIPTION OF EVIDENCE	DESCRIBE REQUESTED ANALYSIS LIST EVENT #'S OTHER THAN PRIMARY ONE HERE
31106	16	NORMAN 3110	BULLET & FRAGMENTS	WAS THIS FIRED FROM ABOVE FIREARM

DETAILS/PERTINENT INFORMATION

Bullet/Cartridge/Cartridge Case Worksheet

Event # 98 0717-0541
Examiner QD 4820

Page 1
Date 8-21-98

Item #	TJ3-12	TJ3-13	TJ3-14	TJ3-15
	Bullet/Case/Cart	Bullet/Case/Cart	Bullet/Case/Cart	Bullet/Case/Cart
Caliber	356-358	.350		lead core
Bullet Type	Pb SW ?	N. plated	Small lead frag - Not left	
Bullet Wt (gr)	94.2 gr	94.7		54.7 gr
L&G/Dir.	SR ??		---	
L&G for comp.	---		---	
ID Potential	---	OK	None	
Trace Evidence	convoluted	Blood/Fining green (convoluted)		
L.I.W.	?			
G.I.W.	?			
Sketch of Bullet			Blood	
Case-Mat				
Primer/Annulus				
Headstamp				
Comments	Stuck in exterior of clothes in blood from area where body found	Bleach - tent. p. exp. -	Lead frag Not Examined	left in baggie
Examiner's Marks	---	TJ3-13		None Examined




MARK
Defen



ION
pit B

4/13

Bullet/Cartridge/Cartridge Case Worksheet
 Event # 980717-0541 Page 1
 Examiner QJ 9826 Date 8-21-98

Item #	TJ3-16	TJ3-17	TJ3-18 Test Amm	TJ2-2,3,5
	Bullet/Case/Cart	Bullet/Case/Cart	Bullet/Case/Cart	Bullet/Case/Cart
Caliber	Nom 38			9mm L
Bullet Type	Nipl. jacket HP		X 9mm STP	
Bullet Wt (gr)			115	
L&G/Dir.				
L&G for comp.				
ID Potential				
Trace Evidence	Tissue/Blood			
L.I.W.				
G.I.W.	canine			
Sketch of Bullet				
Case-Matl			Brass	Brass
Primer/Annulus			Ni / Red (producing)	Ni / Red (producing)
Headstamp				
Comments	bleach jacket 116" to canine	Typ 4 bullet jacket frag	lot 06B492 28	
Examiner's Marks	TJ2-11 08/21/98 821	—	—	TJ2-X 08/21/98 8-21-98



980717-0541

4820 8-21-98

Evid list cont (TJ1)

Item 14 a molded plastic "after-market"
SKS ~~rem~~ removable magazine

(shows signs of use on follower)

Item 15 Twenty Nine (29) 7.62 x 39 mm
Cartridges marked "311 91".

Forward

TJ2

Sealed env (pkg 2 of 2 by K5410N
from "2.1 m NUP of Alexander & Jensen")
Containing:

Item 2 a "WIN 9mm LUGER" cart case

Item 3 " " " " " "

Item 5 " " " " " "

Item 6 a "WINCHESTER 45 Cat" cart case

TJ3

Sealed env (pkg 3110/6 of 8 from
"CME") containing

Item 11 8 corroded Cartridge cases

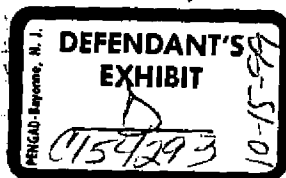
(1 - TCW 7.62 x 39

1 - "F" 3 "Rem" 2 "C"

1 "Super X" - 22 Rem S&W)

Item 12 a heavily corroded Wom 38
caliber bullet,

Item 13 a heavily damaged silver tip ⁽⁷²⁾ type
jacketed hollow point bullet.



2/13

98-0717-0541

QJ-4820 8-21-98

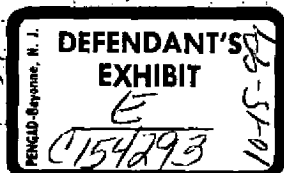
Evid list cont: TJ3

item 14 small lead fragment.

item 15 a lead bullet core

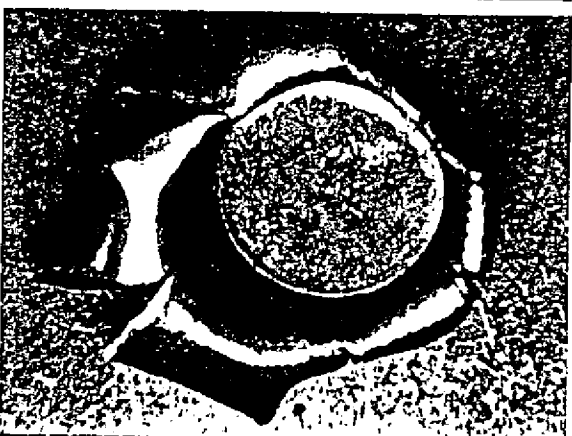
item 16 a heavily damaged Silver-ty[®]
type jacketed hollow point Fg[®] bullet

item 17 a small silver-ty[®] type bullet
jacket fragment.

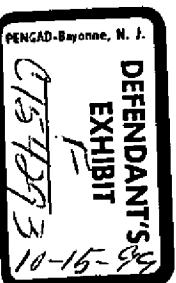


3/13

753-12 - views before bending



980717-0541 984820 8-22-98

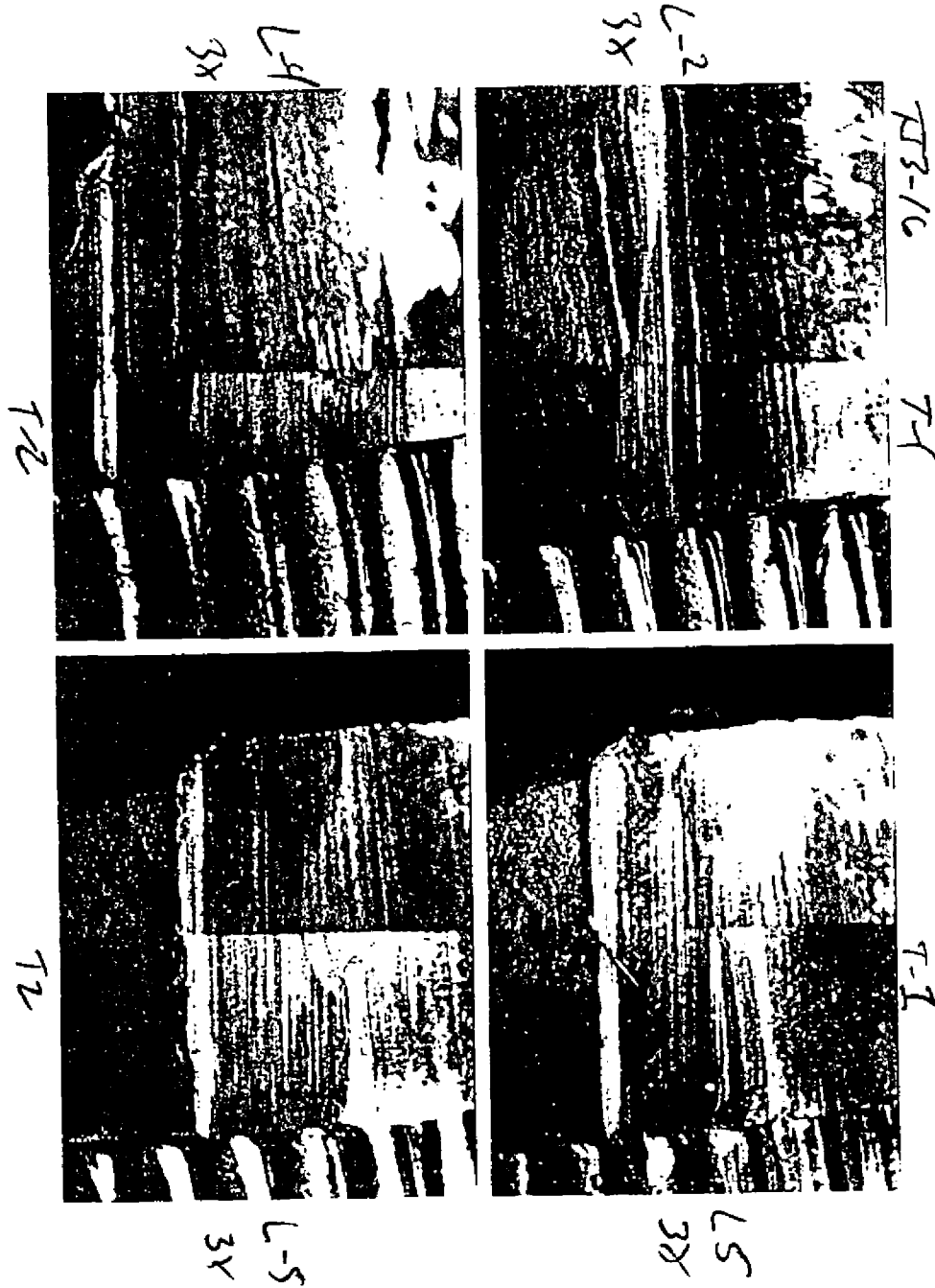


TS-13 - Views before 'banding'



980717-0541 2820 8-22-98

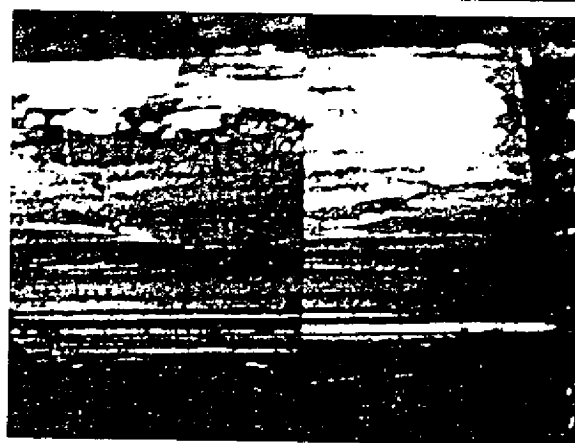
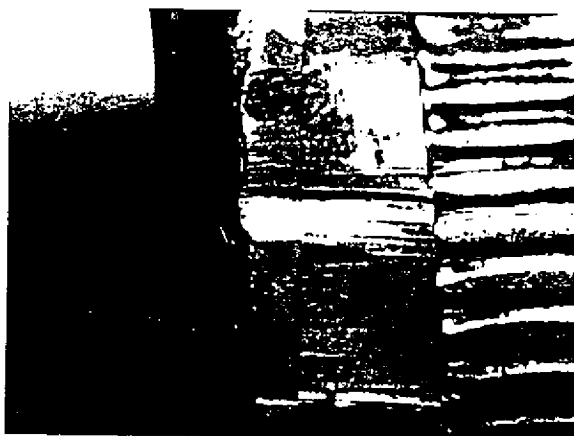
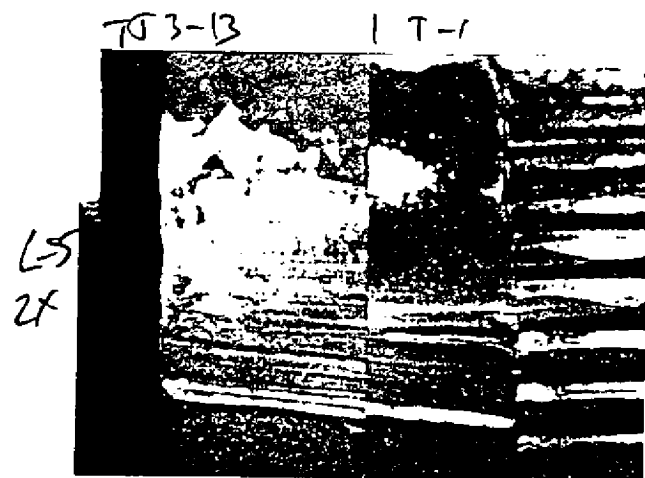




98 0717-0541 004820 8-22-98

DEFENDANT'S
 EXHIBIT
 H
 0154293
 10-5-98

66-5401
DEFENDANT'S
EXHIBIT
F
C154293
PENNSYLVANIA, N. J.



T-3

980717-0541 1450 8-22-88

980717-0841

QJ 48W 8-21-98

Prison Cook at Court case - (Test
fired Wm (1581 STHP - W scars in bullet

T1 T2 T3 - can ID but marks are small
& scattered. Haven't examined chamber
marks yet - will try to compare to BFI/FPA.

Evid vs Test - Tentative ID -

8-22-98 (Saturday)

TJ3-13 - STHP bullet jacket. Very wrapped
around itself. Photos - then unbent - lost one
petal / core sep from main jacket - large
amt of blood behind core.

Comparison - see photo -

Evid TJ3-13 vs T1, 2, 3 - ID - somewhat
scattered but not
too bad - see photo

Evid TJ3-16 & bent to expose

TJ3-16 vs T1, 2, 3 - ID - same comment

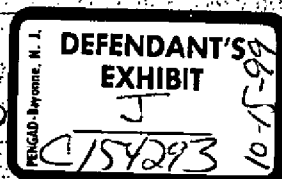


EXHIBIT J

9/13

980717-0541

QJ 4820 8-22-98

Cart case

Can Assoc T1,2,3 -

Evid TJ22- vs T123 head-class

crust. burst

found clear 10 yd

TJ23 vs T-123

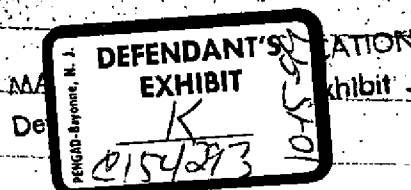
Some comment

8-24-98

Reviewed quality of marks on evidence

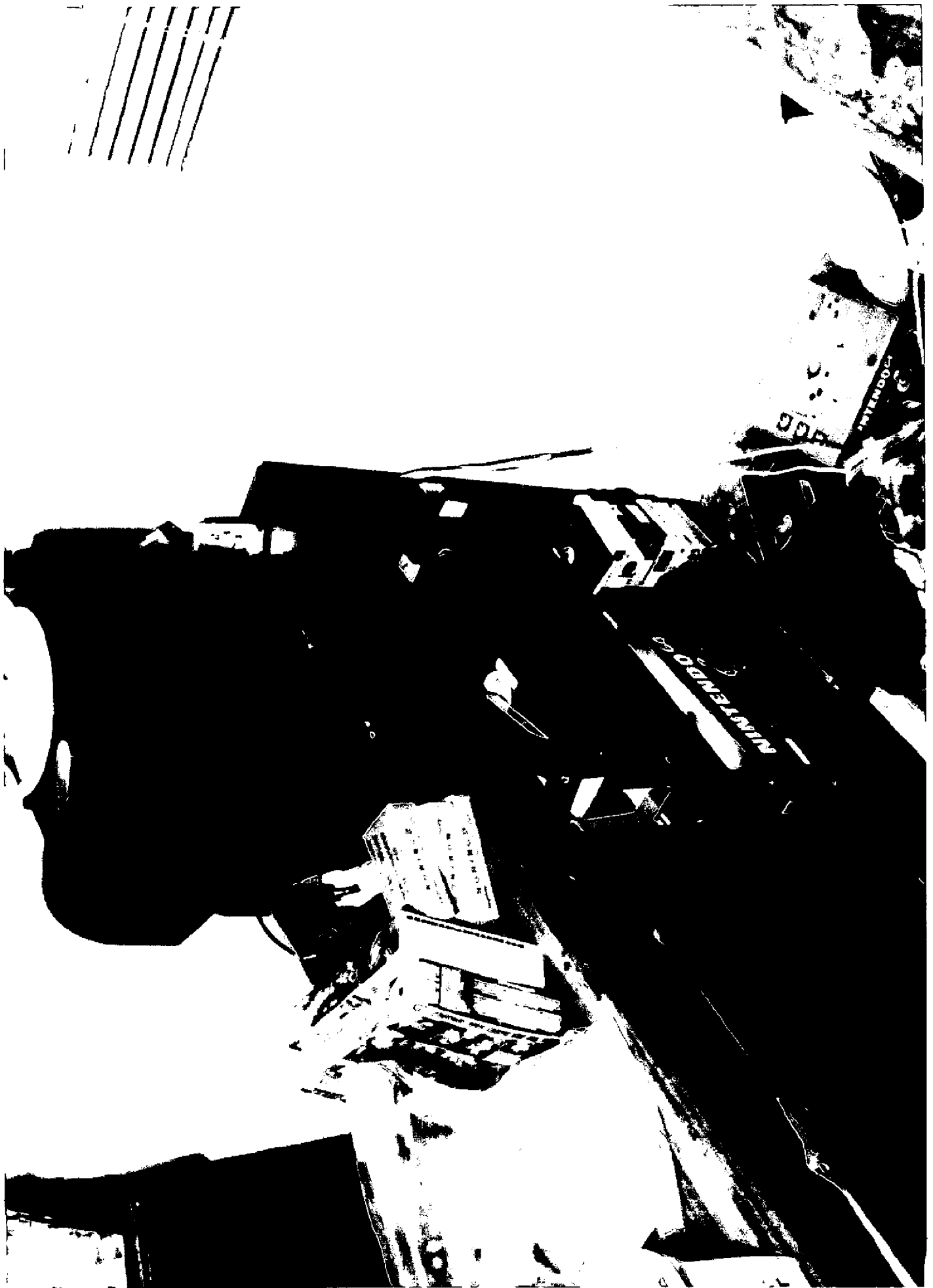
Marks are generally indistinct, small
and of general poor quality.

Can find consistency / there are no
unexplained differences



MARKED FOR IDENTIFICATION
STATE'S PROPOSED EXHIBIT

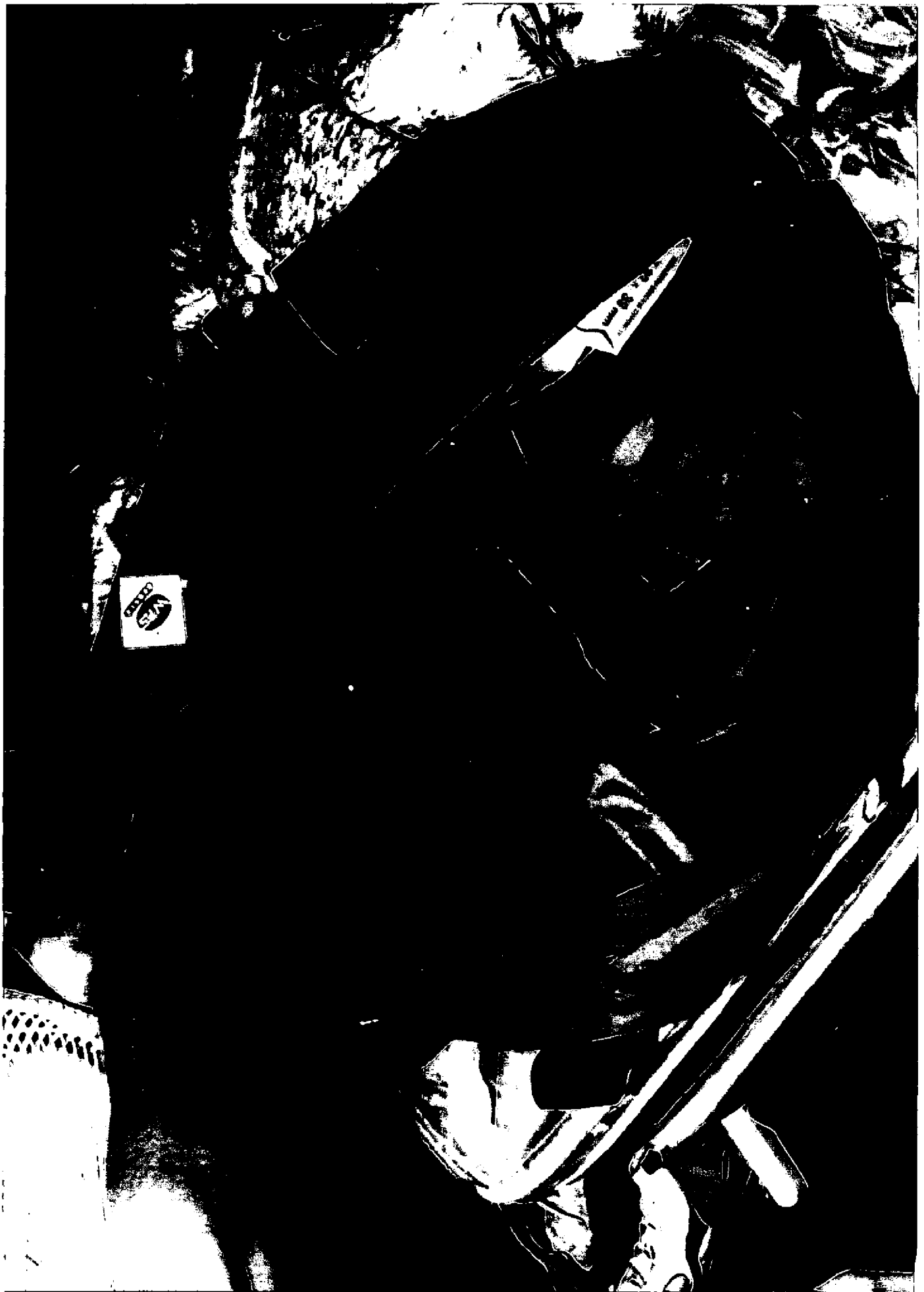
W. J. [unclear]
54



MARKED FOR IDENTIFICATION
STATE'S PROPOSED EXHIBIT

W55

10-14-99



MARKED FOR IDENTIFICATION
STATE'S PROPOSED EXHIBIT

59

The girl's statement

I Met Shugg at the 7-11 on 15th and Fremont. I knew him for about a week before the murder happened. He was always a ~~heavy~~ heavy drinker every time I saw him he was drinking. On the night of the murder he had on a black T-Shirt, black pants (dickies), and black converse with black laces. On that night (July 16, 1998) me and Shugg met at the ~~bus~~ bus station on Stewart & Las Vegas Blvd. I had my homegirl drop me off there on her way to ~~the~~ Fremont. After me and Shugg met that night ~~at~~ at the bus stop around 9:00 P.M.. We hopped on the Martin L. King Bus and took it to ~~the~~ Craig and M.L.K.. When we got off we went to an AM/PM gas station and Shugg paged someone. I think he paged Woods. Me and Shugg waited for about up there for about 20 ~~minutes~~ minutes then Woods came and picked us up in a dark red car (burgundy) with Droop in the back seat, T-Bone in the ~~front~~ front seat, his brother Joe-T in the back behind ~~the~~ T-Bone. I hopped in the back & Shugg hopped in the front with ~~the~~ T-Bone. Now Woods was driving T-Bone next to him and then Shugg next to T-Bone in the back seat it was Droop behind Woods, me next to Droop, then Joe-T on my right. Shugg ~~and~~ said that they wanted to go about

nine that Shugg had. Nobody minded because we were smoking and drinking the whole way up to the desert. I don't ~~from~~ remember which desert it was but I remember that it was off of Alexander somewhere. When we got there Shugg, Woods, and Droop got out. Me, T-Bone, ~~Joe-T~~ and Joe-T stayed in the car smoking and drinking. 10 minutes later I started to get out of the car and saw Woods sitting on the hood of the car. Droop standing in front of the edge of the cliff and Shugg put the gun up to Droop's head area and shot him. After that one shot I hopped back in the car.

I heard another shot but I didn't want to look any more so I didn't see where he shot him the second time. But as ~~everything~~ all this was happening ~~to~~ T-Bone and Joe-T both were wondering what was going on. Then Woods and Shugg got in the car, but Shugg hopped back out and shot ~~at~~ Droop again. Then he got back in the car and we headed back to the AM/PM. Now it was Woods driving & Shugg next to him. In the back seat it was Me behind Wood, Joe-T next to me in the middle, and T-Bone on the right behind Shugg. When we got to the AM/PM Me and Shugg got out. Shugg told me to ~~stay~~ shut up and stay quiet about what happened. Woods, T-Bone, and Joe-

5

~~They~~ left us there. Me and Shugg didn't talk any more that night. I called my ride that took me to the bus ~~stop~~ station and told her to come and get me. I left ~~the~~ shugg at the gas station and haven't talked to him since. On July 16th, That was my first time meeting Droop, T-Bone ~~and~~ Joe-T, and Woods but I couldn't take it any more. The fact that I knew something was eating me up inside. I would have told sooner but I was scared of Shugg. ~~The~~ T-Bone had a blue 22 ~~Jersey~~ Jersey and black ~~pant~~ pants. Joe-T had on a striped blue shirt on and blue pants. I don't know what kind of shoes ~~they~~ they had on because they never got out of the car. Wood had on white shorts with a with tang top and white nike shoes. I don't remember what kind of nike shoes but I know they were low top all white nike ~~shoes~~ shoes.

60

576-37-6349-SS#

576-3136 - H. Phone

Crystal Marie Bradley

W. Washington ← Wild Flower Apartment

541

Las Vegas, NV 89122

576-37-6349-SS#

53-0129 - H. Phone

Tanesha Banks

2651 Napa drive

Las Vegas, NV 89115

Brittany Keshia Adams / Porsche Nichols

397 Honey lake St.

Las Vegas, NV 89110

53-2472 - H. Phone

359-76-6441-SS#

T-pot

233-0822

Tiffany

360-9576

Shank

573-8371

Macl

644-1912

LFO

432-3727

DJ

876-1160

Kelly + Sherell

564-1106

Amber + Alicia

346-7453 / 253-8581

Michelle

396-7017

Dizzy

547-1619

G. ROB

Martha

Vince
565-9499
564-7162
Ansel

459-450
COR

432-3777
L-00

Wood Pectr
H
650-6814

564-1106

Kelly
Sherell

TANYA
3300 N. TANYA
- 45 Vgo - E 207 -
59120

Alien - T-fore
547-9100 -
Inside
TANY

70 (C154293)

8/31/98

B.K.,

West Tupper Girl? How you been these last couple days? I'm hanging in here. I'm just dealing with the lie say, the say bullshit.

I read your state ment that you told the police. Even though it's not the same exact story you told me, it was very good. Now if you get called into court, you have to tell the exact same story you told the police or else they will lock you up for perjury. The only thing you said wrong was that it happened on the 27th, when Droop died on the 17th of July. But all you have to say in court is that you got the dates mixed up. And If you didn't already, don't tell the police nothing else, and don't change your story.

I hope you haven't had second thoughts about me killing the homing Droop (L.P.), because you know I didn't. And what for the police and other people are saying, is a big oh pile of bullshit. The police are lying to everyone, just to get more information from other people. Like when they told you that I said That you moped up that bitch Tweety,

hat shit was all a lie. But peep this, your little cousin told the police the whole tory. If you don't believe me then I'll put that on my daughter, Lynae M. Nasby. Now you know I wouldn't blow her up. You know that I would never say no shit like that. And the people on the streets are just talking off they ass. None of them know what happened. Nobody knows what's being said about my case. I'll tell a couple of people this and tell a couple of people that, just to throw the snitches off. Honestly, the only people that know anything about the case would be me and my attorneys, and that's how it's going to stay. My mother, my sister, Colleen, the hommies; none of them know the deal. So whatever's being said on the streets about me is bullshit, including what Colleen says.

B.K., I care about you, Droop (RIP), and all the rest of the hommies. I even care about .O. cent, Shugg, and Mazzy. Even though Mazzy said he was going to kill me if I do get out. But for one thing, nobody can tagg me without me getting them first. I'm simply untouchable. And another thing is that I know Mazzy doesn't know the real deal. That's why he wants to kill me, he just don't know what's going on. I hope you could understand

3
all this. I wouldn't want to lose another
friend behind me being falsely accused. Goldie
is suppose to be hating on me too. I
couldn't believe that. People are liars all
the way the say bullshit?

Anyways? How's your Little cousins
doing. I hope they're alright.

Oh? Don't be worried. The police
only check incomming mail. So they don't
heck the letters I'm sending out. But whe
you write me, If you write me, don't talk
to specific about the case. But at least
let me know if you're still on my team.

How's your case going with that
battery charge? They said that bitch was
put into an unconscious state. B.K., that
bitch was sleep.

Anyways? Hit me up and let me
know how shit's going. If you can stop by
my house and check up on my mom, Colleen,
and the baby. Make sure they're alright.

P.S. - Pray for
me, as I pray
for you each
day. I Love
you Cuzz!
Be safe.

Much Love

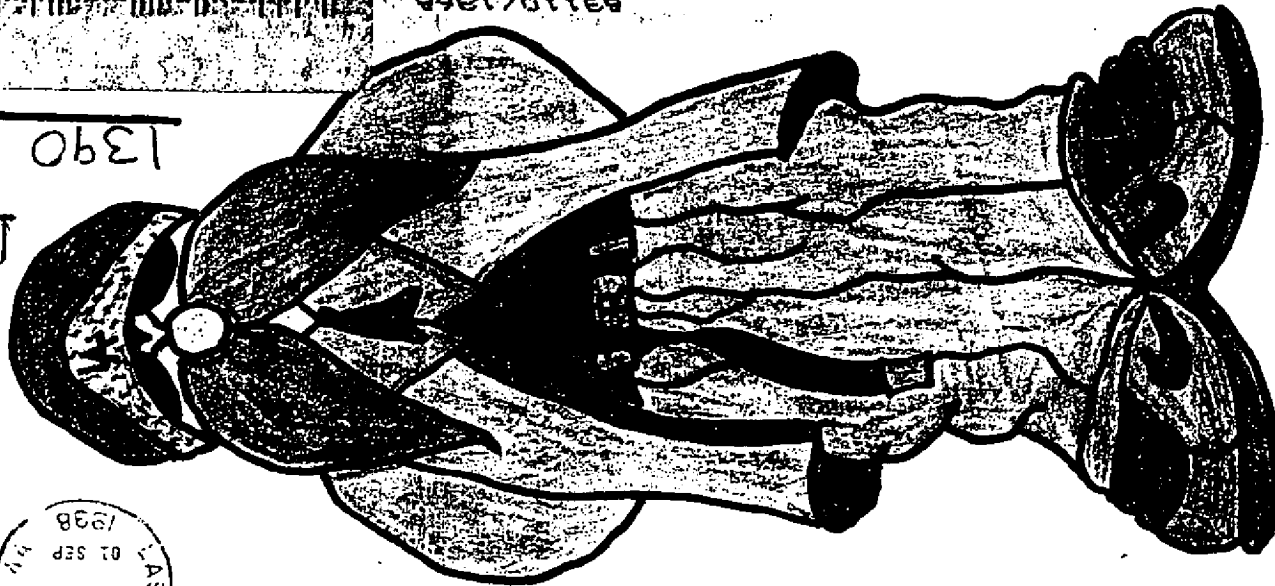
LOC,

BLUE
Loc #1

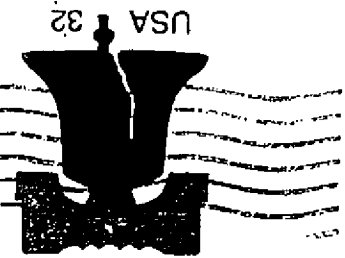
STEFANIE TINSLEY
C.C.D.C. # 1517690-7F.23.L
330 Casino Ctr. Blvd.
Las Vegas, NV 89101



99110/1998



Brittany Adams
1390 Honey Lake St



THE CONFIDENTIAL PRE-
SENTENCE
INVESTIGATION REPORT
WILL FOLLOW VIA U.S.
MAIL

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 27, 1998**

98C154293-2

The State of Nevada vs Brendan J Nasby

October 27, 1998**9:00 AM****Initial Arraignment****INITIAL
ARRAIGNMENT
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Coumou, Frank Attorney**JOURNAL ENTRIES**

- Mr. Coumou requested continuance until 11/10 to finalize negotiations. No objection by Mr. Golightly. COURT ORDERED, matter CONTINUED.

BOND

11/12/98 8:30 AM ARRAIGNMENT CONTINUED

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 12, 1998**

98C154293-2

The State of Nevada vs Brendan J Nasby

November 12, 1998**8:30 AM****Arraignment Continued****ARRAIGNMENT
CONTINUED Court
Clerk: CAROL
GREEN/cg Relief
Clerk: PAULA
GOODELL
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Coumou, Frank Attorney**JOURNAL ENTRIES**

- AGREEMENT TO TESTIFY FILED IN OPEN COURT. NEGOTIATIONS are as contained in the GUILTY PLEA AGREEMENT FILED IN OPEN COURT. Defendant DESKIN ARRAIGNED AND PLED GUILTY TO ACCESSORY TO MURDER (F). COURT ACCEPTED plea, ADJUDGED DEFENDANT GUILTY and ORDERED, matter referred to Parole and Probation and set for sentencing.

BOND**2/8/99 8:30 AM SENTENCING**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 24, 1998

98C154293-2

The State of Nevada vs Brendan J Nasby

November 24, 1998

8:30 AM

Initial Arraignment

INITIAL
ARRAIGNMENT
Court Clerk: LINDA
SKINNER/Is Relief
Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Lalli, Christopher J.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- DEFT ARRAIGNED, PLED NOT GUILTY AND INVOKED THE 60 DAY RULE. COURT ORDERED, matter set for trial. Court advised this date is a few days past the 60 day rule. All parties agreed. Mr. Sciscento will have 21 days from the filing of the transcript to file a writ.

CUSTODY

1/28/99 8:30 AM CALENDAR CALL

2/1/99 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 10, 1998

98C154293-2

The State of Nevada vs Brendan J Nasby

December 10, 1998

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 12/10/98
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

JOURNAL ENTRIES

- ARRAIGNMENT (TOMMIE BURNSIDE JR and JOTEE BURNSIDE)

Defendant TOMMIE BURNSIDE, JR.: GUILTY PLEA AGREEMENT FILED IN OPEN COURT.

NEGOTIATIONS: Deft. waived right to a Preliminary Hearing to enter plea of guilty to Information; State retains right to argue, but will not oppose with Defendant's other case. Defendant TOMMIE BURNSIDE, JR. ARRAIGNED AND PLED GUILTY TO ACCESSORY TO MURDER (F). COURT ACCEPTED plea, ADJUDGED DEFENDANT GUILTY and ORDERED, matter referred to Parole and Probation and set for sentencing. Further, COURT ORDERED, Police Report will be made a part of this plea.

Defendant JOTEE BURNSIDE: GUILTY PLEA AGREEMENT FILED IN OPEN COURT.

NEGOTIATIONS: Deft. waived right to a Preliminary Hearing to enter plea of guilty to Information; State retains right to argue. Defendant JOTEE BURNSIDE ARRAIGNED AND PLED GUILTY TO ACCESSORY TO MURDER (F). COURT ACCEPTED plea, ADJUDGED DEFENDANT GUILTY and ORDERED, matter referred to Parole and Probation and set for sentencing. Further, COURT ORDERED, Police Report will be made a part of this plea.

PRINT DATE: 08/11/2011

Page 4 of 68

Minutes Date:

October 27, 1998

Regarding request for O.R. Release on behalf of Deft. Jotee Burnside, Court advised counsel to file written motion and get something from Intake Services and matter will be put on 12/15 calendar. Counsel advised that Deft. Tommie Burnside would join in motion. Matter will be on calendar as to both Defendants.

CUSTODY (BOTH)

12/15/98 8:30 AM DEFTS' REQUEST FOR O.R. RELEASE (BOTH)

2/25/99 8:30 AM SENTENCING (BOTH)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 15, 1998

98C154293-2

The State of Nevada vs Brendan J Nasby

December 15, 1998

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 12/15/98
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

JOURNAL ENTRIES

- DEFT'S MOTION FOR OWN RECOGNIZANCE RELEASE OR HOUSE ARREST (JOTEE)...DEFT'S REQUEST FOR O.R. RELEASE (TOMMIE)

Mr. Brooks advised the Intake Services Report denies an O.R. release, but would request house arrest as Deft's mother has a full time job and can afford the fees. Mr. Figler stated this applies to Tommie as well. Mr. Coumou opposed both motions because of Deft's gang affiliation and their records. COURT ORDERED, both Motions are DENIED, however, reduced the bail to \$10,000 for each Deft. CUSTODY (BOTH)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 08, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

January 08, 1999**8:30 AM****Motion to Revoke Own
Recognizance Release****STATE'S MOTION
TO REVOKE DEFT
NASBY'S JAIL
PRIVILEGES AND
PLACE IN
ISOLATION Relief
Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised that Defendant will stipulate to isolation until matter can be set for and Evidentiary hearing and Defendant would only request contact with his parents, daughter and two attorneys. Mr. Coumou stated no objection to contact with close family members. COURT ORDERED, matter CONTINUED for hearing; Defendant, having stipulated to being placed in isolation, will be allowed contact with parents, daughter and two attorneys.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 22, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

January 22, 1999

9:00 AM

**Motion to Revoke Own
Recognizance Release**

**STATE'S MOTION
TO REVOKE DEFT
NASBY'S JAIL
PRIVILEGES AND
PLACE IN
ISOLATION Court
Clerk: CAROL
GREEN Relief Clerk:
CONNIE
KALSKI/CK
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised that the allegations made against Defendant will require him to call witnesses. Mr. Sciscento, therefore, requested matter be continued and be put at the end of the court's calendar. COURT ORDERED, matter CONTINUED.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 28, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

January 28, 1999**8:30 AM****Calendar Call****CALENDAR CALL
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Brown, Philip H.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Brown appeared for Mr. Coumou and upon Court's inquiry, Mr. Sciscento advised he would not be ready for trial as he has a civil matter going on Monday. COURT ORDERED, matter CONTINUED with Motion set for Friday.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 29, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

January 29, 1999

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 1/29/99
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...STATE'S MOTION TO REVOKE DEFT'S JAIL PRIVILEGES AND TO PLACE HIM IN ISOLATION

Argument by Mr. Coumou and Mr. Sciscento. Regarding Jury Trial, Mr. Sciscento advised that as he will be in another trial on Monday, he would request a continuance. Defendant had no objection to continuance of trial. COURT ORDERED, Trial Date VACATED; matter CONTINUED for Decision and Status Check on trial setting. Defendant's custody status will remain status quo.

CUSTODY

2/1/99 8:30 AM STATUS CHECK: TRIAL SETTING...STATE'S MOTION TO REVOKE DEFT'S JAIL PRIVILEGES AND TO PLACE HIM IN ISOLATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 01, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

February 01, 1999

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 2/1/99
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Brown, Philip H.	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING...STATE'S MOTION TO REVOKE DEFT'S JAIL PRIVILEGES
AND TO PLACE HIM IN ISOLATION

Mr. Duffy advised that Mr. Sciscento is in Los Angeles and is requesting that matter be continued
until tomorrow. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 2/2/99 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 02, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

February 02, 1999

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 2/2/99
Relief Clerk: CAROL
GREEN
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING...STATE'S MOTION TO REVOKE DEFT'S JAIL PRIVILEGES
AND PLACE HIM IN ISOLATION

COURT ORDERED, Deft's request to be released from isolation is DENIED; Defendant to remain in
isolation, with contact only by Mr. Duffy, Mr. Sciscento, fiance, mother and child. Further, COURT
ORDERED, matter set for Trial.

CUSTODY

4/29/99 8:30 AM CALENDAR CALL

5/3/99 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 08, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

February 08, 1999**8:30 AM****Sentencing****SENTENCING****Court Clerk: LINDA
SKINNER****Reporter/Recorder:
JAMES HELLESO****Heard By:
Pavlikowski, Joseph
S.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coumou, Frank

Attorney

JOURNAL ENTRIES

- Dawn Williams from the Division of Parole and Probation present. CONFERENCE AT BENCH.
Pursuant to that conference, COURT ORDERED, matter CONTINUED.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 10, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

February 10, 1999**8:30 AM****Request of Court****AT THE REQUEST
OF THE COURT
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Coumou advised he had no objection to Deft's fiancée being allowed to visit Deft. Mr. Sciscento to prepare Order adding her name, Colleen Warner, to the list of visitors.

CUSTODY

CLERK'S NOTE: After calendar, Secretary advised an issue was not addressed and requested matter be put back on calendar for Friday. Is.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 12, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

February 12, 1999**8:30 AM****Request of Court****AT THE REQUEST
OF THE COURT
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Coumou, Frank
Nasby, Brendan JAttorney
Defendant**JOURNAL ENTRIES**

- Court advised there was a question regarding correspondence to and from Deft. Mr. Coumou advised he did not have a problem with Deft receiving or sending correspondence as long as it is monitored. COURT SO ORDERED and Mr. Coumou advised he would prepare the Order. DURING CALENDAR: Mr. Sciscento appeared and was apprised of what happened. Mr. Sciscento advised he would speak with Mr. Coumou as he wanted the Order to also contain the information regarding visitation.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 25, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

February 25, 1999**8:30 AM****Sentencing****SENTENCING**
Court Clerk: LINDA
SKINNER/LS Relief
Clerk: CONNIE
KALSKI
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Coumou, Frank Attorney**JOURNAL ENTRIES**

- J.R. Haggerty from the Division of Parole and Probation present. Speaker Helen Jones tried to address the Court. Court directed Mr. Coumou to have Ms. Jones prepare a written statement and ORDERED, matter CONTINUED.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

February 25, 1999

8:30 AM

Sentencing

SENTENCING
Court Clerk: LINDA
SKINNER/LS Relief
Clerk: CONNIE
KALSKI
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank Attorney

JOURNAL ENTRIES

- J.R. Haggerty from the Division of Parole and Probation present. Mr. Brooks advised Deft did not want to proceed with sentencing, but would like this continued for several months so that he might bail out. Upon Court's inquiry, Court DENIED this request. Parties argued and submitted. Statement by Deft. Having been ADJUDGED GUILTY of ACCESSORY TO MURDER (F), COURT ORDERED, in addition to the \$25 Administrative Assessment Fee, DEFT JOTEE BURNSIDE SENTENCED to the Nevada Department of Prisons for a MAXIMUM term of (30) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS with 121 days credit for time served. BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 04, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

March 04, 1999

8:30 AM

Sentencing

SENTENCING
Court Clerk: CAROL
GREEN Relief Clerk:
SHARRY
FRASCARELLI/sf
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank Attorney

JOURNAL ENTRIES

- Roy Stuart from the Division of Parole and Probation present. Statement by Mr. Coumou. Ms. Dickinson argued her case (C152990) be treated as a gross misdemeanor and Mr. Figler argued for boot camp and continuance of sentencing in this case. Defendant made statement. DEFENDANT BURNSIDE, having been ADJUDGED GUILTY of ACCESSORY TO MURDER (F), COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Defendant SENTENCED to a MAXIMUM term of THIRTY SIX (36) MONTHS in the Nevada Department of Prisons with a MINIMUM parole eligibility of TWELVE (12) MONTHS with 139 DAYS credit for time served.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 29, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

April 29, 1999

8:30 AM

Calendar Call

CALENDAR CALL
Relief Clerk: CAROL GREEN
Reporter/Recorder: JAMES HELLESO
Heard By: Joseph Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Coumou advised that State is ready, with 17 witnesses, with two out-of-State witnesses. Mr. Sciscento stated that he is ready, but co-counsel, Mr. Duffy may be in another trial beginning next week. COURT ORDERED, matter sent to OVERFLOW.

CUSTODY

4/30/99 9:00 AM CALENDAR CALL IN DEPT XIV (OVERFLOW FROM DEPT III)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 30, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

April 30, 1999

9:00 AM

Calendar Call

CALENDAR CALL
(OVERFLOW FROM
DEPT III)
COUMOU/SCISCEN
TO-17 WIT/2
OUTSTATE/5DAYS
Court Clerk: RITA
LOPEZ
Reporter/Recorder:
JOE D'AMATO
Heard By: Mosley,
Donald M.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised the Court Mr. Duffy is co-counsel in this matter. Colloquy between Court and Counsel regarding the length of trial and number of witnesses. Due to the Judge's Conference next week, COURT ORDERED, MATTER CONTINUED IN DEPARTMENT XIV TO SEE IF THE TRIAL CAN BE ENTERTAINED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 03, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

May 03, 1999

9:00 AM

Calendar Call

CALENDAR CALL
(OVERFLOW FROM
DEPT III)
COUMOU/SCISCEN
TO-17 WIT/2
OUTSTATE/5DAYS
Court Clerk: JUDY
NORMAN
Reporter/Recorder:
MAUREEN
SCHORN Heard By:
Donald Mosley

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Duffy, John L.	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Mr. Sciscento advised Mr. Duffy would be setting second chair in this matter. There not being a Courtroom available, COURT ORDERED, matter referred back to Dept. III for Trial setting; TRIAL DATE VACATED.

CUSTODY

5/6/99 8:30 AM TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 06, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

May 06, 1999

8:30 AM

Conversion Hearing Type

TRIAL SETTING
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Pursuant to that conference, COURT ORDERED, matter set for trial. Mr. Sciscento inquired if the Order for visit of Deft's mother, could also include Deft's father. Mr. Coumou had no opposition. COURT SO ORDERED.

CUSTODY

7/15/99 8:30 AM CALENDAR CALL

7/19/99 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 13, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

May 13, 1999

8:30 AM

Sentencing

SENTENCING
Relief Clerk: CAROL GREEN
Reporter/Recorder: JAMES HELLESO
Heard By: Pavlikowski, Joseph S.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank Attorney

JOURNAL ENTRIES

- Tom Tatten of the Division of Parole and Probation present. Mr. Golightly advised that State is aware that Defendant is out of the jurisdiction. Further, State is requesting a continuance and he has no objection. Mr. Coumou requested continuance until after July 19. COURT ORDERED, matter CONTINUED.
 BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 15, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

July 15, 1999

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 7/15/99
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS
INTIMIDATION

Upon Court's inquiry, Mr. Coumou advised he is not ready for trial as the witness that examined the gun and cassings will be unavailable. Further, Mr. Coumou advised Mr. Sciscento served an Amended Notice of Witnesses within 10 days of trial and two of these witnesses live out of State and there will not be enough time before trial to interview them. For these reasons, Mr. Coumou requested a continuance. Mr. Sciscento had no objection to a short continuance. COURT ORDERED, trial date VACATED and RESET and Motion set for today will be CONTINUED to calendar call.
CUSTODY

10/7/99 8:30 AM CALENDAR CALL

10/11/99 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 29, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

July 29, 1999

8:30 AM

Sentencing

SENTENCING

Court Clerk: LINDA
SKINNER

Reporter/Recorder:

JAMES HELLESO

Heard By:

Pavlikowski, Joseph
S.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank

Attorney

JOURNAL ENTRIES

- Larry Scott from the Division of Parole and Probation present. Mr. Golightly advised Deft is out of State and requested a continuance until after co-deft's trial, which is October 11. There being no objection, COURT SO ORDERED.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 29, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

July 29, 1999

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 7/29/99
Court Clerk: LINDA
SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By: Joseph
Pavlikowski

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION FOR DISCOVERY...DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME

CONFERENCE AT BENCH. Upon Court's inquiry, Mr. Coumou had no objection to Deft's Motion for Discovery. COURT ORDERED, Motion GRANTED. Pursuant to conference, Mr. Sciscento to prepare Order to reproduce file. Mr. Coumou requested time to respond to Deft's second motion. Court directed Mr. Coumou to answer by 5 pm on 8/13 and Mr. Sciscento to reply by 5 pm on 8/20. Further, matter will be CONTINUED for argument to calendar call.

CUSTODY

10/7/99 8:30 AM DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 07, 1999**

98C154293-2

The State of Nevada vs Brendan J Nasby

September 07, 1999**8:30 AM****Motion****DEFT'S MOTION
FOR ORDER TO
TAKE VIDEO
DEPOSITION AT
TRIAL Court Clerk:
LINDA SKINNER
Reporter/Recorder:
JAMES HELLESO
Heard By:
Pavlikowski, Joseph
S.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Pursuant to that conference, COURT ORDERED, matter
CONTINUED and TRANSFERED TO DEPT. 7
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 09, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

September 09, 1999

9:00 AM

Motion

DEFT'S MOTION
FOR ORDER TO
TAKE VIDEO
DEPOSITION AT
TRIAL Court Clerk:
TINA HURD
Reporter/Recorder:
PATSY SMITH
Heard By: Mark
Gibbons

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court advised he has read the pleadings. Mr. Sciscento advised the witness, Nina Hoque, is getting married and moving out of the country to Bangladesh or Thailand and may not be available for trial. Mr. Coumou advised there are too many questions regarding the availability of the witness. Court advised Ms. Hoque can be placed under subpoena and, if she is available, the deposition will not be used. Mr. Coumou objected to the video deposition and argued there is no authority for it and he does not want the other witnesses to decide not to appear and have their depositions taken as well. Mr. Coumou advised it is the State's position this is a concocted story and if this deposition is on tape, it can be shared with the other witnesses to solidify their story; these witnesses have been extremely uncooperative with the State. Mr. Coumou further argued there is no attached affidavit from this witness stating she is not going to be available. Mr. Sciscento advised he became aware of this

recently and wants to preserve her testimony; further, he gave the witnesses names and phone numbers to the State and it is not his responsibility if they do not cooperate with the State. Mr. Sciscento advised these witnesses have also received threats. COURT ORDERED, motion GRANTED and the video deposition will be taken in this courtroom at a time mutually convenient for both counsel; if the witness is available, the tape will not be used and the witness will be subpoenaed to be here, however, the deposition may be used for impeachment. At request of Mr. Coumou, COURT FURTHER ORDERED, this testimony is not to be shared with anyone and admonished deft. not to share the testimony he hears during the deposition. Counsel to contact the Court for a time. CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 07, 1999

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 10-7-99
Court Clerk: TINA
HURD
Reporter/Recorder:
PATSY SMITH
Heard By: Mark
Gibbons

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- AS TO DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME...Court FINDS the probative value is outweighed by the prejudicial effect, however, this would be proper for rebuttal if it comes up. COURT ORDERED, motion GRANTED.

AS TO DEFT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS INTIMIDATION..

.COURT ORDERED, motion DENIED as this is relevant if deft. is shown to be the source of the intimidation. Colloquy regarding a pre-trial evidentiary hearing. Mr. Coumou advised he has a handwriting expert that states deft. Nasby is the source of these letters. Mr. Sciscento advised he is not prepared for trial at this time as he got the report of the firearms expert, Tory Johnson, a little late. Mr. Coumou objected to a continuance and advised this case has been continued countless times. AS to the discovery motion, Mr. Coumou advised it is speculative and Mr. Sciscento had ample time to do this as the motion was granted on July 29 and all paperwork requested had been photocopied previously as the State had no objection. Further, Mr. Coumou advised defense counsel has a duty to

provide notice of an expert which he has not received. Mr. Sciscento advised his request was for Mr. Johnson's personal notes and when his office called, they were told by Mr. Johnson's office that they would get to it when they got to it. COURT ORDERED, motion to continue is DENIED and trial will go forward Monday afternoon.

CUSTODY

10-11-99 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 11, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 11, 1999

1:30 PM

Jury Trial

TRIAL BY JURY

Court Clerk:

JOSEPHINE BOHN

Reporter/Recorder:

RENEE SILVAGGIO

Heard By: Gibbons,
Mark

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Santacroce, Frederick
A.

Attorney

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Mr. Sciscento stated there was a motion granted regarding guns not used and he was concerned that witness Johnson would mention them. Mr. Coumou stated he has already spoken to the witness regarding that issue and they will not be mentioned. Colloquy regarding the removal of clips from the gun used outside the presence of the jury and the assault rifle not being admitted but released back to the crime scene analyst. Mr. Sciscento addressed the issue of a letter intercepted by the District Attorney's office as well as an audio tape. Court noted the letter was provided to the Court and it was reviewed. Mr. Coumou advised that the letter was obtained by search warrant, but he has found nothing of evidentiary value on the audio tape. Colloquy as to an evidentiary hearing on the issue of the letter. Court stated jury selection would begin and the hearing can be held tomorrow. IN THE PRESENCE OF THE JURY PANEL. Conference at the bench. Jury selection proceeded. Prospective panel admonished and

excused for the evening. OUTSIDE THE PRESENCE OF THE JURY. Court permitted the State to make its first peremptory challenge, juror #137 McNeal. Batson objection by Mr. Sciscento. Arguments by counsel. Court found the State had a rational basis for the challenge and, ORDERED, CHALLENGE APPROVED. Court in recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 12, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 12, 1999

11:00 AM

Jury Trial

TRIAL BY JURY

Court Clerk:

JOSEHINE BOHN

Reporter/Recorder:

RENEE SILVAGGIO

Heard By: Gibbons,
Mark

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Santacroce, Frederick
A.

Attorney

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Jury and alternates selected and sworn. Conference at the bench. Information ready by the Clerk of the Court. EXCLUSIONARY RULE INVOKED BY THE COURT. Opening statements by Mr. Coumou and Mr. Sciscento. Jury admonished and excused for the evening. OUTSIDE THE PRESENCE OF THE JURY. Mr. Santacroce moved for a mistrial based on the State's opening statement regarding the letter which was the basis for the hearing this date. Following arguments by counsel, COURT ORDERED DD, motion is DENIED. Court in recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 12, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 12, 1999

11:00 AM

Hearing

HEARING Court
Clerk: JOSEPHINE
BOHN
Reporter/Recorder:
RENEE SILVAGGIO
Heard By: Mark
Gibbons

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Santacroce, Frederick A.	Attorney
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Court noted this is a hearing regarding the intimidation of witnesses. Testimony and exhibits presented. (See worksheets.) Mr. Sciscento moved to exclude testimony under the Fifth Amendment as well as the letter received after November 4. He stated that any statements made prior to that date are not a part of this motion. Opposition by Mr. Coumou who argued that this is a motion in limine and should have been brought before the Court 10 days prior to the calendar call. Arguments of counsel regarding witness Holmes being an agent of the State. Court stated it will reserve decision until after reviewing the transcript of this hearing which the Court Reporter is ORDERED to prepare and submit to the Court. Court advised counsel the transcript will be reviewed to determine when the letters were delivered and when the witness spoke to the police. COURT ORDERED, RULING RESERVED on the Fifth Amendment issue and witness Holmes working as an agent of the State. Mr. Santacroce moved to exclude testimony and conclusions of Kelly Daubert regarding handwriting

comparisons. Court stated the defense can cross examine on that issue and ORDERED, motion is DENIED.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 13, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 13, 1999

1:30 PM

Jury Trial

TRIAL BY JURY

Court Clerk:

JOSEPHINE BOHN

Reporter/Recorder:

RENEE SILVAGGIO

 Heard By: Gibbons,
Mark

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Santacroce, Frederick
A.

Attorney

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Testimony and exhibits presented. (See worksheets.) Jury admonished and excused for lunch recess. Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Testimony continued. Exhibits admitted. Jury admonished and excused. Evening recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 14, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 14, 1999

11:00 AM

Jury Trial

TRIAL BY JURY

Court Clerk:

JOSEPHINE BOHN

Reporter/Recorder:

RENEE SILVAGGIO

Heard By: Gibbons,
Mark

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Santacroce, Frederick
A.

Attorney

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- Court reconvened with all present as before. Counsel stipulated to the PRESENCE OF THE JURY. Testimony and exhibits presented. (See worksheets.) Counsel stipulated to the chain of custody of exhibits 52, 52A, 52B and 52C. Counsel further stipulated to exhibit 52 being WITHDRAWN AND RETURNED TO Officer McPhail of Metro. Jury admonished and excused. Evening recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 15, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 15, 1999

1:30 PM

Jury Trial

TRIAL BY JURY

Court Clerk: TINA
HURD

Reporter/Recorder:

Renee Silvaggio

Heard By: Gibbons,
Mark

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank

Attorney

Nasby, Brendan J

Defendant

Santacroce, Frederick
A.

Attorney

Sciscento, Joseph S.

Attorney

JOURNAL ENTRIES

- 11:15 A.M.--OUTSIDE THE PRESENCE OF THE JURY, Court advised records from the jail have been subpoenaed and he has reviewed them with Mitchell Cohen, DDA, and there are two possible names that may pertain to this case. Court advised he has asked Mr. Cohen to make copies of those two possibilities and provide those to counsel. Mr. Sciscento advised there is an issue regarding the visitation records. Off record conference between Court and Mr. Cohen. On the record, Court advised he did not see any names of anyone involved in this case on the records except Mr. Buczek. 11:20 a.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented per worksheets. 12:42 p.m.--Jury admonished and excused for lunch, to return at 2:00 p.m. OUTSIDE THE PRESENCE OF THE JURY, Court admonished deft. Nasby regarding his right not to be compelled to testify. Upon Court's inquiry, counsel and deft. stipulated to WAIVE the penalty phase if there is a conviction and deft. is to be sentenced by the Court. COURT SO ORDERED.

2:05 P.M.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented.

3:41 p.m.--OUTSIDE THE PRESENCE OF THE JURY, Court addressed the issue of John Holmes' testimony. Colloquy regarding when John Holmes spoke with law enforcement. State advised there was no interrogation going on, however, there may be a Sixth Amendment issue; John Holmes subsequently received a letter with names and addresses of people deft. wanted intimidated or killed and that is a separate crime. Court advised that sounds like a Petrocelli issue. Court stated his findings and ORDERED, the letter will be EXCLUDED as the prejudice outweighs the probative value. Brief recess taken. 4:08 p.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented. Court admonished the Jury and excused them for the weekend at 5:10 p.m. to return at 1:30 p.m. Monday afternoon. OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding scheduling. Mr. Sciscento requested the State bring back Jerimiah Deskin. COURT SO ORDERED. Court adjourned for the weekend.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 18, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 18, 1999

9:00 AM

Jury Trial

TRIAL BY JURY
Court Clerk: TINA
HURD/th Relief
Clerk: Blanca
Madrigal
Reporter/Recorder:
PATSY SMITH
Heard By: Gibbons,
Mark

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- 11:28 A.M.--Deft's presence waived. Counsel stipulated instructions may be settled on the record before both sides rest on the record with counsel having the right to additional instructions if further issues arise. Jury Instructions settled on the record. Off the record at 11:38 a.m.

1:30 P.M.--Counsel stipulated to the presence of the Jury. State rested. Conference at the bench. 1:33 p.m.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Sciscento moved to dismiss on the grounds the State did not prove their case beyond a reasonable doubt and argued. State argued this should be argued to the Jury as an issue of fact. Court FINDS the State has set forth a prima facie case and ORDERED, motion DENIED. 1:36 p.m.--IN THE PRESENCE OF THE JURY, Defense rested. Court instructed the Jury. Closing arguments by counsel. 3:25 p.m.--Bailiff sworn to take charge of the Jury. Court explained the scheduling to the Jury. At the hour of 3:28 p.m. this date, Jury retired to commence deliberations. Court in recess.

5:00 P.M.--Jury admonished and excused for the evening to return at 9:00 a.m. tomorrow morning.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 19, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 19, 1999

9:00 AM

Jury Trial

TRIAL BY JURY
Court Clerk: TINA
HURD/th Relief
Clerk: Blanca
Madrigal
Reporter/Recorder:
PATSY SMITH
Heard By: Mark
Gibbons

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- 9:00 A.M.--Jury retired to continue deliberations.

1:34 P.M.--Counsel stipulated to the presence of the Jury. Jury returned with VERDICTS of GUILTY OF COUNT I - CONSPIRACY TO COMMIT MURDER (F) and GUILTY OF COUNT II - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F). Jury polled at request of Mr. Sciscento; 12 affirmed. Court thanked and excused the Jury at 1:38 p.m. OUTSIDE THE PRESENCE OF THE JURY, deft. Nasby having been found guilty, COURT ORDERED, matter REFERRED to P&P and set for sentencing; deft. REMANDED TO CUSTODY.

CUSTODY

11-29-99 9:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

October 28, 1999

9:00 AM

Sentencing

SENTENCING

Court Clerk:

JOSEPHINE BOHN

Reporter/Recorder:

RENEE SILVAGGIO

Heard By: Mark

Gibbons

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank

Attorney

JOURNAL ENTRIES

- Susan Bowler of Parole and Probation present. DEFENDANT DESKIN ADJUDGED GUILTY of ACCESSORY TO MURDER (F). Statements by counsel and defendant. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Defendant SENTENCED to a MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Prisons SUSPENDED; placed on PROBATION for a FIXED period of FIVE (5) YEARS. CONDITIONS: 1. Search clause for the detection of weapons and evidence of gang affiliation. 2. Complete 40 hours of community service work each month of probation not to exceed the provisions of NRS 176.087 unless employed full time. 3. Have no association with Brendan Nasby, Tommie Burnside and Jotee Burnside during probation. 4. Have no contact or association with any member of a gang during probation. 5. Pay a \$10,000.00 fine during the term of probation on a monthly basis. Defendant ORDERED to report to P & P immediately upon leaving the courtroom or a bench warrant will issue. BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 29, 1999

98C154293-2

The State of Nevada vs Brendan J Nasby

November 29, 1999

9:00 AM

Sentencing

SENTENCING

Court Clerk: TINA
HURDReporter/Recorder:
PATSY SMITHHeard By: Mark
Gibbons

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank	Attorney
Nasby, Brendan J	Defendant
Santacroce, Frederick A.	Attorney
Sciscento, Joseph S.	Attorney

JOURNAL ENTRIES

- Tom Tatten of Parole and Probation present. Mr. Sciscento requested a brief continuance as he received the PSI report late Wednesday afternoon at which time he was out of state; further, he has received additional letters over the weekend. Mr. Sciscento stated he understands there are speakers and suggested a bifurcated hearing, allowing the speakers to speak today and continuing the rest of the sentencing. State objected to bifurcating as the victim's family has travelled a great distance and want to see deft. sentenced so they can have closure; however, he would have no objection to trailing the matter so Mr. Sciscento can go over the PSI report with deft. Colloquy. COURT ORDERED, matter TRAILED until 2:00 p.m. this afternoon.

2:20 P.M.--Matter recalled with all present as before. DEFT. NASBY ADJUDGED GUILTY OF COUNT I - CONSPIRACY TO COMMIT MURDER (F) and COUNT II - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F). Sworn statements made by victim's grandmother and

mother, ELLEN BEAVER-JONES and VELMA BEASLEY, and deft's mother, BRENDA NASBY. Matter argued and submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Prisons for Count I and SENTENCED to LIFE WITH THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE term of LIFE WITH THE POSSIBILITY OF PAROLE for use of a deadly weapon. for Count II, CONSECUTIVE to Count I, with 480 DAYS credit for time served. BOND, if any, EXONERATED. Mr. Sciscento advised deft's visitors have been restricted to his mother, fiancée and child by court order and requested that be lifted. State advised he moved for that when he found all his witnesses were being intimidated and threatened; deft. is obviously not in isolation now or he would not have these new charges for Battery on a Corrections Officer. COURT ORDERED, the Court order restricting visitation is LIFTED and matter is left to the discretion of the jail commander. Mr. Sciscento advised, as to the appeal, he believes there will be a conflict as the Special Public Defender represented one of the co-defts. and requested the Court appoint Mr. Santacroce. State took no position. COURT ORDERED, Mr. Santacroce is APPOINTED to represent deft. Nasby on appeal. Off the record at 3:16 p.m.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 17, 2001**

98C154293-2

The State of Nevada vs Brendan J Nasby

September 17, 2001**9:00 AM****Motion****DEFT'S PRO PER
MTN TO
DISCOVERY
PRODUCTION/TRA
NSMISSION OF
DOCUMENTS/38
Court Clerk: Denise
Husted Heard By:
Nancy Saitta****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Brower, Keith

Attorney

JOURNAL ENTRIES

- COURT noted Defendant has failed to file a writ and is not entitled to the documents, therefore
ORDERED, motion DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 2002

98C154293-2

The State of Nevada vs Brendan J Nasby

February 25, 2002

9:00 AM

Motion

DEFT'S PRO PER
MTN FOR
DISCOVERY
PRODUCTION AND
TRANSMISSIONS
OF DOCUM/42
Court Clerk: Denise
Husted
Reporter/Recorder:
Kristine Cornelius
Heard By: Saitta,
Nancy M

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Goettsch, Becky S. Attorney

JOURNAL ENTRIES

- COURT noted no opposition from the State and ORDERED, motion CONTINUED to 4/8/02; State to file response.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2002

98C154293-2

The State of Nevada vs Brendan J Nasby

April 08, 2002

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 4/8/02
Court Clerk: Amber
Farley
Reporter/Recorder:
Kristine Cornelius
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Coumou, Frank Attorney
Santacroce, Frederick Attorney
A.

JOURNAL ENTRIES

- F. SANTACROCE'S MOTION TO WITHDRAW AS COUNSEL Mr. Santacroce stated he took this case on the appeal, the appeal was denied and the conviction was affirmed. COURT ORDERED, Motion GRANTED, order signed in open court.

DEFT'S PRO PER MOTION FOR DISCOVERY PRODUCTION...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL ...DEFTS PRO PER MOTION TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR POST CONVICTION RELIEF...DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING

Mr. Coumou stated he doesn't believe an evidentiary hearing is needed and that the motions can be ruled on. Court indicated that it will continue this matter for thirty days to ensure that everything has been fully reviewed, and SO ORDERED.

NDC

98C154293-2

ABOVE MOTIONS CONTINUED TO: 5/6/02 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 06, 2002

98C154293-2

The State of Nevada vs Brendan J Nasby

May 06, 2002

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 5/6/02
Court Clerk: Amber
Farley
Reporter/Recorder:
Debra Vanblaricom
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Lawson, Tamara F. Attorney

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION FOR DISCOVERY PRODUCTION...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL ...DEFTS PRO PER MOTION TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR POST CONVICTION RELIEF...DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING

COURT ORDERED, Mr. Christiansen appointed as counsel. Neither Defendant nor Mr. Christiansen present, COURT ORDERED, matters CONTINUED.

NDC

CONTINUED TO: 6/24/02 9:00 AM

CLERK'S NOTE: Minute Order AMENDED to reflect the Court's appointment of counsel. /af
5/10/02

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 24, 2002

98C154293-2

The State of Nevada vs Brendan J Nasby

June 24, 2002

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 6/24/02
Court Clerk: Amber
Farley
Reporter/Recorder:
Kristine Cornelius
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Brown, David T.	Attorney
	Lawson, Tamara F.	Attorney
	Nasby, Brendan J	Defendant

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR POST CONVICTION RELIEF... DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING

MATTERS CONTINUED to 7/1/02.

DEFT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL

Conference at bench. Pursuant to same, Mr. Christiansen's office is REMOVED from the case and Lori Teicher is APPOINTED. Matter set for confirmation of counsel.

NDC

7/1/02 9:00 AM CONFIRMATION OF COUNSEL (L. TEICHER)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 01, 2002

98C154293-2

The State of Nevada vs Brendan J Nasby

July 01, 2002

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 7/1/02
Court Clerk: Amber
Farley
Reporter/Recorder:
Tina Smith Heard
By: Kathy Hardcastle

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Teicher, Lori C.
Wall, David T.

Attorney
Attorney

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION TO ATTACH SUPPLEMENTAL EXHIBIT TO PETITION FOR POST CONVICTION RELIEF... DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING...CONFIRMATION OF COUNSEL (L. TEICHER)

Ms. Teicher confirmed as counsel. COURT ORDERED, counsel to work out a briefing schedule and ORDERED, matter set for a status check in forty-five days.

NDC

8/19/02 9:00 AM STATUS CHECK: PENDING MOTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 19, 2002

98C154293-2

The State of Nevada vs Brendan J Nasby

August 19, 2002

9:00 AM

Status Check

STATUS CHECK:
PENDING
MOTIONS Court
Clerk: Amber Farley
Reporter/Recorder:
Kristine Cornelius
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Nasby, Brendan J	Defendant
	Teicher, Lori C.	Attorney
	Wall, David T.	Attorney

JOURNAL ENTRIES

- Ms. Teicher stated she has met with the Defendant and now has the file; requested a briefing schedule be set. COURT SO ORDERED, as follows:

Opening due 11/22/02 Response due 12/20/02 Reply due 1/24/02

Matter set for hearing.

NDC

2/5/03 9:00 AM ARGUMENT: POST-CONVICTION WRIT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 02, 2004

98C154293-2

The State of Nevada vs Brendan J Nasby

February 02, 2004

9:00 AM

Motion for Substitution

DEFT'S PRO PER
MTN FOR
SUBSTITUTION
COUNSEL/54 Court
Clerk: Amber Farley
Reporter/Recorder:
Kristine Cornelius
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Owens, Steven S. Attorney

JOURNAL ENTRIES

- Court noted that prior appointed counsel, Ms. Teicher, has gone to the Federal Public Defender's office, and ORDERED, new counsel is appointed.

NDC

CLERK'S NOTE: The Clerk contacted Tony Sgro, who stated he would accept the appointment, and confirmed as counsel. Status check date set in court for confirmation is changed to a status check on the setting of a briefing schedule.

3/1/04 9:00 AM STATUS CHECK: BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 01, 2004

98C154293-2

The State of Nevada vs Brendan J Nasby

March 01, 2004

9:00 AM

Status Check

STATUS CHECK:
BRIEFING
SCHEDULE Court
Clerk: Amber Farley
Reporter/Recorder:
Dick Kangas **Heard**
By: Nancy Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Owens, Steven S. Attorney
Sgro, Anthony P. Attorney

JOURNAL ENTRIES

- Mr. Sgro stated the writ was filed in July 2002 and never litigated, and recounted the procedural history regarding the writ. Mr. Sgro stated the writ was filed 1/30/02, which cures the one-year time bar. Mr. Owens requested that issue be argued, stating that good cause must be shown for the delay. Bench conference. The Court set a briefing schedule, as follows: Opening due 9/3/04; Response due 11/12/04; Reply due 11/17/04; and matter set for argument.

NDC

1/10/05 9:00 AM ARGUMENT: WRIT

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 02, 2005**

98C154293-2

The State of Nevada vs Brendan J Nasby

March 02, 2005**9:00 AM****Hearing****ARGUMENT: POST-
CONVICTION
WRIT Court Clerk:
Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Cory, Ken****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coumou, Frank

Attorney

Sgro, Anthony P.

Attorney

JOURNAL ENTRIES

- At the request of counsel, COURT ORDERED, matter CONTINUED to be heard in front of Judge Saitta.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 02, 2005

98C154293-2

The State of Nevada vs Brendan J Nasby

May 02, 2005

9:00 AM

Hearing

ARGUMENT: POST-
CONVICTION
WRIT Relief Clerk:
Jennifer Kimmel
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank
Sgro, Anthony P.

Attorney
Attorney

JOURNAL ENTRIES

- Argument by counsel. COURT NOTED, an Evidentiary Hearing shall be conducted to ascertain if the conduct of the trial attorney rises to a level of effectiveness in this matter. Court additionally STATED that ineffectiveness at the appellate level may or may not be the result of certain issues not being raised. COURT directed counsel to limit testimony to Mr. Santacroce and Mr. Sciscento at the upcoming hearing. Discussion regarding tactical decisions for trial. COURT ORDERED, Evidentiary Hearing set.

NDC

6/10/05 9:00 A.M. EVIDENTIARY HEARING: TRIAL STRATEGY (INEFFECTIVE ASSISTANCE OF COUNSEL)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 02, 2005**

98C154293-2

The State of Nevada vs Brendan J Nasby

September 02, 2005**11:00 AM****Evidentiary Hearing****EVIDENTIARY
HEARING RE:
TRIAL STRATEGY
(INEFFECTIVE
ASSISTANCE OF
COUNSEL) Relief
Clerk: Theresa Lee
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Coumou, Frank Attorney
Michaelides, Thomas Attorney
C.**JOURNAL ENTRIES**

- (Witnesses present, Joseph Sciscento, Esq. and Frederick Santacroce, Esq.)

Deft not present. Mr. Michaelides contacted Mr. Sgro whom he is appearing for and was informed he wanted the deft present for the hearing. COURT ORDERED, hearing CONTINUED, State to prepare a new Order to Transport. Counsel believed the hearing could take one hour.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 26, 2005**

98C154293-2

The State of Nevada vs Brendan J Nasby

September 26, 2005**10:30 AM****Evidentiary Hearing****EVIDENTIARY
HEARING RE:
TRIAL STRATEGY
(INEFFECTIVE
ASSISTANCE OF
COUNSEL) Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Coumou, Frank
Nasby, Brendan JAttorney
Defendant**JOURNAL ENTRIES**

- Court advised the deft. that it received information that the deft. was not transported and called off Mr. Sciscento, therefore, ORDERED, matter CONTINUED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 09, 2005

98C154293-2

The State of Nevada vs Brendan J Nasby

November 09, 2005

10:30 AM

Evidentiary Hearing

**EVIDENTIARY
HEARING RE:
TRIAL STRATEGY
(INEFFECTIVE
ASSISTANCE OF
COUNSEL) Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Nancy
Saitta**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Michaelides, Thomas	Attorney
	C.	
	Nasby, Brendan J	Defendant

JOURNAL ENTRIES

- Frederick Santacroce, Esq. and Joseph Sciscento, Esq., sworn and testified. Argument by Mr. Coumou. Mr. Michaelides requested to file a written response. Court stated it will give Mr. Michaelides 30 days to file a written response and will give the State 30 days to file a reply. COURT ORDERED, matter set for argument.

NDC

1/11/06 11:00 AM ARGUMENT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 11, 2006

98C154293-2

The State of Nevada vs Brendan J Nasby

January 11, 2006

11:00 AM

Hearing

ARGUMENT Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By:
Pavlikowski, Joseph
S.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank
Nasby, Brendan J

Attorney
Defendant

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 15, 2006

98C154293-2

The State of Nevada vs Brendan J Nasby

February 15, 2006

11:00 AM

Hearing

ARGUMENT Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Coumou, Frank	Attorney
Michaelides, Thomas	Attorney
C.	
Nasby, Brendan J	Defendant

JOURNAL ENTRIES

- Mr. Coumou advised the Court that he just received deft's supplemental pleading and is prepared to respond. COURT ORDERED, matter CONTINUED for oral argument.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2006

98C154293-2

The State of Nevada vs Brendan J Nasby

February 27, 2006

10:30 AM

Hearing

**ARGUMENT Court
Clerk: Kristen Brown
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Saitta,
Nancy M**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Coumou, Frank
Nasby, Brendan J

Attorney
Defendant

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2006

98C154293-2

The State of Nevada vs Brendan J Nasby

March 27, 2006

10:30 AM

Hearing

ARGUMENT Relief
Clerk: Cynthia
Georgilas
Reporter/Recorder: Jo
Anne Pierpont
Heard By: Nancy
Saitta

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Coumou, Frank	Attorney
	Nasby, Brendan J	Defendant
	Sgro, Anthony P.	Attorney

JOURNAL ENTRIES

- Mr. Sgro summarized the facts of the case. Argument by Mr. Sgro regarding counsel's representation at the time of trial. Argument by Mr. Coumou regarding potential alibi witness and handwriting expert, and requested the Court deny Defendant's Post Conviction for Writ of Habeas Corpus. Court FINDS, the decisions by counsel were reasonable and within the discretion of decision making and the evidence does not support ineffective assistance of counsel and therefore counsels' actions were effective. Mr. Coumou to prepare the Order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 27, 2011**

98C154293-2

The State of Nevada vs Brendan J Nasby

April 27, 2011**8:15 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Phyllis Irby**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Raman, Jay

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft not present. Mr. Sgro Deft's counsel not present. COURT ORDERED, MATTER CONTINUED.
Mr. Sgro needs to be present next date to make representations.

NDC

5-11-11 8:00 AM SAME (DEPT. XVIII)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 11, 2011**

98C154293-2

The State of Nevada vs Brendan J Nasby

May 11, 2011**8:15 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Roshonda Mayfield**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:** Raman, Jay Attorney
State of Nevada Plaintiff**JOURNAL ENTRIES**

- Court advised, Defense counsel is not present for today's matter. This matter has been passed twice for counsel to provide additional information. The State has filed a response and defense counsel has failed to file documents. Therefore, this Court will render a decision based upon what has been presented to the Court. COURT ORDERED, petition DENIED under NRS 34.726 and NRS 34.810 as being excessively time barred. The State is to prepare the order of Conclusions of Law and/or the Procedural Grounds.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2011

98C154293-2

The State of Nevada vs Brendan J Nasby

June 20, 2011

8:15 AM

Motion

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 11B

COURT CLERK: Billie Jo Craig

RECORDER: Richard Kangas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Deputy District Attorney Frank Ponticello present for the State. Kevin Leik appearing for Anthony Sgro representing defendant. Defendant not present.

Colloquy regarding status of case. COURT ORDERED, Defendant's Pro Per Motion is DENIED. At request of Mr. Leik, COURT ORDERED, Sgro allowed to WITHDRAW as Counsel of Record. RECALLED LATER. The State advised the Findings of Facts and Conclusions of Law were previously filed and forwarded to defendant at Ely.

NDC

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

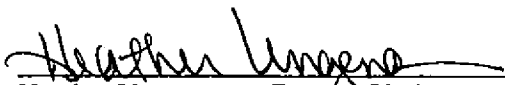
Pursuant to the Supreme Court order dated July 21, 2011, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises eight volumes with pages numbered 1 through 1743.

STATE OF NEVADA,)	
)	
Plaintiff(s),	)	Case No: C154293-2
	)	Dept No: XVIII
vs.)	
)	
BRENDAN J. NASBY,)	
)	
Defendant(s),)	
_____)	

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 11 day of August 2011.

Steven D. Grierson, Clerk of the Court


Heather Ungermann, Deputy Clerk

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6	02/04/2005	STATE'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	1334 - 1365
7	04/08/2011	STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	1556 - 1562
5	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL	1201 - 1203
5	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR EVIDENTIARY HEARING	1204 - 1206
6	01/28/2004	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBSTITUTION OF ATTORNEYS	1271 - 1274
5	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) (CONTINUED)	1207 - 1225
6	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) (CONTINUATION)	1226 - 1240
6	12/19/2002	STIPULATION AND ORDER	1259 - 1260
6	11/10/2004	STIPULATION AND ORDER	1283 - 1284
6	02/01/2005	STIPULATION AND ORDER	1332 - 1333
6	03/25/2005	STIPULATION AND ORDER	1373 - 1374
6	06/16/2005	STIPULATION AND ORDER	1377 - 1378
6	08/10/2005	STIPULATION AND ORDER	1379 - 1380

ANTHONY P. SGRO, ESQ.
Nevada State Bar #3811
PATTI & SGRO
720 S. 7TH Street, Suite 300
Las Vegas, Nevada 89101
(702) 385-9595
Attorneys for Appellant

FILED

JUN 16 3 50 PM '06

Shirley B. Panagiotou
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

BRENDAN NASBY,

Appellant/Petitioner

Case No. C154293

vs.

Dept. No. XVIII

E.K. McDANIEL, WARDEN, and
THE STATE OF NEVADA,

Respondents.

REQUEST FOR ROUGH DRAFT TRANSCRIPTS

TO: JO ANNE PIERPONT, Court Reporter

BRENDAN NASBY, Appellant/Petitioner named above, requests preparation of a rough draft transcript of the above captioned proceedings before the district court, as follows:

Date or dates of proceeding:

3/27/2006 @ 10:30 a.m.

HEARING: Argument re: Ineffective Assistance of Counsel; Post Conviction Writ of Habeas

Date of proceedings:

11/09/2005@10:30 a.m.

EVIDENTIARY HEARING: Testimony of Frederick Santacroce and Joseph Sciscento

Portions of the transcript requested: **All portions** of the oral argument transcript from March 27, 2006, and **all portions** of the oral argument/testimony from the evidentiary hearing on November 09, 2005.

///

///

COUNTY CLERK
JUN 16 2006

RECEIVED

1 This notice requests a transcript of only those portions of the district court proceedings
2 which counsel reasonably and in good faith believes are necessary to determine whether appellate
3 issues are present.

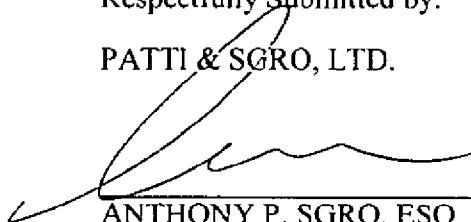
4 I recognize that I must personally serve a copy of this form on the above named court
5 reporter and opposing counsel, and that the above named court reporter shall have twenty (20)
6 days from the receipt of this notice to prepare and submit to the district court the rough draft
7 transcript requested herein.

8 I hereby certify that on this date I ordered the required transcripts from the court reporter
9 named above.

10
11 **DATED** this 13th day of June, 2006.

12
13 Respectfully Submitted by:

14 PATTI & SGRO, LTD.

15
16 
17 ANTHONY P. SGRO, ESQ.
18 Nevada Bar No. 003811
19 720 S. 7th Street, Ste. 300
20 Las Vegas, NV 89101
21 Telephone: (702) 385-9595

22 Attorney for Appellant / Petitioner
23
24
25
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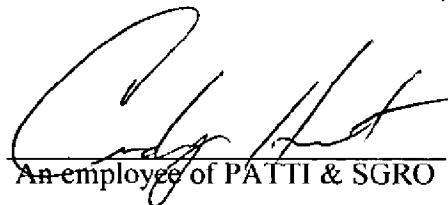
1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 16th day of June, 2006, I mailed a true and correct copy of the
3 foregoing REQUEST FOR ROUGH DRAFT TRANSCRIPT, by depositing a copy in the United
4 States Mail, postage pre-paid, addressed to the following:

5
6 DAVID ROGER, ESQ.
7 DISTRICT ATTORNEY'S OFFICE
8 200 Lewis Avenue
9 Las Vegas, Nevada 89101

10 JO ANNE PIERPONT
11 Court Reporter, D.C. Department XVIII (18)
12 200 Lewis Avenue
13 Las Vegas, Nevada 89101

14 and that there is regular communication between the place(s) mailed and the place(s) so
15 addressed.

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An employee of PATTI & SGRO

14
ORIGINAL

FILED

JUN 20 3 53 PM '06

DISTRICT COURT *of the State of Nevada*
CLERK
CLARK COUNTY, NEVADA

1 TRAN
2
3
4
5
6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 BRENDAN JAMES NASBY,

11 Defendant.
12

)
) CASE NO. C154293
)
)
)

) DEPT. XVIII
)
)
)
)

13 BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT COURT JUDGE
14 MONDAY, MARCH 27, 2006, 10:18 A.M.
15

16 RECORDER'S TRANSCRIPT OF HEARING RE:
17 ARGUMENT

18 APPEARANCES:

19 For the State: FRANK COUMOU, ESQ., Deputy District Attorney

20 For the Defendant: ANTHONY P. SGRO, ESQ.,
21
22
23
24

RECORDED BY: JO ANNE B. PIERPONT, COURT RECORDER/TRANSCRIBER

1 MONDAY, MARCH 27, 2006, 10:18 A.M.

2
3 THE COURT: Now Nasby, 154293. I think all parties are present. The
4 defendant is present in custody. This is for argument. Hang on let me just get
5 my notes. Okay, State, are you ready to go?
6

7 MR. COUMOU: Yes.

8 THE COURT: And on behalf of the defendant are you ready to go?

9 MR. SGRO: Yes, Your Honor.

10 THE COURT: Very well. Let me just set the procedural background in
11 this case. It appears as if the defendant was convicted, strike that, a jury found
12 the defendant guilty of conspiracy and first degree murder with use of a deadly
13 weapon on October 19, 1999. He was sentenced to a maximum term of 120
14 months with a minimum parole eligibility of 48 months on the conspiracy count.
15 On the murder count he was sentenced to a consecutive term of life with the
16 possibility of parole with a consecutive term of life for the deadly weapon
17 enhancement.
18

19 He appealed his conviction and that was affirmed in February of
20 '01. He filed a pro per petition in February of '02. In March of '04 this Court
21 entered a new briefing schedule and defendant was granted an extension of
22 time to file his petition.

23 In this case the facts are that on July 16, 1998 the defendant and
24 others were at Mr. Nasby's house. They all went for a drive allegedly picked up
25 the victim in this case, Michael Beesley, took him to the desert and shot him in

1 the head and in the chest.

2 It appears that the defendant asserts prosecutorial misconduct
3 based on preventing a defense witness from testifying, improperly vouching for
4 the credibility of a witness, improperly referring to things not in evidence and
5 generally includes most of those matters that were set forth in the original
6 appeal.
7

8 We are now here on the ineffective assistance of counsel in this
9 case with respect to the appellate process in this matter, and if you would like
10 on behalf of the defendant you may add what you need and tell my why it is
11 that you believe I should grant your petition.
12

13 MR. SGRO: Thank you, Your Honor. Judge, we filed an opening petition
14 and we raised numerous points. The Court read it thoroughly and at the
15 conclusion of reading that decided that there should be an evidentiary hearing
16 on two points. My understanding of that is the Court wanted some more
17 information, some understanding from the defense counsel as to what their
18 thought process was and why they did or didn't make certain decisions. Those
19 decisions focused around mainly two points that no witnesses were called on
20 behalf of Mr. Nasby and that an alibi witness wasn't pursued with respect to
21 those two witnesses.
22

23
24 In addition, Mr. Nasby, although he has no prior criminal history
25 was not called to the stand. Now, that to me calls upon the defense counsel -

1 And I don't want to say it changes the burden of proof and puts it in their
2 court. I don't want to use that legal lingo, but to me it calls upon defense
3 counsel to come to court and to explain what the thought process was in
4 making those decisions.
5

6 We had a three or four month period of time to prepare for that
7 evidentiary hearing. Counsel, both trial counsels, came to Court and a majority
8 of their answers were I don't remember and I don't know. Understandably, it
9 was a long trial, a complicated trial, but we had plenty of time for counsel to
10 come forth, be prepared to answer those questions. Now, it was not going to
11 be a surprise what those questions were, what were you thinking, why did you
12 do it, and what was your communication with the defendant.
13

14 Again, not much came from the evidentiary hearing, other than I
15 don't remember and I don't recall. Now, it's difficult as a defense attorney to
16 argue ineffective against two trial counsel that I know are usually very effective
17 and Mr. Santacroce I know has a not guilty in front of a jury verdict, which is
18 not easy to do. I've only done it twice myself. So, I know these people are
19 generally very effective counsel, however some things were on which I believe
20 at the time of trial may have caused a lack of communication or a
21 communication breakdown.
22

23 We know that Mr. Sciscento was moving his office. We know that
24 he had just accepted new employment some time about before the trial started
25

1 and we know that Mr. Duffy could not go to trial due to his schedule and that
2 Mr. Santacroce had to come in. So under normal circumstances I believe these
3 two are very effective. Individually, they probably could have done a finer job,
4 but together under these circumstances not one – How would one of us like to
5 go to trial without having one person called to the stand to defend us and not
6 being able to be called to the stand ourselves to defend ourselves?
7

8 Now, there was some statements about Mr. Santacroce that he
9 spoke with the defendant that there was an understanding that Mr. Nasby was
10 not going to testify. However, that's refuted in the affidavit that we attached.
11 He did want to testify. He had no prior criminal history. The only points out of
12 all the I don't remembers and the I don't recalls that we got was something
13 about a letter being written by Mr. Nasby. However, prior to trial I don't believe
14 that there was any handwriting exemplar done on that and I know there was
15 after trial, but that fact, if you're going to call it a fact, was simply accepted by
16 defense counsel.
17

18 The prosecutor told me he wrote this letter so I'm not going to put
19 you on the stand 'cause everything you say it might be perjured. That is not
20 affective assistance of counsel. Certainly other alternatives could have been
21 taken to deal with that letter. Nothing was done and simply in the face of all
22 the allegations that the prosecutor very ably lobbed onto the defendant at trial,
23 allegation after allegation, the defense stood silent and that silence was
24
25

1 deafening and in turn resulted in a guilty verdict on all counts. Submit it,
2 Judge.

3 MR. COUMOU: Judge, I just want to pick up on the last portion about
4 the handwriting expert. It was my recollection that a handwriting expert did
5 examine this upon my request and did come in and at a hearing outside the
6 presence gave the opinion that it was written by the defendant and so Mr.
7 Sciscento was present because he cross-examined and was aware of the fact
8 that this letter, which appears to be coaching a potential witness, knew that it
9 came from the defendant. On top of that, it was intercepted from the jail and
10 the defendant was the sender of that letter so I just want to correct that
11 misstatement.
12

13 I also want to point out that in the supplemental brief that the
14 defense wanted to attach and set out its argument for on page three, it lists
15 that Brittany Adams was a potential alibi witness. That was incorrect. Brittany
16 Adams testified at the trial. She originally was going to be a alibi witness for
17 the defense, but Miss Adams did not want to basically not be forthright and
18 come up with a lie and so she did testify to other things and her involvement on
19 top of the fact that the defendant apparently confessed to her. So, there is
20 just some misstatements here.
21

22 Now, as to Mr. Santacrocce's and Mr. Sciscento's performance,
23 quite frankly I thought both of them did an admirable job. I was the prosecutor
24
25

1 in this particular case and I quite frankly felt that it was very astute on Mr.
2 Sciscento's behalf to bring in Mr. Santacroce since he was transferring office to
3 the Special Public Defender's office and you heard testimony at our evidentiary
4 hearing that Mr. Santacroce was taking over the files and he was the conduit of
5 witnesses and information flowing between Mr. Sciscento and Mr. Santacroce
6 in order to make sure there was that Chinese wall that Mr. Sciscento and the
7 Special Public Defender was trying to create in order not to interfere with any
8 knowledge that they may have gained from the other defendants in this
9 particular case.
10
11

12 You know, what's really not being addressed in this particular
13 argument is that both counsels for the defendants really were admirable in the
14 fact that they were following their code of ethics that they need to follow and
15 they're not going to suborn perjury and they certainly were not going to commit
16 a fraud, you know, during a jury trial and what they did and what Mr. Sciscento
17 as opted felt, and he testified to this, the best defense in this particular case
18 was to blame the killing on another individual named Damon VonLewis also
19 known as Sugar Bear. That was very believable under the circumstances and it
20 was the right defense and which is the defense that I believed was the proper
21 defense as the prosecutor.
22
23

24 When I prepare for a case and I always start looking at what is the
25 best defense that the defense attorney is going to attack my case on it was my

1 opinion that he was going to blame Damon VonLewis as the shooter in this
2 particular case. He had very strong evidence to try to make a suggestion to the
3 defense and he did that and he kept that promise. It wasn't until just recently
4 prior to trial that suddenly the defendant wanted to use this alibi defense and
5 quite frankly you heard how the alibi defense started falling apart.

7 And, finally, this case was very strong as to guilt on the defendant.
8 We had people who took in confessions on behalf of the defendant. We had
9 the murder weapon found in the defendant's bedroom. We had motive. The
10 strongest motive of all is that the fact that apparently the victim was pushing
11 himself into position of authority among this gang that the defendant was the
12 leader of at the time and he didn't like the fact that his authority was being
13 challenged by the victim and so it was him who brought up the fact that he
14 wanted to take the victim out and shoot him out in the desert. We had the co-
15 defendants testify to this.

18 I mean this case when you look at it and you take a step back and
19 not focus on the tree, but look at the entire forest the guilt was overwhelming
20 in this particular case. And so on behalf of the State, Judge, we ask that you
21 deny their post-conviction petition for a writ of habeas corpus.

23 THE COURT: Any reply?

24 MR. SGRO: Briefly, Judge. I disagree that the notice of alibi was
25 suddenly - the alibi came up as suddenly at trial. A notice of alibi is due prior

1 to trial pursuant to statute, so I'm assuming that was filed correctly or we
2 would have been prevented from putting forth that argument. So, it didn't
3 happen suddenly.
4

5 The other witnesses who would have called would have supported
6 - I agree that would have been a good defense and it was the defense - but
7 other witnesses, had they been called, would have supported that Sugar Bear
8 was in fact the shooter. No one was called. I understand that there's going to
9 be overwhelming evidence. When one side puts on evidence and the other side
10 doesn't of course it's going to seem overwhelming.
11

12 My understanding and I read this in the brief, I didn't write the brief,
13 but Chinese walls are not recognized in the State of Nevada. Mr. Scisento,
14 with all due respect, stated that's what he was following, a series of Chinese
15 walls. And, again, I'll leave it to the Court upon a review of the briefs. They
16 are not recognized in the State of Nevada, and if I could just confer with
17 respect to the witness Brittany for one second, Judge, with my client?
18

19 THE COURT: Sure.
20

[Pause in the Proceedings]

21 MR. SGRO: Thank you, Judge. And again with respect to the letter,
22 there's a fine line between coaching a witness and witness preparation. It
23 wasn't - It was never discussed with the defendant. He was never shown the
24 letter and gone over sentence by sentence to explain if you did write this,
25

1 which is still a big if, what did you mean? Were you going over the testimony
2 to see that she remembered correctly or coaching? It certainly could have been
3 handled with that trial.
4

5 The alternative of ignoring it and not calling anybody and putting on
6 no defense is not the best alternative in face of a statement like that or a letter
7 like that. Submit it based upon that, Your Honor.

8 THE COURT: We can begin with, if you will, one of the defendant's
9 claims that the trial court was ineffective for failing to call any witnesses and
10 failing to offer any evidence. That has been reviewed by our Supreme Court
11 actually some time ago in both the *Thomas* case and the *Love* case and in
12 general the Supreme Court found that that decision of which witnesses to call
13 or whether to call witnesses is left to the professional judgment of trial counsel.
14
15

16 I have had, frankly, the pleasure of having both Mr. Santacroce and
17 Mr. Sciscento and Mr. Coumou in my court on trials on numerous occasions
18 and the caliber of professionalism is one that I only wish was throughout the
19 entire Bar. We did hear testimony also from those counsel and defendant also
20 submits in his petition that his counsel was ineffective because they exerted I
21 think what is referred to as extreme pressure on him to plead guilty.
22

23 Again, the reality of case preparation or case consideration has to
24 do with the judgment of counsel and then I am, of course, referred to the
25 *Strickland* standard which is a determination of whether or not counsels'

1 actions would be reasonably affective assistance in this instance and we'd have
2 to see something that points to deficiency and that, and it is a conjunctive
3 under *Strickland*, and that the deficiency prejudiced the defense. I cannot find
4 that in this case and I do not believe that the points and authorities and
5 allegations set forth on behalf of the defendant are supported by the law or the
6 facts and especially now that we have had the evidentiary hearing that is
7 necessary.
8

9
10 I do believe that the decisions made by counsel were reasonable,
11 that they were certainly well within the professional discretion and decision
12 making that trial counsel generally brings to a case like this. The evidence in
13 this case does not support ineffective assistance of counsel and that will be this
14 Court's ruling.
15

16 MR. COUMOU: Thank you, Judge.

17 THE COURT: Thank you.

18 MR. SGRO: Thank you, Judge.

19 MR. COUMOU: Would you like us to prepare defense clad conclusions?
20

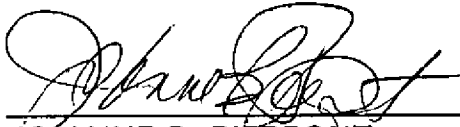
21 THE COURT: Yes, with the appropriate findings, as well.

22 MR. COUMOU: Yes, Your Honor.
23

24 [Proceedings concluded AT 10:37 A.M.]
25

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



JO ANNE B. PIERPONT
Court Recorder/Transcriber

ORIGINAL

h

1 ANTHONY P. SGRO, ESQ.
2 Nevada State Bar #3811
3 PATTI & SGRO
4 720 S. 7TH Street, Suite 300
5 Las Vegas, Nevada 89101
6 (702) 385-9595
7 Attorneys for Appellant

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EXPRESS BOX

FILED AFTER HOURS

2006 JUN 20 P 1:24

JUN 20 2006

Shirley B. Longines

[Signature]

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

8 BRENDAN NASBY,

9 Appellant/Petitioner

Case No. C154293

10 vs.

Dept. No. XVIII

11 E.K. McDANIEL, WARDEN, and
12 THE STATE OF NEVADA,

13 Respondents.

14 **REQUEST FOR ROUGH DRAFT TRANSCRIPTS**

15 TO: JO ANNE PIERPONT, Court Reporter

16 BRENDAN NASBY, Appellant/Petitioner named above, requests preparation of a rough
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19 *Date or dates of proceeding:*

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HEARING: Argument re: Ineffective Assistance
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22 *Date of proceedings:*

11/09/2005@10:30 a.m.

EVIDENTIARY HEARING: Testimony of
Frederick Santacroce and Joseph Sciscento

23
24 *Portions of the transcript requested:* **All portions** of the oral argument transcript from
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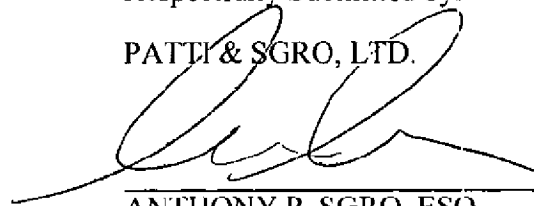
4 I recognize that I must personally serve a copy of this form on the above named court
5 reporter and opposing counsel, and that the above named court reporter shall have twenty (20)
6 days from the receipt of this notice to prepare and submit to the district court the rough draft
7 transcript requested herein.

8 I hereby certify that on this date I ordered the required transcripts from the court reporter
9 named above.

10
11 **DATED** this 16th day of June, 2006.

12
13 Respectfully Submitted by:

14 **PATTI & SGRO, LTD.**

15
16 

17 **ANTHONY P. SGRO, ESQ.**

18 Nevada Bar No. 003811

19 720 S. 7th Street, Ste. 300

20 Las Vegas, NV 89101

21 Telephone: (702) 385-9595

22 Attorney for Appellant / Petitioner
23
24
25
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27
28

1 **CERTIFICATE OF MAILING**

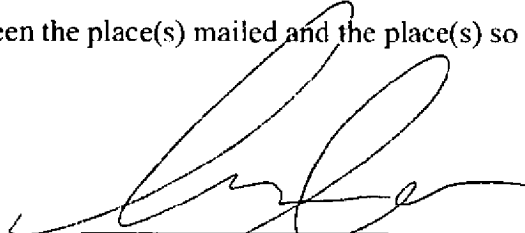
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3 foregoing REQUEST FOR ROUGH DRAFT TRANSCRIPT, by depositing a copy in the United
4 States Mail, postage pre-paid, addressed to the following:

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8 200 Lewis Avenue
9 Las Vegas, Nevada 89101

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11 DISTRICT ATTORNEY'S OFFICE
12 200 Lewis Avenue
13 Las Vegas, NV 89101

14 JO ANNE PIERPONT
15 Court Reporter, D.C. Department XVIII (18)
16 200 Lewis Avenue
17 Las Vegas, Nevada 89101

18 and that there is regular communication between the place(s) mailed and the place(s) so
19 addressed.

20
21 
22 An employee of PATTI & SGRO
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ORIGINAL

FILED

JAN 29 9 22 AM '07

CLERK OF THE COURT

1 **EXPT**
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 003811
4 PATTI, SGRO & LEWIS
5 720 S. 7th Street, Ste. 300
6 Las Vegas, Nevada 89101
7 (702)385-9595

8 Attorneys for Defendant

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 *****

13 THE STATE OF NEVADA

14 Plaintiff,

15 -vs-

16 BRENDAN NASBY,

17 Defendant.

CASE NO.: C154293
DEPT. NO.: XVIII

18 **EX PARTE MOTION FOR AUTHORIZATION OF PAYMENT OF FEES**

19 **COMES NOW** the Defendant BRENDAN NASBY, by and through his counsel, ANTHONY
20 P. SGRO, ESQ. of PATTI & SGRO, requests this Honorable Court issue an Order pursuant to
21 Nevada Revised Statute 7.125, granting payment of fees in the above-captioned matter.

22 ///

23 ///

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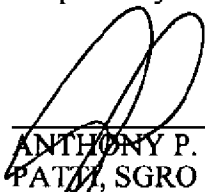
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1 This Ex-Parte Motion is based upon the attached Points and Authorities and the Affidavit of
2 Anthony P. Sgro, Esq.

3 DATED this 24 day of January, 2007.

4
5 Respectfully Submitted,

6
7
8 
9 ANTHONY P. SGRO, ESQ.
10 PATRICK SGRO & LEWIS
11 Nevada Bar No. 003811
12 720 S. 7th Street, Ste. 300
13 Las Vegas, NV 89101

14 Attorney for Defendant
15
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1 POINTS AND AUTHORITIES

2 Nevada Revised Statute states:

3 **Fee if appointed other than public defender.**


- 4 4. If the appointed court because of:
5 (a) the complexity of a case or the number of its factual or legal issues;
6 (b) the severity of the offense;
7 (c) the time necessary to provide an adequate defense; or
8 (d) other special circumstances, deems it appropriate to grant a fee in excess
9 of the applicable maximum, the payment must be made, but only if the excess
10 in which the representation was rendered certifies that the amount of the
11 excess payment is both reasonable and necessary and the payment is approved
12 by the presiding judge of the judicial district in which the attorney was
13 appointed. ...

14 Counsel for Defendant, BRENDAN NASBY, has attached hereto an Affidavit in support of
15 the instant Motion for Fees.

16 WHEREFORE, for the foregoing reasons counsel for Defendant, BRENDAN NASBY,
17 requests that his Ex-Parte Motion for an Order Authorizing Payment of Fees.

18 DATED this 24 day of January, 2007.

19 Respectfully Submitted,

20 
21 ANTHONY P. SGRO, ESQ.
22 PATL SGRO & LEWIS
23 Nevada Bar No. 003811
24 720 S. 7th Street, Ste. 300
25 Las Vegas, Nevada 89101
26 (702) 385-9595

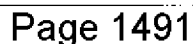
27 Attorney for Defendant

STATE OF NEVADA)
COUNTY OF CLARK)ss.

1. That your affiant is an attorney duly licensed to practice before this Court.
2. That your affiant is the attorney for the Defendant, BRENDAN NASBY, in the above-entitled action and has personal knowledge of the facts and circumstances set forth herein and is competent to testify to the same;
3. That your affiant makes this affidavit in support of this Ex-Parte Motion for Authorization of Payment of Fees;
4. That the Defendant was charged with First Degree Murder and convicted;
5. That in order to provide effective assistance, defense counsel spent a considerable time and expense on this case.
6. That because the this case is now concluded, defense counsel respectfully requests that payment be made for fees and costs, which represents, 72.75 hours out of Court (\$7,275.00) and (\$280.68) in expenses, for a total amount of \$ 7,555.68.

ANTHONY P. SGRO, ESQ.
PATRICK SGRO & LEWIS
Nevada State Bar No. 003811
720 S. 7th Street, Ste. 300
Las Vegas, Nevada 89101
(702) 385-9595

Deborah L Hart
NOTARY PUBLIC in and for said
COUNTY and STATE



ORIGINAL

CLERK OF THE COURT

FEB 12 4 06 PM '07

FILED

1 ORDR

2 ANTHONY P. SGRO, ESQ.

3 Nevada Bar No. 003811

4 PATTI, SGRO & LEWIS

5 720 S. 7th Street, Ste. 300

6 Las Vegas, Nevada 89101

7 (702)385-9595

8 Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA

10 Plaintiff,

11 -vs-

12 BRENDAN NASBY,

13 Defendant.

CASE NO.:

C154293

DEPT. NO.:

XXIII

14 ORDER AUTHORIZING PAYMENT OF FEES

15 Based on the Ex-Parte Motion, and good cause appearing,

16 **IT IS HEREBY ORDERED**, pursuant to the Nevada Revised Statute 200.010, THAT
17 PAYMENT OF FEES IN THE AMOUNT OF Seven Thousand ~~Five~~ ^{Four} Hundred Fifty Five Dollars and
18 ~~Sixty Eight Cents (\$7,555.68)~~ ^{ninety-four and 7,440.94}, for services rendered in the above-captioned case, shall be made to
19 ANTHONY P. SGRO, ESQ.

20 DATED this 12th ^{February} day of ~~January~~, 2007.

21 *Elysha Anderson*
22 DISTRICT COURT JUDGE

23 Submitted By:
24 PATTI, SGRO & LEWIS,
25 ATTORNEYS AT LAW

26 ANTHONY P. SGRO, ESQ.

27 Attorney for Defendant

RECEIVED

FEB 12 2007

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

BRENDAN JAMES NASBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 47130

2007 JUL 16 P 3:46

District Court Case No. C154293

Cheryl R. Bloom
CLERK OF THE COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 18th day of June, 2007.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 13th day of July, 2007.

Janette M. Bloom, Supreme Court Clerk

By:

J. Cherry

Chief Deputy Clerk

RECEIVED

JUL 16 2007

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 47130

FILED

JUN 18 2007

ANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Appellant Brendan James Nasby was convicted, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon and conspiracy to commit murder. The district court sentenced him to serve two consecutive terms of life in prison with the possibility of parole for murder with the use of a deadly weapon and a consecutive term of 48 to 120 months for conspiracy. This court affirmed the judgment of conviction and sentence on direct appeal.¹

¹Nasby v. State, Docket No. 35319 (Order of Affirmance, February 7, 2001).

RECEIVED

JUL 16 2007

CLERK OF THE COURT

SUPREME COURT
OF
NEVADA

(O) 1947A 

07-13205

Nasby filed a timely postconviction petition for a writ of habeas corpus. After conducting an evidentiary hearing, the district court denied the petition. This appeal followed.

Nasby argues that the district court erred in finding that his trial and appellate counsel were not ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness and that but for counsel's errors the result of the proceeding would have been different.² "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."³ A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.⁴ The district court's factual findings regarding ineffective assistance of counsel are entitled to deference upon review.⁵

²See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

³Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

⁴Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

⁵Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Nasby claimed that trial counsel, Joseph Sciscento and Frederick Santacroce, were ineffective for failing to call three witnesses whom Nasby claimed would have given him an alibi.⁶ At the evidentiary hearing, counsel testified that they were prepared to call these witnesses at trial, but before trial they were given a letter Nasby had written from jail that suggested Nasby was concocting his alibi. Counsel testified that they suspected the witnesses might give false testimony if called, and they could not ethically call them. Nasby also claimed counsel were ineffective for failing to re-interview these witnesses to investigate whether he in fact concocted the alibi. Nasby failed to demonstrate that counsel's re-interview of the alibi witnesses, whom Mr. Sciscento testified he had previously interviewed, would have negated counsel's concerns. We conclude the district court did not err in denying this claim.

Next, Nasby claimed that trial counsel were ineffective for not obtaining an earlier ruling on the admissibility of the letter referenced above. Nasby argued that failing to obtain a ruling allowed the State to reference the letter in opening argument and accuse Nasby of concocting an alibi. Nasby also claimed counsel were ineffective for failing to move to strike the State's reference to the letter after the district court ruled the letter inadmissible. Even assuming counsel were deficient in this regard,

⁶We note that an affidavit submitted by one of the witnesses, Colleen Warner, indicates that she was present on the first day of trial and told counsel she would not testify on Nasby's behalf.

Nasby failed to demonstrate prejudice. We concluded in his direct appeal that the State's reference to the letter was not unfairly prejudicial. We therefore conclude the district court did not err in denying this claim.

Nasby also claimed that trial counsel were ineffective for failing to call Porsche Nichols to contradict Brittny Adams' testimony. Adams testified that Nasby wanted her to kill Tanesha Banks, who apparently was blaming Nasby for the murder. Our review of the record, including a transcript of a police interview of Nichols, reveals that Nichols' statement, while not as thorough as Adams' testimony, did not contradict it. Nasby also claimed counsel should have located and called Madison Jones and Michelle McKinrion to testify that they saw Charles Von Lewis threaten the victim with a gun. Nasby's defense was that Von Lewis, not Nasby, was the killer. Nasby's assertion that these witnesses were available to trial counsel and would have so testified has no factual support in the record.⁷ We conclude the district court did not err in rejecting these claims.

Nasby also claimed that trial counsel Joseph Sciscento was ineffective for representing him despite an alleged conflict of interest. Specifically, Nasby argued that a conflict arose when Sciscento accepted a position with the Special Public Defender, who represented one of Nasby's

⁷See Sparks v. State, 96 Nev. 26, 29, 604 P.2d 802, 804 (1980) (noting that facts stated in a party's brief will not compensate for a deficiency in the record).

alleged coconspirators. Evidentiary hearing testimony established that Mr. Sciscento's agreement with the Special Public Defender allowed him to finish his existing cases. Mr. Sciscento testified that his files on this matter were kept in his private office, not at the Special Public Defender's office, that he performed his work on this case in his private office, and that he did not discuss this case with anyone at the Special Public Defender's office. The district court concluded that Mr. Sciscento did not have a conflict of interest. We conclude the district court did not err in rejecting this claim.

Nasby next claimed that trial counsel were ineffective for failing to show the jury a videotape of Charles Von Lewis threatening the victim with a gun. At the evidentiary hearing, counsel testified that the videotape also contained images damaging to Nasby, including Nasby waving a gun around and "making comments." The record makes clear that counsel made a tactical decision not to show the videotape in order to avoid potential prejudice to their client. Counsel's tactical decisions are "virtually unchallengeable absent extraordinary circumstances,"⁸ which are not present here. We conclude the district court did not err in rejecting this claim.

⁸Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990)).

Nasby further claimed that trial counsel were ineffective for not advising the district court that the prosecutor had shown Colleen Warner, one of his alibi witnesses, a letter from Nasby to Crystal Sobrian, in which Nasby disparaged and threatened Warner. Nasby claimed the prosecutor showed Warner the letter in an effort to convince her not to testify on Nasby's behalf. Nasby's claim that the State's action was in violation of a district court order is not supported by the record; the record reveals that before trial the prosecutor suggested he might use the letter in his case in chief. The court said that if he did so, Nasby's comments about Warner should be redacted. The prosecutor said he wanted to present "that information to [Warner] and see how she feels about him at this point," to which the district court responded, "I don't know about that." There was no order from the district court that the information not be disclosed outside the jury's presence. We conclude the district court did not err in rejecting this claim.

Nasby next claimed that trial counsel were ineffective for failing to request an accomplice-testimony instruction and failing to object to the district court's failure to give such an instruction. He failed to support this claim with any citation to the record or relevant legal authority. "It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by

this court."⁹ Even if counsel were deficient in this regard, Nasby failed to demonstrate prejudice in light of the fact that two witnesses testified that Nasby confessed to killing the victim and the murder weapon was found in his bedroom. We conclude the district court did not err in rejecting this claim.

Nasby also claimed that trial counsel were ineffective for refusing to allow him to testify. He fails to cite anything in the record indicating he wanted to testify and counsel prevented him from doing so.¹⁰ We conclude the district court did not err in rejecting this claim.

Next, Nasby claimed that trial counsel were ineffective for failing to object to the prosecution's vouching for witnesses and misinforming the jury on the law of conspiracy, accomplice liability, and/or accessory. Nasby provided no citations to the record or legal authority to support these allegations. "It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."¹¹ We note that the jury was properly instructed on the definition of conspiracy. We conclude the district court did not err in rejecting this claim.

⁹Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

¹⁰See Sparks, 96 Nev. at 29, 604 P.2d at 804.

¹¹Maresca, 103 Nev. at 673, 748 P.2d at 6.

Nasby also made a general claim that appellate counsel was ineffective "for Failure to raise all the meritorious issues contained in this memorandum of law" (emphasis in original). Nasby failed to cite to the record or provide cogent argument or legal authority for how appellate counsel's performance was deficient and prejudiced him.¹²

Nasby also cited numerous instances of alleged prosecutorial misconduct and trial court error. The district court determined that these claims were waived by Nasby's failure to raise them on direct appeal.¹³ In an attempt to show good cause for his failure sufficient to overcome this procedural bar,¹⁴ Nasby claimed his trial and appellate counsel were ineffective. "To establish good cause to excuse a procedural default, a defendant must demonstrate that some impediment external to the defense prevented him from complying with the procedural rule that has been violated."¹⁵ Nasby failed to demonstrate that an impediment external to the defense caused his failure to raise these claims earlier. We therefore conclude the district court did not err in rejecting these claims. Nasby's claim that a fundamental miscarriage of justice will result if this

¹²Id.

¹³See NRS 34.810(1)(b).

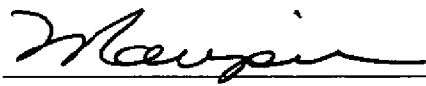
¹⁴See NRS 34.810(3).


¹⁵Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

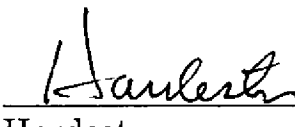
court does not hear these claims is unsupported by any cogent argument and is insufficient to raise a colorable showing that he is actually innocent.¹⁶

Having reviewed Nasby's contentions and concluded they are without merit or procedurally barred, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Maupin

 J.
Parraguirre

 J.
Hardesty

cc: Eighth Judicial District Court Dept. 18, District Judge
Patti, Sgro & Lewis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁶Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 47130

District Court Case No. C154293

REMITTITUR

TO: Charles J. Short, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 13, 2007

Janette M. Bloom, Clerk of Court

By: _____

[Signature]
Chief Deputy Clerk

cc: Eighth Judicial District Court Dept. 18, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Patti, Sgro & Lewis

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on JUL 16 2007

BRANDI J. WENDEL

~~Deputy~~ District Court Clerk

07-13657

49010

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Case No. C154293

Dept. No. XVIII

FILED

FEB 18 2011

John J. Williams
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

Brendan Nasby
Petitioner,

v.

E.K. McDaniel et al.
Respondent.

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED
IN FORMA PAUPERIS

I, Brendan Nasby being first duly sworn, depose and say that I am the
Petitioner in the above-entitled case; that in support of my motion to proceed without being required to
prepay fees, cost or give security therefor, I state that because of my poverty I am unable to pay the costs of
said proceeding or to give security therefor; that I believe I am entitled to relief.

I do ☒ do not ☐ request an attorney be appointed to represent me.

I further swear that the responses which I have made to the questions and instructions below
relating to my ability to pay the cost of prosecuting the proceeding are true.

1. Are you presently employed? Yes ☐ No ☒

a. If the answer is yes, state the amount of your salary or wages per month and give the
name and address of your employer.

N/A
EMPLOYER

N/A
EMPLOYER

N/A
Salary or Wage per month

N/A
Salary or Wage per month

b. If the answer is no, state the date of your last employment and the amount of the
salary or wages per month which you received.

Unknown
Date of last Employment

Unknown
Date of last Employment



98C154293 - 2
AFD
Affidavit in Support
1244940

Unknown
Salary or Wage per month

Unknown
Salary or Wage per month

2. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or form of self-employment?
Yes _____ No ☒
- b. Rent payments, interest or dividends?
Yes _____ No ☒
- c. Pensions, annuities or life insurance payments?
Yes _____ No ☒
- d. Gifts or inheritances?
Yes _____ No ☒
- e. Any other sources?
Yes _____ No ☒

If the answer to any of the above is "Yes" describe each source of money and state the amount received from each during the past twelve months:

<u>N/A</u> Source of Income	<u>N/A</u> Source of Income
<u>N/A</u> Amount Received (in the past year)	<u>N/A</u> Amount Received (in the past year)

3. Do you own any cash or checking or savings account? Yes _____ No ☒

- a. If the answer is yes, state the total value of the items owned.

<u>N/A</u> Item	<u>N/A</u> Item	<u>N/A</u> Item
<u>N/A</u> Total Value	<u>N/A</u> Total Value	<u>N/A</u> Total Value

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No ☒


- a. If the answer is yes, describe the property and state its approximate value.

<u>N/A</u> Property	<u>N/A</u> Property	<u>N/A</u> Property
<u>N/A</u> Approximate value	<u>N/A</u> Approximate value	<u>N/A</u> Approximate value

5. List the persons who are dependent upon you for support and state your relationship to those Persons, and indicate how much you contribute towards their support.

<u>N/A</u> Person	<u>N/A</u> Person	<u>N/A</u> Person
<u>N/A</u> Relationship	<u>N/A</u> Relationship	<u>N/A</u> Relationship
<u>N/A</u> Contribution	<u>N/A</u> Contribution	<u>N/A</u> Contribution


I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.



Petitioner
Brendan Nasby #63618

EXECUTION OF INSTRUMENT BY PRISONER

Pursuant to N.R.S. 208.165, I hereby declare under the penalty of perjury that the contents of the above documents are true and correct to the best of my knowledge.



Petitioner/Declarant
Brendan Nasby #63618

ORDER

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this ____ day of _____, 200__.

District Judge

Brendan Nasby
I.D. No. 63818
Ely State Prison
P.O. Box 1989
Ely, NV 89301
(Petitioner In Prose)

FILED
FEB 18 2011
CLERK OF COURT

56

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby,
Petitioner,

VS.
E.K. McDaniel, et. al.,
Respondent.

Case No.: C154293

Dept. No.: XVIII

Memorandum of Points and Authorities
In Support of Petitioner's Petition For Writ
of Habeas Corpus
(Post-Conviction N.R.S. 34.720)

98C154293-2
MPA
Memorandum of Points and Authorities
1244950



Date of Hearing: _____

Time of Hearing: _____

ARGUMENT

I. The Court erroneously allowed introduction of Prior Bad Acts evidence.

N.R.S. 48.045(2) in pertinent part; Evidence of other crimes, wrongs, or acts, is not admissible as to character of person in order to show that he acted in conformity therewith.

Federal law is much the same. See U.S. v. Schuler 813 F.2d 978, 981-982 (9th Cir. 1987)

Improper reference to criminal history is a violation of Due Process and reviewing Court must determine whether error was harmless. Chapman v. California 386 U.S. 18, 24 (1967).

During the testimony of Brittany Adams, the Prosecutor elicited testimony from her regarding prior bad acts of Petitioner that improperly put Petitioner's character at issue, and since he did not testify, severely prejudiced him.

Brittany Adams testified as followed:

Q. Now you mentioned something about he wanted to kill her.

A. Yes.

Q. What exactly did he do or say to you?

A. Well, before we left, he offered me his gun, one of his guns to kill her.

Petitioner's counsel finally objected to this line of questioning and the Court gave a brief curative instruction, but did not explain why the testimony was being stricken.

Immediately after the above testimony, the Prosecutor continued with Ms. Adams:

Q. On the way to the house of Tanesha Banks, did he offer anything to you?

A. Yes. He offered me a hammer.

A few lines down, the Prosecutor asked her what the hammer was for and she answered:

A. He said: You can just hit her between the eyes and kill her; just kill her.

(T.T. Vol. V, Pgs. 158-159)

Detective Thowson testified that Petitioner had tried to intimidate a witness, specifically, Tanesha Banks, but could not prove it was Petitioner who phoned in the alleged threats. (T.T. Vol. V, Pgs. 254-262).

Then, there's the letter that Petitioner allegedly gave John Holmes, which the State mentions in their opening statement and after it was ruled inadmissible during testimony of Ms. Adams. (T.T. Vol. V, Pg. 173).

Moreover, the Prosecutor reinforced these same arguments concerning witness intimidation in his closing. (T.T. Vol. , pgs. 35-36).

Furthermore, the Court must note that Ms. Adams was under a strong compulsion to testify as the State wanted her to. The State bolstered the charges against her. She was, originally, charged with first degree kidnapping, intimidating a witness, battery with the intent to cause bodily injury and speeding, all stemming from a single blow or punch thrown. She did not know that Ms. Banks would be a witness at Petitioner's trial and she certainly did not kidnap Ms. Banks. Thus, the State charged her with crimes they could not prove and this tactic was effective. She changed her story and implicated Petitioner. (T.T. Vol. IV, Pgs. 187-189, and Vol. V, pg. 171).

"A Prosecutor's intimations of witness intimidation by a defendant are reversible error, unless the Prosecutor also pre-~~sented~~ sent substantial credible evidence that the defendant was source of the intimidation." Lay v. State 110 Nev. 1189, 1193, 886 P.2d 448 (1994). The State failed to prove conclusively that Petitioner was source of intimidation.

By the time the Jury had heard all of the Petitioner's alleged prior bad acts, character was totally destroyed and the verdict inevitable. U.S. v. Sanchez 176 F.3d 1214, 1221 (9th Cir. 1999) (Prosecutor's use of prior bad acts to impeach defendant's testimony was reversible error). Here, Petitioner did not testify, but the Prosecutor launched a furious attack on his character anyway. U.S. v. LeQuire 943 F.2d 1554, 1571 (11th Cir. 1991) (Prosecutor's elicitation of testimony on five occasions about previous convictions of defendant was reversible despite curative instruction). Prior bad acts and convictions are the same for they refer to a crime Petitioner allegedly committed. Pertaining to the letter of John Holmes making, See U.S. v. Spinner 152 F.3d 950, 960-962 (D.C. Cir. 1998) (Prosecutor's questioning of defendant's girlfriend regarding letter she sent to him indicating prior bad acts was reversible error argument).

The testimony about prior bad acts, the Prosecutor's closing and opening statements about prior bad acts, clearly warrants reversal of Petitioner's conviction.

These actions by the Prosecutor violated Petitioner's 4th, 5th, 6th, and 14th Amendments right to Due Process, and are made even more unconstitutional, in combination with all the other instances of Prosecutorial Misconduct.

II. The Conviction for Murder and Conspiracy To Commit Murder Was Obtained Where There Was No Corroborating Evidence.

State violates a defendant's due process Right to Fundamental Fairness if it arbitrarily deprives the defendant of State law enforcement. Laboa v. Calderon, 224 F.3d 972, 979 (9th Cir. 2000) (Holding that violation of a state law prohibiting convictions based upon uncorroborated accomplice testimony can violate the constitution.).

Federal constitutional law does not require corroboration of an accomplice's testimony as a prerequisite for admissibility. State procedural error is not a proper ground for Federal habeas relief, unless that error results in a denial of due process. Castellon v. Whitley, 739 F.Supp. 526, 1990 U.S. Dist. LEXIS 6971 (D. Nev. 1990), aff'd, 976 F.2d 736 (9th Cir. 1992), cert. denied, 507 U.S. 1052, 113 S.Ct. 1947, 123 L.Ed.2d 653 (1993).

In the instant case, Petitioner's Right to due process was denied when testimony of Conspiracy by a State's witness was not corroborated by any independent evidence. What's worse, this testimony was coerced, and a failure to give an Accomplice Instruction, further violated Petitioner's due process rights.

According to Nevada law, N.R.S. 175.291 states the following:

- 1) A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

- 2) An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

Petitioner was tried on the charges of conspiracy to commit murder and first-degree murder with the use of a deadly weapon. Petitioner was alleged to have conspired with Jerimiah Deskin, Jotee Burnside, and Tommie Burnside. However, the only testimony with regard to a conspiracy came from Mr. Deskin. He exchanged testimony against Petitioner for a plea-bargain. He was allowed to plead guilty to accessory to commit murder and for a significantly lighter sentence. He was originally charged with the same crimes as Petitioner. (T.T. Vol. III, pgs. 76-101)

Accomplices, Tommie Burnside and Jotee Burnside, also testified at Petitioner's trial. Their testimony mirrored each other's. They both testified in a cryptically, and mystifying fashion. In their original statement to police, they did not implicate Petitioner in the crime, they identified someone else as committing the murder. After being offered plea-bargains by the State, they changed their stories. (T.T. Vol. V, pgs. 91, 92, 93, 113, 116, and 139.) Tommie Burnside testified that "no one did it", (T.T. Vol. V, pg. 116), and Jotee Burnside testified only to who did not do it. Neither man directly implicated Petitioner or provided a reason other than a plea-bargain, for changing their stories. Nor did either man admit any conspiracy. (See attached Exhibit "A" - Affidavits of Jotee and Tommie Burnside)

Deskin's accomplice testimony of a conspiracy was not corroborated by any evidence or independent witness. The state produced no such corroborating testimony as to the conspiracy to commit murder, and this alone, warrants relief.

Corroborating evidence must independently connect the defendant with the offense; "evidence does not suffice as corroborative if it merely supports the accomplice's testimony. If there is no independent, inculpatory evidence, evidence tending to connect the defendant with the offense, there is no corroboration."

Heglemeier v. State, 111 Nev. 1244, 903 P.2d 799, 1995 Nev. LEXIS 136 (1995). In the same case, the Court also stated, "This case presented a particularly close issue with regard to corroboration. Although the state did introduce some evidence that might be construed as tending to connect the defendant with the crime, the evidence was insufficient, as a matter of law, to corroborate the accomplice's testimony."

The Trial Court failed to give the cautionary accomplice instruction, or any curative instruction. The purpose of the ~~cautionary~~ cautionary instruction is, "that, it advises the Jury that it should view as suspect, incriminating testimony given by those liable for prosecution for identically charged offense as ~~was~~ used. Riley v. State, 110 Nev. 638, 653, 878 P.2d 272 (1994).

Failure to give the accomplice instruction in Petitioner's case, was particularly prejudicial to Petitioner's defense, because Petitioner's conviction for Conspiracy to Commit Murder, is based solely on uncorroborated accomplice testimony, and the Prosecutor resorted to various devices to bolster the credibility of accomplices testimony corroborating one another. Accomplices can not corroborate each other. Sheriff v. Gordon, 96 Nev. 205, 206, 606 P.2d 533, 534 (1980). This misstatement of the law would not have been possible had the cautionary instruction been given.

Plain error may result from failure to give accomplice instruction. United States v. Jones, 673 F.2d 115, 119 (5th Cir. 1982).

Petitioner submits that this is such a case and the fact that Counsel was allowed to cross-examine accomplices regarding their plea-bargains, does not cure the defect considering the lengths the Prosecutor went to, in order to increase their credibility.

III. Trial Court Erred by Failing To Provide a Cautionary Instruction to the Jury Regarding Accomplice Testimony.

When the State uses accomplice testimony in prosecution of it's case in chief, a cautionary instruction must be given to the jury. No such instruction was given to the jury in Petitioner's Trial, thus denying his right to due process and fundamental fairness under the U.S. Constitution.

State violates defendant's due process Right to Fundamental Fairness if it arbitrarily deprives the defendant of State law enforcement. Laboa v. Calderon, 224 F.3d 972, 979 (9th Cir. 2000) (Holding that violation of a state law prohibiting convictions based upon uncorroborated accomplice testimony can violate the constitution.).

When reviewing the issue of accomplice instructions, Federal court stated that, "Plain error may result from failure to give accomplice instruction. United States v. Jones, 673 F.2d 115, 119 (5th Cir. 1982).

Furthermore, in Sheriff v. Acuna, 107 Nev at 669, the language mandatory and plain, "a cautionary instruction must be given to the jury."

In Riley v. State, 110 Nev. 638, 653 (1994) the court said that an accomplice instruction "advises the jury that it should

view as suspect incriminating testimony given by those who are liable to prosecution for identical charged offense as accused.

No such instruction was provided the jury in the instant case. While the court did give the standard credibility instruction, that instruction does not meet the test of Crowe v. State, 84 Nev. 358, (1968).

In Crowe the Court addressed the issue of informant testimony.

The Court Stated:

"recognizing that the use of informers is a dirty tactic for a dirty business that may raise serious questions of credibility, we think the defendant is entitled to considerable latitude to probe credibility by cross-examination and to have the issue submitted to the jury with careful instructions cautioning them of the care which must be taken in weighing such testimony. (Citations Omitted)

Special cautionary instructions are surely required when the informer's testimony is uncorroborated and no direct evidence is untainted or when there is only minor corroboration of the witness. (Citation omitted) And even when such testimony is corroborated in ~~most~~ critical respects we would favor careful instructions in form and substance to call attention to the character of the testimony of the informer, leaving to the jury the ultimate question of value and credibility. (Citations omitted)

We do not here suggest any particular formula of instruction for there is no ritual of words to be used and abstract instructions are usually beamed to the appellate courts

State violates defendants due process Right to Fundamental Fairness if it arbitrarily deprives the defendant

On Willfulness, Deliberation, and Remediation Instruction (a)

IV. The Trial Court Failed to Instruct the Jury

In the instant case it was mandatory for the Court to provide a cautionary instruction to the Jury regarding accomplice testimony in light of the Acuna ruling. The Court failed to instruct the Jury accordingly, denying petitioner both his State and Federally protected Constitutional Rights. (See Attached Exhibit "A" - Affidavits of Jote and Tommie Burnsides)

Accomplice testimony presents the same reliability concerns as informant testimony. (See Justices Rose and Springers concurring opinion in Sheriff v. Acuna, 107 Nev. 664 (1992)) The trial court "must" give the jury a specific instruction which would "call attention to the character of the testimony of the informer." (Id.)

(Id. at 367, 368)
ctions.

rather than to the jury. Suffice it to say that the instruction should be beyond the scope of the ordinary instruction that the jury is the sole judge of the evidence and the weight to be accorded to the testimony of the witness. It is desirable that jury instructions have meaning in the particular circumstances of each case rather than be patterned for all cases, therefore, we leave it to the able trial counsel and trial courts to formulate appropriate instructions.

-11-

of state law enforcement. Labov v. Calderon, 224 F.3d 972, 979 (9th Cir 2000).

In instructing the Jury on premeditation the Court used the Kazalyn instruction (Kazalyn v. State, 108 Nev. 67, 75, 825 F.2d 578, 583 (1992)).

Defense Counsel objected to this instruction, instead offering Defense "A". (T.T. Vol. VI pg. 3)

The Court rejected Defense "A" Id. at pg. 5. In Byford v. State, 116 Nev. —, 944 P.2d 700 (2000). The Nevada Supreme Court held that, "it is clear from the statute that all three elements, willfulness, deliberation, and premeditation must be proven beyond a reasonable doubt before an accused can be convicted of first degree murder."

Byford directed district courts to "cease instructing juries that a killing resulting from premeditation is willful, deliberate, and premeditated murder"; Id. This is exactly what the Jury was instructed to think in Petitioner's trial.

The Nevada Supreme Court recognized that the Kazalyn instruction "blurs the distinction between first and second degree murder. Byford supra.

Petitioner asserts that it does more than blur the Jury's vision. It totally blinds them to the prosecutor's obligation of proving every element of the crime of first degree murder, thus violating Petitioner's Due Process Rights. U.S. v. Bardin, 515 U.S. 506, 532-23 (1995). Furthermore, the Kazalyn instruction creates a mandatory rebuttable presumption that violates the Due Process Clause of the United States Constitution. Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450 (1979); Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965 (1985).

It forces Petitioner to disprove premeditation, willful-

ness, and deliberation. For the instruction orders the Jury is to presume the murder was willful, deliberate, and premeditated murder, if it finds the killing resulted from premeditation. Byford supra. Consequently only premeditation need be proven to find the Petitioner guilty of all the elements of first degree murder, because the others are presumed proven once the instruction is satisfied.

Petitioner's claim can be distinguished from the one made in Houston v. Dutton 50 F.3d 381 (6th Cir. 1995), which is the origin of the Byford decision. Byford v. State, 994 P.2d at 713, where the Sixth Circuit held no Federal Constitutional Right violated by lower courts failure to apply State v. Brown, 836 S.W. 2d 530, 538, (Tenn. 1992)

In Houston the Petitioner did not argue or present the Kazalyn instruction issue in a Federal context. Rather, he argued that the State applied State law to his disadvantage. Houston v. Dutton, 50 F.3d at 385 (No Federal question presented).

However, your Petitioner here argues that his Federal Constitutional Rights were violated in two ways. First, the State was not obligated to prove every element of the crime, and second, the instruction unconstitutionally shifts the burden creating a mandatory presumption. Yates v. Evatts, 500 U.S. 391, 111 S.Ct. 1984 (1991).

Petitioner has set forth four claims of error that violate his Constitutional Rights under the Fifth and Fourteenth Amendments.


Wherefore, Petitioner prays that this Honorable Court:

- 1) Allow this petition to be heard on the merits of ~~the~~ Claims made;

- 2) Grant an Evidentiary Hearing;
- 3) Order a new trial be ~~held~~ held;
- 4) Order release of Petitioner from unconstitutional confinement.

Or whatever relief this Court deems true and appropriate.

Dated this 14th day of February, 2011.

Signed By: 
Brendan Nasby #03618
P.O. Box 1989
Ely, NV 89301
(Petitioner In ProSe)

EXHIBIT

"A"

Affidavits Of Jotee Burnside
&
Tommie Burnside

1 State of Nevada, Clark County

2

3

4 State of Nevada, Clark County,

Case No.: No. C 154293

5 Plaintiff,

AFFIDAVIT of Tommie Burnside

6 vs.

7 Brendan James Nasby,

8 Defendant

9 This statement is made freely and without duress or coercion regarding the
10 above named defendant and case. The final statement I provided the District
11 Attorney in 1999 regarding the circumstances surrounding the death of Michael
12 Beasley was provided under duress. This is the statement subsequently used
13 in trial of Brendan James Nasby in October 1999. This statement was given
14 for exchange of a significantly lighter sentence for my brother Jotee
15 Burnside and myself. It was also given with an explicit agreement that I
16 would not have to testify in the trial of Brendan James Nasby. In spite of
17 this agreement, I was called by the District Attorney's office to testify in
18 the trial of Brendan James Nasby. I was offered a shorter prison sentence in
19 exchange for testimony requested by the District Attorney's office.

20
21 Signed: *Tommie Burnside*

22 Name:

23 Address: *1341 Tyler St*

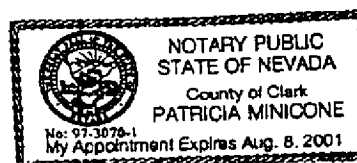
24 City/State: *Las Vegas, NV*

25 SUBSCRIBED AND AFFIRMED TO before me this 22nd day of

July, 2000.

State of Nevada
County of <u>Clark</u>
Signed or attested before me on <u>7-22-00</u> by
<u>Tommie Burnside</u>
(Notary Stamp) <i>Patricia Minicone</i>
(Signature of notarial officer)

Affidavit - 1



1 State of Nevada, Clark County

2

3

4 State of Nevada, Clark County,

Case No.: No. C 154293

5 Plaintiff,

AFFIDAVIT of Jotee Burnside

6 vs.

7 Brendan James Nasby,

8 Defendant.

9 This statement is made freely and without duress or coercion regarding the
10 above named defendant and case. The third and final statement I provided the
11 District Attorney in 1999 regarding the circumstances surrounding the death
12 of Michael Beasley was provided under duress. This is the statement
13 subsequently used in trial of Brendan James Nasby in October 1999. This
14 statement was given with an explicit agreement that I would not have to
15 testify in the trial of Brendan James Nasby. In spite of this agreement, I
16 was called by the District Attorney's office to testify in the trial of
17 Brendan James Nasby in October 1999. I was afraid that if I did not testify
18 that the decision for my parole date would be reversed.

19
20 Signed: *Alice Burnside*

21 Name: *Jotee Burnside*

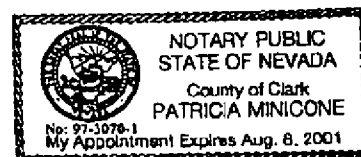
22 Address: *1341 Tyler St*

23 City/State: *Las Vegas, NV 89115*

24 SUBSCRIBED AND AFFIRMED TO before me this 22nd day of

25 *July*, 2000.

State of Nevada
County of Clark
Signed or attested before me on 7-22-00 by
Alice Burnside (minor)
(Notary Stamp) *Patricia Minicone*
(Signature of notarial officer)



Affidavit - 1

Brendan Nasby
I.D. No. 63618
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301
(Petitioner In ProSe)

FILED

FEB 18 2011

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby
Petitioner,

Case No.: C154293

VS.

E.K. McDaniel, et, Al.,
Respondent.

Dept. No.: XVIII

MOTION FOR APPOINTMENT OF
COUNSEL

COMES NOW, the Petitioner, Brendan Nasby, proceeding in ProSe, before this Honorable Court, in the above-captioned action, Respectfully submitting this Motion For The Appointment Of Counsel.

This motion is made and based on the need for counsel in the interest of Justice, as well as, N.R.S. 34.750 (1)(2), 28 U.S.C. Section 1915, 28 U.S.C. Section 2254, Local Rule 7-2 of the Local Rules Of Practice, Rule 7 of the Federal Rules of Civil Procedure, Rule 11 of the Rules Governing Section 2254 Cases, the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case, 18 U.S.C. Section 3006A and for the following reasons.

1. Petitioner is not able to afford counsel herein.

2. The issues and law are very complicated and complex.

3. Petitioner is limited in his access to Federal case law and other materials, due to the Nevada Department of Corrections decision to refuse to supply any additions and/or updates to the Federal Practice Digest 4th Edition; United States Code Service; and United States Code Annotated, for years.

4. The merits of claims for relief in this action are of Constitutional dimension, and Petitioner is likely to succeed in this case.

5. Petitioner is incarcerated at Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability as an attorney would or could, to investigate crucial facts involved within the Petitioner's Petition for Writ of Habeas Corpus.

6. Petitioner does not have the current legal knowledge and ability, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately ~~shortening~~ shortening the time of this prosecution of this case.

7. Petitioner is housed in Unit 6 at Ely State Prison, which is now a "locked-down" unit. Petitioner only has access to the prison's legal law library via institutional mail, which delays the reception of needed legal mat-

Unfortunately, for Petitioner, the State District Court severely limited the development of the record, by limiting the issues to be discussed and witnesses to be called at Petitioner's first Evidentiary Hearing. What's more, the issues presented in the Writ before this Court were deemed "Not Federalized" by the Federal Court in the District of Nevada, when they were presented to this Court in Petitioner's original Petition for Writ of Habeas Corpus.

Thus, Petitioner has Federalize the above listed issues, to the best of his abilities. Petitioner ask this Court to take into account, the limited access to federal case law and materials, provided to Petitioner in locked-down units at Ely State Prison, now and at the time his original petition for writ of habeas corpus was filed.

Petitioner now request that this Court be given the opportunity to hear the above listed issues with their federal arguments, and expand the record. The record is silent on the Federalized claims of these ~~issues~~ issues. See attached Petition For Writ Of Habeas Corpus.

It is the Petitioner's belief that once this Court hears the federalized arguments, regarding the above listed issues, ~~this Court~~ and the truthful and untampered testimony, this Court will agree that the Petitioner's trial was unfair and unconstitutional. If true, this would entitle Petitioner to relief.

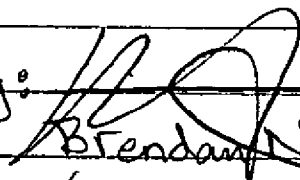
This record is not contrary to any of the alleged facts above, and if true, these kinds of error demand a reversal of conviction.

CONCLUSION

Petitioner has satisfied the Rules Governing Post-Conviction Cases, and the standard to receive an Evidentiary Hearing. Where if true, his claims would ~~be~~ entitle him to relief and the record can not repel said claims because it is silent in them. Therefore, Petitioner respectfully request this Honorable Court to Grant an Evidentiary Hearing.

Dated this 14th day of February, 2011.

Respectfully Submitted,

By: 
Brendan Nasby #63618
(Petitioner In Pro Se)

Brendan Nasby
I.D. No. 63618
Ely State Prison
P.O. Box 1489
Ely, NV 89301
(Petitioner In Pro Se)

FILED

FEB 18 2011

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby,
Petitioner,
VS.
E.K. McDaniel, et al.,
Respondent.

Case No.: C154293

Dept. No.: XVIII

MOTION FOR EVIDENTIARY HEARING

COMES NOW, Brendan Nasby, Petitioner in Pro Se, before this Honorable Court, with this Motion For Evidentiary Hearing, and respectfully moves this Court for an Order to hold a hearing regarding the claims presented in Petitioner's Petition For Writ Of Habeas Corpus.

This Motion is made and based on all papers, pleadings, and verified Petition filed in this Court, as well as, the points and authorities annexed hereto.

98C154293-2
MOT
Motion
1244946



POINTS AND AUTHORITIES

Petitioner has filed with this Court, a Petition For Writ Of Habeas Corpus, challenging his convictions for Murder and Conspiracy to Commit Murder. This Petition contains several claims of error. Among them are:

- 1) The Court erroneously allowed introduction of Prior Bad Acts evidence.
- 2) The conviction for Murder and Conspiracy to Commit Murder was obtained where there was no corroborating evidence.
- 3) Trial Court erred by failing to provide a cautionary instruction to the jury regarding accomplice testimony.
- 4) The Trial Court failed to instruct the Jury on Willfulness, Deliberation, and Premeditation-Instruction (12)

An Evidentiary Hearing is needed to establish Facts necessary to the above claims and to comply with the United States Supreme Court Rule that a State Prisoner must make every effort to develop the record and facts necessary to his Constitutional claims. A State Prisoner can only develop the record via Evidentiary Hearing on his claims. Williams v. Taylor, 529 U.S. 420, 437 (2000), 28 U.S.C. 2254 (E)(2), See also, Miller v. Champion, 161 F.3d 1249, 1253 (10th Cir. 1998) (Petitioner did not "fail" to develop factual basis of Ineffective Assistance of Counsel claim because State Court denied Petitioner's request for ~~and~~ Evidentiary Hearing on issue.)

erials.

8. The Prison has very limited legal research materials and sources; and to add, much needed research materials are often already rented out to other inmates or not in stock. See Exhibit #1 - Legal Library Request Forms

9. Petitioner is housed in Unit 6 at Ely State Prison, and prison law clerks are not allowed in this unit. Thus, Petitioner does not even have the basic assistance of a prison law clerk.

10. Petitioner, by reason of imprisonment, has a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.

11. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

12. The inmate who assisted Petitioner with the filing of his Petition For Writ of Habeas Corpus, is no longer housed at the same prison as Petitioner. Thus, the minimal assistance Petitioner did have, is now no longer accessible.

VERIFICATION

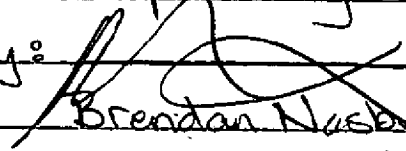
I Declare, Affirm, and Swear under penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them to all be true and correct.

Pursuant to: N.R.S. 34.750 (1)(2), 28 U.S.C. Sect. 1746, and 18 U.S.C. Sect. 1621.

Dated this 14th day of February, 2011.

Respectfully Submitted

By:


Brendan Nasby

I.D. No. 63618

(Petitioner In Pro Se)

POINTS AND AUTHORITIES

Motions for the appointment of counsel under 28 U.S.C. Sect. 1915(d), and are addressed to the sound discretion of the Court. United States v. McQuade, 579 F.2d 1180 (9th Cir. 1978). Under 28 U.S.C. Sect. 1915(d), the Court may request an attorney to represent any such person unable to employ ~~own~~ counsel. On a Motion for Appointment of Counsel pursuant to 28 U.S.C. Section 1915(d), the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination. Ulmer v. Chancellor, 691 F.2d 209 (5th Cir. 1982).

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; ① The merits of the claim for relief; ② The ability to investigate crucial factors; ③ whether evidence consists of conflicting testimony effectively treated only by counsel; ④ The ability to present the case; and ⑤ The complexity of the legal issues raised in the petition. Spadwin v. Wisconsin Gas Co., 788 F.Supp. 1019 (E.D. Wis. 1992). And finally, the District Court's decision is subject to the abuse of discretion review. Richardson v. Henry, 902 F.2d 414, 417 (5th Cir.) cert. Denied, 498 U.S. 901, 111 S.Ct. 260, 112 L.Ed. 2d. 218 (1990); also United States v. 30.64 Acres of Land, 795 F.2d 796, at 604 (9th Cir. 1986).

Nevada law and N.R.S. 34.750(1)(2), are much the

Same as the above cited Federal law.

Moreover, in Stringer v. Rowe, 616 F.2d 993, 1001 (7th Cir. 1980), the Court stated, "Counsel can explain the applicable legal principles to the complainant and limit litigation to potentially meritorious issues. In addition, appointment of a lawyer provides the unlettered inmate with an opportunity to obtain representation equally qualified with the professional counsel usually provided by the State for the defendants."

The Petitioner has filed a Motion For Evidentiary Hearing, and asserts that the Record in this case must be expanded as provided by Habeas Corpus Rule 7, and as well, that the appointment of counsel under Habeas Corpus Rule 8(c) and 18 U.S.C. Sect. 3006A, is necessary for the expansion of the record and subsequent evidentiary hearing herein.

Finally, in regards to Reason 3, listed on page 2 of this Motion, the law as to what is needed and required in a prison law library has been addressed and settled by the Federal Courts here in Nevada. See - Craig v. Hocker, 405 F.Supp. 656 (D.Nev. 1975). There are also Ninth Circuit cases that deal with the requirements of law library: Johnson v. Moore, 948 F.2d 517, 521 n.2 (9th Cir. 1991); Lindquist v. Idaho State Bd. Of Corrections, 776 F.2d 851, 856 n.1, (9th Cir. 1985); and a holding that inmates need not make a showing of prejudice where core Bounds requirements are denied, see Harris v. Malabney, 827 F.Supp. 1488 (D.Mont. 1993). The Ninth Circuit in Casey v. Lewis, 43 F.3d 1261 (9th Cir. 1994), also held that updates are required, which was not overturned by the Supreme Court's decision in Lewis v. Casey, 116 S.Ct. 2174, 518 U.S. 334 (1996).

CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action.

Dated this 14th day of February —, 2011.

Respectfully Submitted,

By:

 #63618

E.S.P.

P.O. Box 1989

Ely, NV 89301

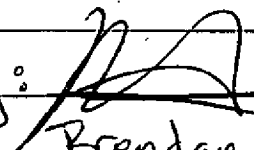
(Petitioner In Pro Se)

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis; Motion For Appointment of Counsel, and Motion for Evidentiary Hearing, was mailed, postage prepaid, to the following:

- | | |
|----------------------------|--------------------------------|
| 1) E.K. McDaniel, et., Al. | 2) David Roger |
| P.O. Box 1989 | Clark County District Attorney |
| Ely, NV 89301 | P.O. Box 552212 |
| F.S.P. | Las Vegas, NV 89155-2212 |
| 3) The Clark County Clerk | 4) Attorney General |
| P.O. Box 552212 | 100 N. Carson St. |
| Las Vegas, NV 89155-2212 | Carson City, NV 89701 |

Dated this 14th day of February, 2011.

By: 
Brendan Nasty #63618
(Petitioner In Pro Se)

EXHIBIT

#1

Legal Law Library Request
Forms

Nasby 6B/12

LAW LIBRARY SUPPLY AND BOOK REQUEST FORM

SUPPLIES REQUESTED	AMT.
LINED PAPER 20 to 50 sheets	
DRAFTING PAPER 8 1/2 x 11	Not For Check
PENS (ONE PER MONTH)	OUT
LEGAL ENVELOPES 9 X 12	
LEGAL ENVELOPES 10 X 15	
LEGAL ENVELOPES 4 X 9	
CARBON PAPER (issue on exchange only)	
FIRE BOX	

BOOKS REQUESTED
(LIST ISSUE OR THE NAME AND VOLUME NUMBER)
Please send me a Legal Dictionary
OUT and a Georgetown Law Journal

Brendan Nasby 63618 6B-12 10-16-10
 INMATE NAME (PRINT) DOC # HOUSING/UNIT DATE

YOU MUST STATE THE COURT AND CASE
 NUMBER OR WHAT TYPE OF NEW LITIGATION U.S. District Court
 3:07-CV-0304-ECR-RAM

DO NOT WRITE BELOW THIS LINE

 LAW LIBRARY SUPERVISOR

 RECEIVING INMATE

 LIBRARIAN/CLERK

 DATE RECEIVED

 DELIVERING LAW CLERK

USE OF THIS FORM

Procedure:

Inmates will complete this form and submit it to the law library supervisor. Incomplete or incorrectly filled out forms WILL NOT be processed. Send form through inter-departmental mail or via the Unit Law Library Mail. Do not give to count officers.

The law library supervisor shall review the request, authorizing those materials which may be issued.

The inmate librarian will fill the request, based on the Supervisor's authorization and will then give the items to the librarian assigned to the inmate unit for delivery to the inmate.

The inmate librarians will make the appropriate entries pertaining to the checkout of books, due dates and the issuing of supplies.

Check In/Check Out

Each inmate may have up to ten (10) law books (case laws and reference) checked out and in their possession at one time. Each file folder containing WestLaw "pink" pages will be considered one book.

CD ROM Legal materials may be checked out for one consecutive 10 day period and renewed every 10 days.

Hardbound Legal materials may be checked out for one consecutive 10 day period. If the hardbound does not have a wait list, then another 10 day period will be granted. This rule will make it possible for all inmates to use these materials.

All inmates may "Check-in" and "Check-out" legal books and request supplies/copy work Monday through Friday. Failure to return legal materials at the designated time will result in disciplinary action.

DOC-3040 (08/08)

Nasby 6B/12

LAW LIBRARY SUPPLY AND BOOK REQUEST FORM

SUPPLIES REQUESTED	AMT.
LINED PAPER 20 to 50 sheets	
DRAFTING PAPER 8 1/2 x 11	
PENS (ONE PER MONTH)	
LEGAL ENVELOPES 9 X 12	
LEGAL ENVELOPES 10 X 15	
LEGAL ENVELOPES 4 X 9	
CARBON PAPER (issue on exchange only)	
FIRE BOX	

BOOKS REQUESTED
(LIST ISSUE OR THE NAME AND VOLUME NUMBER)
Please send me a "Motion For Stay And Abeyance" asking the Federal Court to hold my exhausted claims in abeyance while I return to state court to exhaust my un-exhausted claims.
DON'T HAVE A MOTION

Brendan Nasby 63618 6B-12 10-16-10
 INMATE NAME (PRINT) DOC # HOUSING/UNIT DATE

YOU MUST STATE THE COURT AND CASE NUMBER OR WHAT TYPE OF NEW LITIGATION U.S. District Court
3:07-CV-0304-ECR-RAM

DO NOT WRITE BELOW THIS LINE

 LAW LIBRARY SUPERVISOR

 RECEIVING INMATE

 LIBRARIAN/CLERK

 DATE RECEIVED

 DELIVERING LAW CLERK

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DOC-3040 (08/08)

LAW LIBRARY SUPPLY AND BOOK REQUEST FORM

SUPPLIES REQUESTED	AMT.	BOOKS REQUESTED
LINED PAPER 20 to 50 sheets		(LIST ISSUE OR THE NAME AND VOLUME NUMBER)
DRAFTING PAPER 8 1/2 x 11	OUT	Please send me ANY
PENS (ONE PER MONTH)		Georgetown Law Journal
LEGAL ENVELOPES 9 X 12		and
LEGAL ENVELOPES 10 X 15		
LEGAL ENVELOPES 4 X 9		
CARBON PAPER (issue on exchange only)	DON'T	The Prisoner's Guide To Survival
FIRE BOX	HAVE THIS	

Brendan Nasby

INMATE NAME (PRINT)

63619

DOC #

6B-12

HOUSING/UNIT

10-19-10

DATE

YOU MUST STATE THE COURT AND CASE NUMBER OR WHAT TYPE OF NEW LITIGATION

U.S. District Court
1983 Habeas Writ

DO NOT WRITE BELOW THIS LINE

LAW LIBRARY SUPERVISOR

RECEIVING INMATE

LIBRARIAN/CLERK

DATE RECEIVED

DELIVERING LAW CLERK

USE OF THIS FORM

Procedure:
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All inmates may "Check-in" and "Check-out" legal books and request supplies/copy work Monday through Friday. Failure to return legal materials at the designated time will result in disciplinary action.

RETURN TO 6B/12

LAW LIBRARY SUPPLY AND BOOK REQUEST FORM

GB12
NABBY

SUPPLIES REQUESTED	AMT.
LINED PAPER 20 to 50 sheets	
DRAFTING PAPER 8 1/2 x 11	
PENS (ONE PER MONTH)	
LEGAL ENVELOPES 9 X 12	
LEGAL ENVELOPES 10 X 15	
LEGAL ENVELOPES 4 X 9	
CARBON PAPER (issue on exchange only)	
FIRE BOX	

BOOKS REQUESTED
(LIST ISSUE OR THE NAME AND VOLUME NUMBER)
28 U.S.C.S. Sec. 2254, Nos. 792, 1727, 1735, 1733
RE - Submit
Printer out of ink

Brendan Nabby 63618 GB-12 12-9-10
INMATE NAME (PRINT) DOC # HOUSING/UNIT DATE

YOU MUST STATE THE COURT AND CASE 3:07-CV-00304-ECR-RAM-Fed Court
NUMBER OR WHAT TYPE OF NEW LITIGATION Post-Conviction

DO NOT WRITE BELOW THIS LINE

LAW LIBRARY SUPERVISOR

A_____
RECEIVING INMATE

LIBRARIAN/CLERK

A_____
DATE RECEIVED

DELIVERING LAW CLERK

USE OF THIS FORM

Procedure:

Inmates will complete this form and submit it to the law library supervisor. Incomplete or incorrectly filled out forms WILL NOT be processed. Send form through inter-departmental mail or via the Unit Law Library Mail. Do not give to count officers.

The law library supervisor shall review the request, authorizing those materials which may be issued.

The inmate librarian will fill the request, based on the Supervisor's authorization and will then give the items to the librarian assigned to the inmate unit for delivery to the inmate.

The inmate librarians will make the appropriate entries pertaining to the checkout of books, due dates and the issuing of supplies.

Check In/Check Out

Each inmate may have up to ten (10) law books (case laws and reference) checked out and in their possession at one time. Each file folder containing WestLaw "pink" pages will be considered one book.

CD ROM Legal materials may be checked out for one consecutive 10 day period and renewed every 10 days.

Hardbound Legal materials may be checked out for one consecutive 10 day period. If the hardbound does not have a wait list, then another 10 day period will be granted. This rule will make it possible for all inmates to use these materials.

All inmates may "Check-in" and "Check-out" legal books and request supplies/copy work Monday through Friday. Failure to return legal materials at the designated time will result in disciplinary action.

DOC-3040 (08/08)

Case No. C154293

Dept. No. XVIII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

Brendan Nasby
Petitioner,

-VS-

E.K. McDaniel, et. Al.
Respondents.

ORDER APPOINTING COUNSEL

Petitioner, Brendan Nasby, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that _____, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this ____ day of _____, 200__.

Submitted by:

DISTRICT COURT JUDGE

[Signature]
Petitioner, In Proper Person

Brendan Nasby #63618
P.O. Box 1989
Ely, NV 89301
E.S.P.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Habeas Corpus

Petition; Motion for leave; Motion for Evidentiary Hearing; Motion for Counsel
(Title of Document)

filed in District Court Case No. C154293

☒ Does not contain the social security number of any person.

-OR-


☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

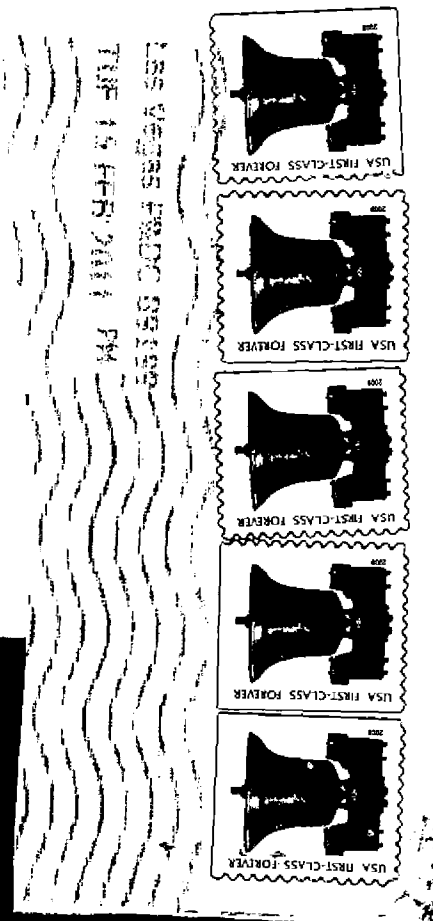
-OR-

B. For the administration of a public program or
for an application for a federal or state grant.


(Signature)
Brendan Nasog #63618
(Petitioner In Pro Se)

2-11
(Date)

B. Nasby #63618
P.O. Box 1484
Eliz, NY 84301
E.S.P.



56

PPH

FILED

FEB 18 2011

Ch. J. Blum
CLERK OF COURT

Case No. C154293

Dept. No. XVIII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

Brendan Nasby
Petitioner,

v.

E. K. McDaniel, et. al.
Respondent.

**MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

COMES NOW, the Petitioner,, in propria persona, pursuant to N.R.S. 12.015, and respectfully moves this Honorable Court for an Order granting Petitioner leave to proceed in the above-entitled action in forma pauperis, without requiring Petitioner to pay or provide security for the payment of costs of prosecuting this action.

This motion is made and based upon the attached affidavit and certificate.

Dated this 14th day of February, 2011.

Respectfully submitted,

[Signature]
Petitioner
Brendan Nasby #63618
Ely State Prison
P.O. Box 1469
Ely, NV 89301

98C154293-2
MPFP
Motion for Leave to Proceed In Forma Pau
1244936



CLERK OF THE COURT

FEB 17 2011

RECEIVED

Case No. C154293

Dept. No. XVIII

56
FILED

FEB 18 2011

John J. Fleming
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

Brendan Nasby
Petitioner,

v.

E.K. McDaniel, et, Al.
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

98C154293-2
PWHC
Petition for Writ of Habeas Corpus
1244933



(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Ely STATE PRISON, White Pine County

2. Name and location of court which entered the judgment of conviction under attack: 8th Judicial District Court - Clark County Nevada

3. Date of judgment of conviction: December 1, 1999

4. Case number: C154293

5. (a) Length of sentence: 20 yrs. to Life, & 20 yrs. to life, & 48-120 months

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes No ✓

If "yes", list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: First Degree Murder w/ the Use & Conspiracy To Commit Murder.

8. What was your plea? (check one):

(a) Not guilty ✓ (b) Guilty (c) Nolo contendere

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ✓ (b) Judge without a jury

11. Did you testify at the trial? Yes No ✓

12. Did you appeal from the judgment of conviction? Yes ✓ No

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: C154293

(c) Result: Affirmed Conviction

(d) Date of result: June 18, 2007
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: Clark County District Court, Nev. Sup. Court, & U.S. Dist. Court
(2) Nature of proceeding: Writ of Habeas Corpus, Appeal, and 2254 Petition / Federal Writ of Habeas Corpus.
(3) Grounds raised: Numerous, including those found in this petition.
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☒ No ☐
(5) Result: Affirmation of Conviction & On going
(6) Date of result: 6-18-07
(7) If known, citations of any written opinion or date of orders entered pursuant to such result:
Unknown

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: N/A
(2) Nature of proceeding: N/A
(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☒ No ☐

Citation or date of decision: 6-18-07

(2) Second petition, application or motion? Yes ☐ No ☐

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☐

Citation or date of decision: N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: Grounds 1, 2, 3, and 4.

(b) The proceedings in which these grounds were raised: Direct Appeal to the Nevada Supreme Court, & 2254 Petition to U.S. District Court - District of Nevada, & State Petition Writ of Habeas Corpus

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Federal Court demands that these grounds be federalized in State Court before they can be raised in Federal Court (Cont. on Additional Paper.)

18. If any of the grounds listed in No. 's 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Yes. Federal Court demands that the issues/ grounds included in this petition be federalized in State Court first, before I raise them in Federal Court. (Cont. on Additional Paper.)

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No ☐

If yes, state what court and case number: U.S. District Court, District of Nevada - Case No.: 3:07-cv-00304-ECL-RAM

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Joseph S. Sciscento & Frederick A. Santacroce

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully, summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

* Continuing Answers to Questions #17(c) and #19 on page
4-A:

..... In addition, at the time my original Writ of Habeas Corpus was filed, and still to this day, I was & are, limited in my access to federal case law and other materials, due to the Nevada Department of Corrections decision to refuse to supply any additions and/or updates to the Federal Practice Digest 4th Edition; United States Code Service; and United States Code Annotated, for several years.

I never had the current knowledge, nor ability, to properly present this case to this Court. ~~more~~ Furthermore, I've been housed at Ely State Prison, which is a "locked-down" facility. I'm only allowed access to the prison's law library via, institutional mail. So, to add to the limited research materials and sources, much needed research materials are often already rented out to other inmates or not in stock.

Moreover, Prison law clerks are not even allowed in the units, thus making it even more difficult to attain the Federal knowledge needed to insure that I have ~~a~~ exhausted all my State remedies and requirements before I file a Petition in Federal Court.

In regards to these questions, the law as to what is needed and required in a prison law library has been addressed and settled by the Federal Courts here in Nevada. See - Craig v. Hocker, 405 F.Supp. 656 (D. Nev. 1975). There are also 9th Circuit cases that deal with the requirements of law library: Johnson v. Moore, 948 F.2d 517, 521 n. 2, (9th Cir. 1991); Lindquist v. Idaho State Bd. Of Corrections, 776 F.2d 851, 856 n. 1, (9th Cir. 1985); and a holding that inmates need not make a showing of prejudice where core Bounds requirements are denied, see Harris v. Malowhney, 827 F.Supp. 1488 (D. Mont. 1993). The 9th Circuit in Casey v. Lewis, 43 F.3d 1261 (9th Cir. 1994), also held that updates are required, which was not

4-B

overturned by the Supreme Court's decision in Lewis v. Casey,
116 S.Ct. 2174, 518 U.S. 334 (1996).

(a) Ground One: The Court erroneously allowed introduction of Prior Bad Acts.

Supporting FACTS (Tell your story briefly without citing cases or law.):

See Memorandum of Law in support of this petition attached hereto.

(b) Ground Two: The conviction for Murder ~~and~~ Conspiracy to Commit Murder was obtained where there was no corroborating evidence.

Supporting FACTS (Tell your story briefly without citing cases or law.):

See Memorandum of Law in support of this petition attached hereto.

(c) Ground Three: Trial Court erred by failing to provide a cautionary instruction to the jury regarding accomplice testimony.

Supporting FACTS (Tell your story briefly without citing cases or law.):

See Memorandum of Law in support of this petition attached hereto. Also see attached Exhibit "A" (Affidavits of Jotie & Tommie Burnside)

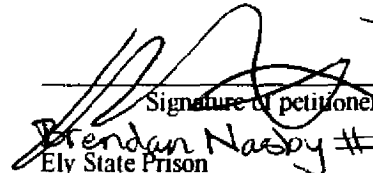
(d) Ground Four: The Trial Court failed to instruct the jury on Willfulness, Deliberation, and Premeditation; Instruction (12).

Supporting FACTS (Tell your story briefly without citing cases or law.):

See Memorandum of Law in support of this petition attached hereto.

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 14th day of the month of February, of the year 2011.



Signature of petitioner
Brendan Nasby #63618
Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989
(Petitioner In Pro Se)

None

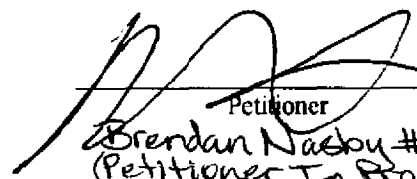
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.



Petitioner
Brendan Nasby #63618
(Petitioner In Pro Se)

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Brendan Nasby, hereby certify pursuant to N.R.C.P. 5(b), that on this 14th day of the month of February, of the year 2011, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:


E.K. McDaniel, et, Al.
Respondent prison or jail official

P.O. Box 1989
Ely, Nevada 89301
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

David Roger - Clark County DA
District Attorney of County of Conviction

P.O. Box 552212
Las Vegas, NV 89155-2212
Address



Signature of Petitioner
Brendan Nasby #63618

FILED

FEB 28 2011

Adam L. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,

Petitioner,

vs.

E.K MCDANIEL ETAL,
Respondent,

Case No: C154293
Dept No: 18

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on February 18, 2011. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 27th day of April, 2011, at the hour of

8:15 o'clock for further proceedings.

Date: FEB 24 2011

98C154293-2
OPWH
Order for Petition for Writ of Habeas Corpus
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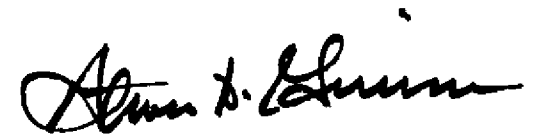


[Signature]
District Court Judge

RECEIVED

FEB 28 2011

CLERK OF THE COURT



CLERK OF THE COURT

RSPN
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
FRANK J. COUMOU
Chief Deputy District Attorney
Nevada Bar #004577
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN NASBY,
#1517690

Defendant.

CASE NO: 98C154293-2

DEPT NO: XVIII

**STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION
FOR WRIT OF HABEAS CORPUS**

DATE OF HEARING: April 27, 2011

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through FRANK J. COUMOU, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition For Writ Of Habeas Corpus.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 The State charged Brendan Nasby ("Defendant") by way of Information with Count 1
4 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.010, 200.030) and Count 2 –
5 Murder With Use of a Deadly Weapon (Open Murder)(Felony – NRS 200.010, 200.030,
6 193.165).

7 A jury trial commenced on October 11, 1999. On October 19, 1999, the jury returned
8 with a verdict of guilty on both counts. On November 29, 1999, Defendant was sentenced as
9 to Count 1 – to a maximum of one hundred twenty (120) months, with a minimum parole
10 eligibility of forty-eight (48) months in the Nevada Department of Corrections ("NDC"); as
11 to Count 2 – to Life with the possibility of parole with a consecutive term of Life with the
12 possibility of parole. Judgment of Conviction was entered on December 2, 1999.

13 Defendant filed a Notice of Appeal on December 14, 1999. The Nevada Supreme
14 Court affirmed Defendant's conviction on February 7, 2001. Remittitur was issued on March
15 6, 2001.

16 On February 1, 2002, Defendant filed a pro per Petition for Writ of Habeas Corpus
17 (post-conviction). The State filed a Response on April 5, 2002. This matter was never
18 litigated. On March 1, 2004, the district court set a new briefing schedule. Defendant filed
19 his Petition on November 17, 2004. On February 4, 2004, the State filed its Opposition to
20 Defendant's Petition. On November 9, 2005, an Evidentiary Hearing was held. On March
21 27, 2006, the court denied Defendant's Petition. Defendant filed a Notice of Appeal on April
22 12, 2006. The district court filed its Notice of Entry of Decision and Order on April 27,
23 2006. On May 24, 2006, Defendant filed a second Notice of Appeal.

24 On June 8, 2007, the Nevada Supreme Court affirmed the district court's denial of
25 Defendant's Petition. Remittitur was issued on July 13, 2007.

26 Defendant filed the instant Second Petition for Writ of Habeas Corpus on February
27 18, 2011. The State responds as follows:

28 ///

1 **ARGUMENT**

2 **I. DEFENDANT'S PETITION IS TIME BARRED PURSUANT TO NRS**
3 **34.726**

4 NRS 34.726(1) clearly states:

5 Unless there is good cause shown for delay, a petition that challenges the validity of a
6 judgment or sentence *must be filed within 1 year after entry of judgment of*
7 *conviction or, if an appeal has been taken from the judgment, within 1 year after*
8 *the Supreme Court issues its remittitur.* For purposes of this subsection, good cause
9 for delay exists if the petitioner demonstrates to the satisfaction of the court:

- 10 a) That the delay is not the fault of the petitioner; and,
11 b) that dismissal of the petition as untimely will unduly prejudice the
12 petitioner.

13 (emphasis added) The one year time limit for preparing petitions for post-conviction relief
14 under NRS 34.726 is strictly construed.

15 Furthermore, the “[a]pplication of the statutory procedural default rules to post-
16 conviction habeas petitions is mandatory.” State v. District Court (Riker), 121 Nev. 225,
17 331 112 P.3d 1070, 1074 (2005). Primarily, because the excessive number of habeas corpus
18 petitions that are filed years after conviction have placed an “unreasonable burden on the
19 criminal justice system.” Id. An example of the strict application of these procedural bars
20 can be found in Gonzales v. State, 118 Nev. 61, 590 P.3d 901 (2002), where the Nevada
21 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
22 and unambiguous” mandatory provisions of NRS 34.726(1). In sum, “NRS 34.726(1) . . .
23 evinces intolerance toward perpetual filing of petitions for relief, which clogs the court
24 system and undermines the finality of convictions.” Pellegrini, 117 Nev. at 875, 34 P.3d at
25 529.

26 Here, Defendant's Petition is well beyond the one-year time bar. Defendant's
27 Judgment of Conviction was entered on December 2, 1999. Defendant's conviction was
28 affirmed by the Nevada Supreme Court on February 7, 2001 and Remittitur was issued on
March 6, 2001. Thus, Defendant had until March 6, 2002 to file his second petition for a
post-conviction writ of habeas corpus. Defendant filed the instant Petition on February 18,

1 2011. As discussed, infra at p. 5-6, Defendant fails to establish any good cause or prejudice
2 to overcome the one-year time bar. Since this Petition is *almost ten (10) years late*, it must
3 be summarily denied.

4
5 **II. DEFENDANT'S PETITION IS SUCCESSIVE AND BARRED BY NRS
34.810(2)**

6 Defendant has filed a Second Post-Conviction Writ of Habeas Corpus. Defendant's
7 previous petition was denied and affirmed by the Supreme Court. Since the grounds raised
8 for relief either were or should have been raised in Defendant's prior Petition, this petition is
9 successive and should be dismissed. With respect to grounds 1 and 3 of Defendant's second
10 Petition, he raised the issue of prior bad acts evidence being elicited during the testimony of
11 Britney Adams and the court's failure to give an accomplice jury instruction in his first
12 Petition. With respect to grounds 2 and 4 of Defendant's second Petition, the issue of the
13 court failing to instruct the jury on willfulness, deliberation, and premeditation and the issue
14 of lack of corroborating evidence should have been raised in his first Petition.

15 NRS 34.810(2) provides as follows: "A second or successive petition must be
16 dismissed if the judge or justice determines that it fails to allege new or different grounds for
17 relief and that the prior determination was on the merits or, if new and different grounds are
18 alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a
19 prior petition constituted an abuse of the writ."

20 As the Nevada Supreme Court noted in Evans v. State, 117 Nev. 609, 621-22, 29 P.3d
21 498, 507 (2001), "[a] court must dismiss a habeas petition if it presents claims that either
22 were or could have been presented in an earlier proceeding, unless the court finds both cause
23 for failing to present the claims earlier or for raising them again and actual prejudice to the
24 petitioner." Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); Pellegrini v.
25 State, 117 Nev. 860, 34 P.3d 519 (2001). The Court went on to hold that "post-conviction
26 habeas claims that are independent of ineffective assistance claims and that could have been
27 raised on direct appeal are waived." Evans, 117 Nev. at 621-22, 29 P.3d at 507.

28 //

1 Without such limitations on the availability of post-conviction remedies, prisoners
2 could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition,
3 meritless, successive and untimely petitions clog the court system and undermine the finality
4 of convictions. Lozada, 110 Nev. at 358, 871 P.2d at 950; Dickerson v. State, 114 Nev.
5 1084, 967 P.2d 1132 (1998).

6 The Nevada Supreme Court has also stated, “[u]nlike initial petitions which certainly
7 require a careful review of the record, successive petitions may be dismissed based solely on
8 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

9 Here, Defendant’s successive filing amounts to a blatant abuse of the writ and Defendant
10 cannot overcome the successive petition bar of NRS 34.810(2). Thus, this Court should
11 dismiss the instant post-conviction petition.

12
13 **III. THERE IS NO GOOD CAUSE TO OVERCOME THE PROCEDURAL
BARS OF NRS 34.726 AND NRS 34.810(2)**

14 “In order to demonstrate good cause, a petitioner must show that an impediment
15 external to the defense prevented him or her from complying with the state procedural
16 default rules.” Hathaway v. State, 119 Nev. 248, 71 P.3d 503, 506 (2003); *citing* Pellegrini,
17 117 Nev. at 886-87, 34 P.3d at 537; Lozada, 110 Nev. at 353, 871 P.2d at 946. Such an
18 external impediment could be “that the factual or legal basis for a claim was not reasonably
19 available to counsel, or that ‘some interference by officials’ made compliance
20 impracticable”. Hathaway, 71 P.3d at 506; *quoting* Murray v. Carrier, 477 U.S. 478, 488,
21 106 S.Ct. 2639, 2645 (1986); *see also* Gonzalez, 53 P.3d at 904; *citing* Harris v. Warden,
22 114 Nev. 956, 959-60 n. 4, (64 P.2d 785 n. 4 (1998). The failure of counsel to inform the
23 petitioner of his right to direct appeal, however, does not rise to good cause for overcoming
24 the time bar. Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998). Moreover, the
25 delay in filing of the petition ***must not*** be the fault of the petitioner. NRS 34.726(1)(a).

26 Defendant fails to show both good cause and prejudice to overcome the procedural
27 bars contained in NRS 34.726 and NRS 34.800. Defendant’s post-conviction Petition is
28 almost ten (10) years late. Defendant demonstrates no good cause or prejudice to explain his

1 failure to follow the procedural requirements in filing this untimely and successive Petition.
2 Defendant's only explanations are that he did not have adequate legal resources to file a
3 proper first Petition and that the petition he filed in federal court was returned. (Def. Pet., pg.
4 4-B). However, lack of adequate legal resources in prison is not good cause. Phelps v.
5 Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Additionally, return from
6 federal court to exhaust state remedies is not good cause to overcome state procedural bars.
7 Shumway v. Payne, 223 F.3d 982 (9th Cir. 2000).

8 The strict mandate of NRS 34.726(1) dictates that Defendant's Petition is
9 procedurally barred and must be dismissed because such petitions "that are filed many years
10 after conviction are an unreasonable burden on the criminal justice system. The necessity for
11 a workable system dictates that there must exist a time when a criminal conviction is final."
12 Riker, 121 Nev. at 231, 112 P.3d at 1074. Defendant's sentence has been final for over ten
13 (10) years and accordingly, Defendant's Petition must be denied as untimely.

14 **IV. THE STATE PLEADS LACHES PER NRS 34.800**

15 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
16 exceeding five years [elapses] between the filing of a judgment of conviction, an order
17 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
18 conviction and the filing of a petition challenging the validity of a judgment of
19 conviction..." The Nevada Supreme Court observed in Groesbeck v. Warden, 100 Nev. 259,
20 679 P.2d 1268 (1984), that "petitions [] filed many years after conviction are an
21 unreasonable burden on the criminal justice system. The necessity for a workable system
22 dictates that there must exist a time when a criminal conviction is final." To invoke the
23 presumption, the statute requires the State to plead laches in its motion to dismiss the
24 petition. NRS 34.800(2).

25 The State affirmatively pleads laches in this case. Defendant's direct appeal was
26 denied on February 7, 2001 and Remittitur was issued on March 6, 2001. Almost ten (10)
27 years later, Defendant filed the instant second Petition. Defendant's delay exceeds the
28 statute's presumptively prejudicial time period. The State would be unreasonably burdened

1 to identify witnesses and evidence in order to refute Defendant's allegations. Defendant has
2 failed to rebut the presumption of prejudice and thus his fourth petition is also barred under
3 the doctrine of laches.

4 **CONCLUSION**

5 Based on the foregoing arguments, Defendant's Petition for Writ of Habeas Corpus
6 should be DISMISSED.

7
8 DATED this 8th day of April, 2011.

9 Respectfully submitted,

10 DAVID ROGER
11 Clark County District Attorney
Nevada Bar #002781

12
13 BY /s/ FRANK J. COUMOU
14 FRANK J. COUMOU
15 Chief Deputy District Attorney
Nevada Bar #004577

16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 8th day of
18 April, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19
20 B. NASBY, #63618
21 ELY STATE PRISON
22 POST OFFICE BOX 1989
ELY, NEVADA 89301

23 BY: /s/ M. JENKINS
24 M. Jenkins
25 Employee of the District Attorney's Office

26
27 jjn/FJC/mj
28

Brendan Nasby
I.D. No. 63618
Ely State Prison
P.O. Box 1999
Ely, NV 89301
(Petitioner In ProSe)

8
FILED
APR 29 2011
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby,
Petitioner,

Case No. 98C154293-2

VS.

E.K. McDaniel, et., al.,
Respondent.

Dept. No. XVIII

98C154293-2

RPLY

Reply

1384237



PETITIONER'S REPLY TO STATE'S
RESPONSE AND MOTION TO DISMISS PETIT-
IONER'S PETITION FOR WRIT OF
HABEAS CORPUS

COMES NOW, Brendan Nasby, Petitioner in ProSe, before this Honorable Court, in the above-captioned action, respectfully submitting this ~~Reply~~ Reply To the State's Response and Motion To Dismiss Petitioner's Petition For Writ of Habeas ~~Corpus~~ Corpus.

This Reply is made, filed, and based on all papers, pleadings, and verified Petition filed in this Court, as well as the points and authorities annexed hereto.

Date Of Hearing: 4-27-11 Time Of Hearing: 8:15AM

CLERK OF THE COURT

APR 29 2011

RECEIVED

POINTS AND AUTHORITIES

I. Petitioner's Petition Is Not Time Barred

In the instant case, the State argued that the Petitioner's Petition was Time Barred Pursuant to NRS 34.726. This is incorrect.

The State argues that Petitioner's Petition is ten years late. This too, is incorrect.

The State also argued that the Petitioner had until March 6, 2002, to file his Petition.

The State's argument is non-applicable in the instant case.

Petitioner's Judgment of Conviction was ~~enter~~ entered on December 1, 1999. The date Petitioner's appeal was decided was February 7, 2001. Petitioner's petition, containing the same issues raised in this petition, was filed on January 27, 2002. This petition remained in this Court for several years before being denied. Petitioner appealed the denial of his Petition. This appeal was decided on June 18, 2007, in the Nevada Supreme Court. Petitioner then filed his Federal Petition (2254) on August 14, 2007. Petitioner was informed by the U.S. District Court, that there was more to be heard on these issues, and that ~~he~~ he must Federalize these issues, before they can be heard in Federal Court, in State Court First. The U.S. District Court Dismissed Petitioner's Petition, allowing him to return to State

Court on November 17, 2010. On February 18, 2011, Petitioner filed the instant Petition.

The State's argument that Petitioner's Petition is time barred, ~~is~~ non-applicable for two reasons.

First, once a Court gives notice of filing, that Court maintains jurisdiction until a judgment or order is given, and final, in that matter. Thus, one Court may not entertain a petition that is currently being adjudicated in another. (See Flanagan v U.S., 465 U.S. 259, 263 (1984), also see U.S. v Parr, 351 U.S. 513, 518 (1956))

Secondly, Petitioner is entitled to equitable tolling of filing deadline of NRS 34.726 and AEDPA. Once a petition or appeal is filed with a Court, tolling of the filing deadline takes effect.

Thus, Petitioner's Petition is not time barred.

II. Petitioner's Petition Is Not Barred By NRS 34.810(2)

Petitioner satisfied the requirements of NRS 34.810(2) argued by the State.

Petitioner has provided this Court with documents that show the lack of access to Federal legal materials, (See Attached Exhibits to Motion For Appointment Of Counsel & Evidentiary Hearing)

Petitioner raises the issue of his Constitutionally protected right of access to the courts being denied

When prison officials/authorities fail to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law. (See Lewis v. Casey, 518 U.S. 343, 116 S.Ct. 2174 (1996))

This issue not only constitutes "new grounds" in and of itself, but it also explains and shows just cause for the lack of Federalization of the grounds raised in the instant petition, in previous court proceedings.

The State argues that the failure to assert these grounds in a prior petition constitutes an abuse of the writ, however, Petitioner's failure to Federalize the grounds in the instant petition, is due to a lack of Federal material, and no fault of the Petitioner's.

Thus, denying the instant petition on these grounds would be an absolute denial of the Petitioner's right to ~~Real~~ Fundamental Fairness.

III. Good Cause Does Exist To Overcome The Procedural Bars Of NRS 34.726 & NRS 34.810(2)

Petitioner did raise these issues in his previous Petition and Direct Appeal, in a timely fashion. However, it is the Federal argument that The State Court has not been given the opportunity to hear

and rule on. Had Petitioner had access to the needed legal research materials, he would have, and could have supplied this Court with the Federal arguments. The Petitioner was made aware of the requirement that the State be given the opportunity to hear the Federal argument, by the U.S. District Court, just last year, (November 2010), which explains the current action.

It is not the fault of the Petitioner that the grounds raised in the instant petition, were not argued federally, in previous State proceedings. The prison is required to provide inmates with adequate legal assistance and law library. Ely State Prison fails to meet the requirements.

The U.S. District Court, in Nevada, also agrees with Petitioner. (See - Attached Order from the U.S. District Court regarding exhausting these issues in State Court) (Exhibit-A)

IV. The State's Laches Plea Is Unfair and Un-Constitutional

The State ask this Court to dismiss Petitioner's Petition, basically, because it's an older case.

Petitioner's issues have merit and meet the requirement to be revisited and heard. Yet, the State request that Petitioner be denied the access

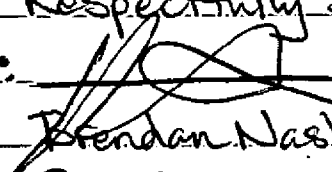
to the Court and possible relief and fundamental fairness, because a period of time has passed. Were the State's request applicable in this case, ~~there is~~ the existence of "requirements" need not be met by the Petitioner, to be heard. There would be no need for "requirements" if the State only need argue that the case is an old one.

Furthermore, Petitioner's grounds refer to evidence that the State currently possesses through the record.

CONCLUSION

Based on these, and previous arguments, the Petitioner request that this Court grant his Motion For Counsel, Evidentiary Hearing, Proceeding In Forma Pauperis, Allow the instant Petition to be heard on the merits of claims made, and release Petitioner from unconstitutional confinement.

Dated this 25th day of April, 2011.

Respectfully Submitted,
By: 
Brendan Nasby #63618
P.O. Box 1989
Ely, NV 89301
Ely State Prison

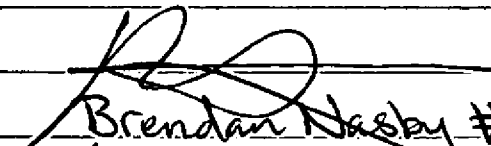
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Reply to the State's Response, was mailed, postage prepaid, to the following:

- 1) Steven D. Grierson
Clerk Of The Court
200 Lewis Ave; 3rd Floor
Las Vegas, NV 89155-1160
- 2) David Roger, District Attorney
Office of the District Attorney
200 Lewis Ave
P.O. Box 552212
Las Vegas, NV 89155-2212

Dated this 25th day of April, 2011.

Submitted By:


Brendan Nasby #63618
(Petitioner In Pro Se)

EXHIBIT

" A "

Order From U.S. District Court

BRENDAN NASBY,
Petitioner,
vs.
E.K. McDANIEL, *et al.*,
Respondent

ORDER

The motion for reconsideration is brought pursuant to F.R.C.P. 60(b) and was filed almost four months after the record on appeal was transmitted to the Ninth Circuit Court of Appeals. This Court retains jurisdiction to address this motion. F.R.C.P. 60(c); *See Stone v. INS*, 514 U.S. 386, 115 S.Ct. 1537, 1547 (1995) (“[T]he pendency of an appeal does not affect the district court’s power to grant Rule 60 relief.”); *Ingraham v. United States*, 808 F.2d 1075, 1080-81 (5th Cir. 1987).

1 ("[A] Rule 60(b) motion may be entertained in the district court at any time within a year of
2 judgment, regardless of the pendency or even the completion of an appeal.")¹

3 Under this rule, a party may obtain relief from judgment or an order due to clerical
4 mistakes or because of mistake, inadvertence, excusable neglect, fraud or newly discovered
5 evidence. Motions to reconsider are generally left to the discretion of the trial court. *See Combs v.*
6 *Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to
7 reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to
8 reverse its prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665
9 (E.D. Cal. 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987).

10 While acknowledging he has no constitutional right to the effective assistance of
11 counsel in post-conviction proceedings, petitioner, nonetheless argues that inadequate law library
12 resources and ineffective assistance of post-conviction counsel warrants reconsideration of the
13 Court's order of dismissal. Petitioner contends that he was inaccurately advised by his appointed
14 counsel's assistant as to the procedures to obtain a stay and as to his obligations in that regard.² He
15 further contends that the grounds found to be unexhausted were, in fact, properly federalized before
16 the state court and, had he possessed the record of those proceedings and proper access to legal
17 research materials, he could have presented arguments to that effect. Finally, petitioner argues that
18 he was never consulted by counsel as to the Motion for Stay and Abeyance in order to provide the
19 requisite explanation as to why he failed to fully exhaust his claims; e.g., ignorance of the
20

21
22 ¹ There is some question whether the Ninth Circuit would normally require petitioner to seek
23 remand of the case in order to permit this Court to entertain his Rule 60(b) motion. *See, e.g. Rodgers*
24 *v. Reynaga*, Slip Copy, 2010, WL 2402850. However, a copy of this Order will be forwarded to that
Court for review and reaction, and the Circuit Court can determine if the procedure followed is
appropriate.

25 ² Petitioner provides copies of correspondence he had with his counsel's assistant which seems
26 to support the contention that both he and counsel, or at least the assistant, were confused about the
requirements for the motion for stay.

1 requirement and lack of access to federal habeas materials in Ely State Prison due to lock-down
2 conditions and limited availability of legal resources/materials.

3 As an initial point, the Court finds that as represented by petitioner and supported by
4 documentation, the legal resources afforded at the Ely State Prison, including the paging system
5 employed there, may be constitutionally inadequate. In *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct.
6 2174 (1996), the United States Supreme Court held that “ ‘the fundamental constitutional right of
7 access to the courts requires prison authorities to assist inmates in the preparation and filing of
8 meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance
9 from persons trained in the law.’ ” *Id.*, at 346, 116 S.Ct at 2177 (quoting *Bounds v. Smith*, 430 U.S.
10 817, 825, 97 S.Ct. 1491, 1496 (1977)). The various Law Library Supply and Book Request Forms
11 submitted by petitioner demonstrate the near impossibility that an inmate will be able to obtain
12 necessary research materials in a timely manner. The forms further demonstrate that the inmate must
13 be fully informed of the available resources and even specific case law before such can be delivered.
14 Similar exact-cite paging systems have been held to fail to meet the requirement that a prison ensure
15 a reasonably adequate opportunity to present to the court a prisoner’s claims that his or her
16 fundamental constitutional rights have been violated. See *Koerschner v. Warden*, 508 F.Supp. 849,
17 859 (D. Nev. 2007); see also *Trujillo v. Williams*, 465 F.3d 1210, 1226-27 (10th Cir. 2006).³

18 The inadequacy of the law library aside, the Court notes that while represented by
19 court-appointed counsel, petitioner did not file an opposition to the motion to dismiss which
20 ultimately resulted in dismissal of his petition. This offers significant evidence of counsel’s failure
21 to engage in the representation, particularly when petitioner, in pro se, offers cogent, if not totally
22 convincing arguments as to the exhaustion of his claims. The Court further notes that while
23 represented by counsel, petitioner filed a bare-bones motion for stay and abeyance despite the Court

24
25 ³ While recognizing the potential security issues involved, this Court wonders why, with the
26 advance of internet and computerized legal research resources, prisons have not incorporated these tools
into the law library for use by inmates.

1 having informed petitioner and his counsel of the requirements of *Rhines v. Weber*, 544 U.S. 269
 2 (2005). That motion offered nothing to show cause for the failure to exhaust his claims, and the
 3 correspondence between petitioner and his attorney's office strongly suggests that counsel did not
 4 believe any showing the required, despite this Court's order to the contrary. Petitioner has presented
 5 facts that also strongly suggest that, had counsel been more fully informed and engaged in this matter
 6 and a proper opposition to the motion to dismiss had been prepared and filed and had counsel
 7 prepared and filed a proper motion for stay and abeyance, the petition would not have been
 8 dismissed, but a stay would have been granted.

9 As to petitioner's arguments that the claims were, in fact, exhausted, the Court agrees
 10 that ground 2(b) was presented to the Nevada Supreme Court on appeal from denial of the post-
 11 conviction petition. However, as with the remainder of ground 2, even though it was presented to
 12 the Nevada Supreme Court in that appeal, it is procedurally barred under Nevada Revised Statutes
 13 34.810(1)(b) because the court found the claim should have been presented on direct appeal and was
 14 not. See Exhibit 10 to the Motion to Dismiss. Grounds 5, 6, and 7, were, according to petitioner,
 15 presented in his original post-conviction petition to the state district court. They were not presented
 16 to the state's highest court for review, however, and they are not exhausted. *Rose v. Lundy*, 455 U.S.
 17 509 (1982); 28 U.S.C. § 2254(b).⁴

18
 19 ⁴ 28 U.S.C. § 2254(b) states, in pertinent part:

20 An application for a writ of habeas corpus on behalf of a person in
 21 custody pursuant to the judgment of a State court shall not be granted
 22 unless it appears that: (A) the applicant has exhausted the remedies
 23 available in the courts of the State; or (B)(i) there is an absence of
 available state corrective process; or (ii) circumstances exist that render
 such process ineffective to protect the rights of the applicant.

24 * * *

25 (c) An applicant shall not be deemed to have exhausted the remedies
 26 available in the courts of the State, within the meaning of this section, if
 he has the right under the law of the State to raise, by any available
 procedure, the question presented.

1 The motion for reconsideration will be granted. The Order denying the motion for
2 stay and abeyance (ECF No. 42) shall be vacated and Judgment (ECF No. 43) recalled. Petitioner
3 shall be granted a stay of these proceedings and the matter shall be held in abeyance pending his
4 return to state court to exhaust grounds 5, 6 and 7.

5 **IT IS THEREFORE ORDERED** that the Clerk shall transmit a copy of this Order
6 to the Ninth Circuit Court of Appeals in the case number assigned to petitioner's appeal.

7 **IT IS FURTHER ORDERED** that, pending remand from the Circuit Court, the
8 Motion for Reconsideration (ECF No. 51) is **GRANTED**. The Order denying the motion for stay
9 and abeyance (ECF No. 42) is hereby vacated and the Judgment (ECF No. 43) **RECALLED**.

10 **IT IS FURTHER ORDERED** that ground 2(b) is **DISMISSED WITH**
11 **PREJUDICE AS PROCEDURALLY BARRED**.

12 **IT IS FURTHER ORDERED** that this action is **STAYED** pending exhaustion of
13 the unexhausted claim. Petitioner may move to reopen the matter following exhaustion of grounds
14 5, 6 and 7 of the petition.

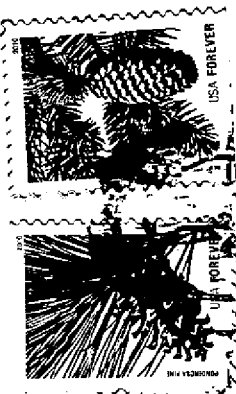
15 **IT IS FURTHER ORDERED** that the grant of a stay is conditioned upon petitioner
16 filing a state post-conviction petition or other appropriate proceeding in state court within forty-five
17 (45) days from the entry of this order and returning to federal court with a motion to reopen within
18 forty-five (45) days of issuance of the remittitur by the Supreme Court of Nevada at the conclusion
19 of the state court proceedings.

20 **IT IS FURTHER ORDERED** that the Clerk shall **ADMINISTRATIVELY**
21 **CLOSE** this action, until such time as the Court grants a motion to reopen the matter.

22 Dated this 19th day of April, 2011.

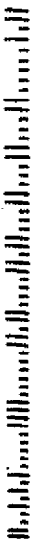
23 
24 UNITED STATES DISTRICT JUDGE
25
26

B. Nasby #63618
P.O. Box 1989
Elko, NV 89301-1989
E.S.P.



Steven D. Grierson
Clerk of the Court
200 Lewis Ave.; 3rd Floor
Las Vegas, NV 89155-1160

9910136300



*Legal Mail * Confidential

Brendan Nasby
I.D. No. 63618
Ely State Prison
P.O. Box 1489
Ely, NV 89301
(Petitioner In ProSe)

FILED

5

JUN - 6 2011

John L. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby,
Petitioner,

Case No.: C154293-2

vs.

E.K. McDaniel, et, Al.,
Respondent.

Dept. No.: XVIII

HD. June 20, 2011

NOTICE TO THE COURT
AND MOTION REQUESTING UPDATE

COMES NOW, the Petitioner, Brendan Nasby, proceeding in ProSe, before this Honorable Court, in the above-captioned action, Respectfully submitting this Notice To The Court and Motion Requesting Update.

This Notice and Motion is made and based on the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case.

98C154293-2
MOT
Motion
1452667



RECEIVED
JUN 03 2011
CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

1 On, February 14, 2011, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) in this Court. It was filed by the clerk on, February 18, 2011.

Along with that petition, Petitioner submitted a Motion To Proceed In Forma Pauperis and an Affidavit in support of that Motion. Also, Petitioner submitted a Motion For Appointment Of Counsel, and a Motion For Evidentiary Hearing.

All of the above was mailed to the County Clerk and the District Attorney at, P.O. Box 552212; Las Vegas, NV 89155

2 On, February 28, 2011, this Court filed an Order for Petition for Writ of Habeas Corpus. In this Order, it was ordered that Respondent shall answer or respond to the petition. It was also ordered that this matter be placed on the Court's calendar on, April 27, 2011.

The above order was sent to Petitioner, by the County Clerk, with a return address different from the one Petitioner used to file his petition. The address was: Steven D. Grierson, Clerk of the Court; 200 Lewis Avenue, 3rd Floor; Las Vegas, NV 89155-1160.

3 On, April 19, 2011, Petitioner received a copy of the State's response and Motion to Dismiss Petitioner's petition. This response was dated, April 8, 2011.

The above State's Response was sent to the Petitioner with ~~this~~ this ~~as~~ return address: David Roger, District Attorney; Office of the District Attorney; 200 Lewis Avenue; P.O. Box 552212; Las Vegas, NV 89155-2212.

4 On, April 25, 2011, Petitioner mailed out his Reply to the State's Response to Petitioner's Petition. This Reply was mailed to the County Clerk and the District Attorney using the ~~addresses~~ return addresses provided by the Clerk and the District Attorney, as listed in #2 and #3 of this motion.

However, Petitioner did not receive a filed copy of his Reply, confirming the filing of his Reply. Also, the Petitioner has received nothing regarding the April 27, 2011 hearing, regarding his petition.

The Sixth Amendment guarantees the Petitioner the right to participate in the Just litigation of his case; however the filing of his Reply to the State's Response and the outcome of the April 27th hearing, are both unknown to Petitioner. Over a month has past and the Petitioner hasn't been notified of anything. Petitioner's Due Process Rights may also be in violation, as well.

CLOSING

The Petitioner respectfully request that this Court take Notice that a Reply was ~~sent~~ mailed by the Petitioner to the County Clerk and the District

Attorney. Also, take Notice that Petitioner has received no confirmation that his Reply was filed. Also, take Notice that the Petitioner has not heard or received any Orders or Documents prior to receiving the State's Response to Petitioner's Petition.

Petitioner also, Respectfully request that this Court inform and ~~update~~ give update on original all happenings or proceedings following April 25, 2011, up until the present date.

Dated this 30th day of May, 2011

Respectfully Submitted,

By: 

Brendan Nash #63618

(Petitioner In Pro Se)

P.O. Box 1989


Ely, NV 89301

VERIFICATION

I Declare, Affirm, and Swear under penalty of perjury that all of the above facts, statements and actions are true and correct of my own knowledge, and to any such matters stated upon information or belief, I swear that I believe them to all be true and correct

Pursuant to: NRS 24.750 (1)(a), 28 U.S.C. Sect 1746, and 18 U.S.C. Sect. 1621

Dated this 30th day of May, 2011.

Respectfully Submitted,
By: 

Brendan Nease #63618
(Petitioner In Pro Se)

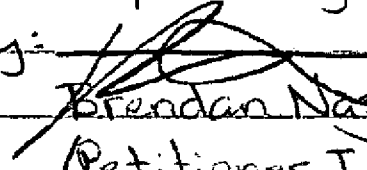
CONCLUSION

Based upon the facts and law presented herein, Petitioner respectfully request this Court Notify and Update the Petitioner on all Court proceedings and actions taken in this case from dates April ~~2011~~₂₅, 2011, up until the present day.

Dated this 30th day of May, 2011

Respectfully Submitted,

By:



Brendan Nasty #63618
(Petitioner In ProSe)

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice To The Court and Motion Requesting Update, was mailed, postage pre-paid to the following:

1. Clark County Clerk
P.O. Box 552212
Las Vegas, NV 89155-2212
2. David Roger
Office of the District Attorney
200 Lewis Ave.
P.O. Box 552212
Las Vegas, NV 89155-2212
3. Steven D. Prierson
Clerk of the Court
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155-1160
4. Attorney General
100 N. Carson St.
Carson City, NV 89701

Dated this 30th day of May, 2011.

By: 
Brendan Nasby #63618
(Petitioner In Pro Se)

B. Nadey #63618
P.O. Box 1484
Ely, NV 89301-1484
E.S.P.

Legal Mail - Confidential
95101\$5300

LAS VEGAS NV 890
JUN 1984

Steven D. Grierson
Clerk of the Court
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155-1160



ELY STATE PRISON

MAY 30 2011

U6

C/O T. Perkins
5/30/11

Brendan Nasby
I.D. No. 63618
Ely State Prison
P.O. Box 1989
Ely, NV 89301
(Appellant)
(Petitioner In Pro Se)

FILED

5

JUN 13 2011

John H. Williams
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF CLARK

Brendan Nasby,
Petitioner,

Case No.: C154293-2

vs.

E.K. McDaniel, et., Al.,
Respondent.

Dept. No.: XVIII

NOTICE OF APPEAL

Notice is hereby given that, Brendan Nasby,
Petitioner above named, hereby appeals to the Supreme
Court of Nevada from the final judgment/order
Denying Petitioner's Recent Petition For Writ Of Habeas
Corpus entered in this action on the 11th day of
May, 2011.

Dated this 7th day of June, 2011.

By: *[Signature]*

Appellant - Brendan Nasby
#63618; P.O. Box 1989;
Ely, NV 89301-1989

98C154293-2
NOASC
Notice of Appeal (criminal)
1465067



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-1-

RECEIVED
JUN 13 2011
CLERK OF THE COURT

CERTIFICATE OF MAILING

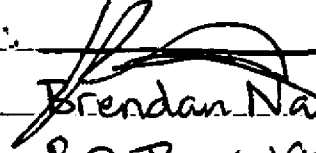
I, Brendan Nasby, hereby certify pursuant to Rule 5(b) of the NRC.P, that on this ~~day~~ 7th day of June, 2011, I served a true and correct copy of the above-entitled Notice Of Appeal postage prepaid and addressed as follows:

1) Clark County
Regional Justice Center
Clerk of the Court
P.O. Box 551601
200 Lewis Ave.
Las Vegas, NV 89155-1601

2) Clark County District Att-
orney; David Roger
Suite #701
P.O. Box 552212
200 Lewis Ave.
Las Vegas, NV 89155-2212

3) State Of Nevada
Attorney General's Office
Attorney General, George J. Chanos
Suite #3900
555 Washington Ave.
Las Vegas, NV 89101

Dated this 7th day of June, 2011.

By: 
Brendan Nasby #63618
P.O. Box 1989
Ely, NV 89301-1989

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: Notice Of Appeal
_____, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 7, DAY OF, June, 2011.

SIGNATURE: _____

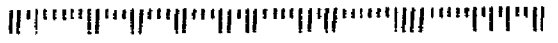
INMATE NAME PRINTED: Brendan Nasby
INMATE NUMBER: 63618
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

B. Nashby # 63618
P.O. Box 1989
Eliz, NV 89301-1989
E.S.P.

U.S. POSTAGE
FIRST CLASS PERMIT NO. 380
LAS VEGAS, NV



Clark County
Regional Justice Center
Clerk of the Court
P.O. Box 551601
200 Lewis Ave.
Las Vegas, NV 89155-1601



*Legal Mail - Confidential
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ELY STATE PRISON

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YAS. Perkins
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FILED

JUN 16 2011

Alma L. Johnson
CLERK OF COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

BRENDAN J. NASBY,

Defendant(s),

) Case No: 98C154293-2

) Dept No: XVIII

98C154293-2

ASTA

Case Appeal Statement

1474854



CASE APPEAL STATEMENT

1. Appellant(s): Brendan Nasby

2. Judge: David Barker

3. Appellant(s): Brendan Nasby

Counsel:

Brendan Nasby #63618

P.O. Box 1989

Ely, NV 89301

4. Respondent: THE STATE OF NEVADA

Counsel:

David Roger, District Attorney

200 Lewis Ave.

Las Vegas, NV 89101

(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes

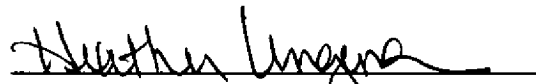
6. Appellant Represented by Appointed Counsel In District Court: No

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: October 21, 1998
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Writ of Habeas Corpus
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 35319, 47130
8 12. Child Custody or Visitation: N/A
9

10 Dated This 16 day of June 2011.

11 Steven D. Grierson, Clerk of the Court
12

13 By:



14 Heather Ungermann, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
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ORIGINAL

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FILED

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Ann D. Cohen
CLERK OF THE COURT

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 PAMELA WECKERLY
6 Deputy District Attorney
7 Nevada Bar #006163
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 BRENDAN NASBY,
16 #1517690

17 Defendant.

CASE NO: 98C154293-2

DEPT NO: XVIII

98C154293-2
FCL
Finding of Fact and Conclusions of Law
1476416



18 FINDINGS OF FACT, CONCLUSIONS OF
19 LAW AND ORDER

20 DATE OF HEARING: May 11, 2011
21 TIME OF HEARING: 8:15 A.M.

22 THIS CAUSE having come on for hearing before the Honorable Douglas E. Smith,
23 District Judge, on the 11th day of May, 2011, the Petitioner nor defense counsel, Anthony P.
24 Sgro, being present, the Respondent being represented by DAVID ROGER, District
25 Attorney, by and through JAY RAMAN, Deputy District Attorney, the Court having
26 considered the matter, including briefs, transcripts, no argument, and documents on file
herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The State charged Brendan Nasby ("Defendant") by way of Information with Count 1 - Conspiracy to Commit Murder (Felony - NRS 199.480, 200.010, 200.030) and Count 2 - Murder With Use of a Deadly Weapon (Open Murder)(Felony - NRS 200.010, 200.030, 193.165).

CLERK OF THE COURT

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2. A jury trial commenced on October 11, 1999. On October 19, 1999, the jury returned with a verdict of guilty on both counts.
3. On November 29, 1999, Defendant was sentenced as to Count 1 – to a maximum of one hundred twenty (120) months, with a minimum parole eligibility of forty-eight (48) months in the Nevada Department of Corrections (“NDC”); as to Count 2 – to Life with the possibility of parole with a consecutive term of Life with the possibility of parole.
4. Judgment of Conviction was entered on December 2, 1999.
5. Defendant filed a Notice of Appeal on December 14, 1999. The Nevada Supreme Court affirmed Defendant’s conviction on February 7, 2001. Remittitur was issued on March 6, 2001.
6. On February 1, 2002, Defendant filed a pro per Petition for Writ of Habeas Corpus (post-conviction). The State filed a Response on April 5, 2002. This matter was never litigated.
7. On March 1, 2004, the district court set a new briefing schedule. Defendant filed his Petition on November 17, 2004. On February 4, 2004, the State filed its Opposition to Defendant’s Petition.
8. On November 9, 2005, an Evidentiary Hearing was held.
9. On March 27, 2006, the court denied Defendant’s Petition.
10. Defendant filed a Notice of Appeal on April 12, 2006.
11. The district court filed its Notice of Entry of Decision and Order on April 27, 2006.
12. On May 24, 2006, Defendant filed a second Notice of Appeal. On June 8, 2007, the Nevada Supreme Court affirmed the district court’s denial of Defendant’s Petition. Remittitur was issued on July 13, 2007.
13. Defendant filed a Second Petition for Writ of Habeas Corpus on February 18, 2011. The State filed a Response and Motion to Dismiss Defendant’s Second Petition on April 8, 2011.

1 14. Defendant's Petition is procedurally time barred.

2 15. Defendant's Petition is successive.

3 16. Defendant failed to establish good cause for the delay in filing his post conviction
4 petition.

5 17. The State has pled laches and Defendant has not overcome the statutory
6 presumption that his delay of more than five years in filing the instant Petition
7 has prejudiced the State.

8 **CONCLUSIONS OF LAW**

- 9 1. NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that
10 challenges the validity of a judgment or sentence *must* be filed within one (1) year
11 after entry of the judgment of conviction or, if an appeal has been taken from the
12 judgment, within one (1) year after the Supreme Court issues its remittitur."
13 (Emphasis added).
- 14 2. "NRS 34.726(1) . . . evinces intolerance toward perpetual filing of petitions for relief,
15 which clogs the court system and undermines the finality of convictions." Pellegrini
16 v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).
- 17 3. The "[a]pplication of the statutory procedural default rules to post-conviction habeas
18 petitions is mandatory." State v. District Court (Riker), 121 Nev. 225, 331 112 P.3d
19 1070, 1074 (2005). Primarily, because the excessive number of habeas corpus
20 petitions that are filed years after conviction have placed an "unreasonable burden on
21 the criminal justice system." Id.
- 22 4. The Nevada Supreme Court interprets NRS 34.726 very strictly. In Gonzales v. State,
23 118 Nev. 590, 53 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas
24 petition, pursuant to the mandatory provisions of NRS 34.726(1), that was filed a
25 mere two days late.
- 26 5. NRS 34.810(2) provides as follows: "A second or successive petition must be
27 dismissed if the judge or justice determines that it fails to allege new or different
28 grounds for relief and that the prior determination was on the merits or, if new and

- different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”
6. As the Nevada Supreme Court noted in Evans v. State, 117 Nev. 609, 621-22, 29 P.3d 498, 507 (2001), “[a] court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); Pellegrini, 117 Nev. 860, 34 P.3d 519.
 7. The Court went on to hold that “post-conviction habeas claims that are independent of ineffective assistance claims and that could have been raised on direct appeal are waived.” Evans, 117 Nev. at 621-22, 29 P.3d at 507.
 8. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions. Lozada, 110 Nev. at 358, 871 P.2d at 950; Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).
 9. The Nevada Supreme Court has also stated, “[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).
 10. To establish good cause to cure procedural default, a defendant must demonstrate some external impediment that prevented compliance with procedural rules. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).
 11. Such an external impediment could be “that the factual or legal basis for a claim was not reasonably available to counsel, or that ‘some interference by officials’ made compliance impracticable.” Hathaway, 119 Nev. at 252, 71 P.3d at 506; *quoting* Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986).
 12. The failure of counsel to inform the petitioner of his right to direct appeal, however,

- 1 does not rise to good cause for overcoming the time bar. Dickerson v. State, 114 Nev.
2 1084, 976 P.2d 1132 (1998).
- 3 13. Any delay in the filing of a petition must not be the fault of the petitioner. NRS
4 34.726(1)(a).
- 5 14. Lack of adequate legal resources in prison is not good cause to overcome procedural
6 bars. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).
- 7 15. Return from federal court to exhaust state remedies is not good cause to overcome
8 state procedural bars. Shumway v. Payne, 223 F.3d 982 (9th Cir. 2000).
- 9 16. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
10 exceeding five years [elapses] between the filing of a judgment of conviction, an
11 order imposing a sentence of imprisonment or a decision on direct appeal of a
12 judgment of conviction and the filing of a petition challenging the validity of a
13 judgment of conviction..."
- 14 17. The Nevada Supreme Court observed in Groesbeck v. Warden, 100 Nev. 259, 679
15 P.2d 1268 (1984), that "petitions [] filed many years after conviction are an
16 unreasonable burden on the criminal justice system. The necessity for a workable
17 system dictates that there must exist a time when a criminal conviction is final."

18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
20 Relief shall be, and it is, hereby DENIED.

21 DATED this 16th day of June, 2011.

22 
23 _____
DISTRICT JUDGE

24 DAVID ROGER
25 DISTRICT ATTORNEY
Nevada Bar #002781

26 BY 
27 PAMELA WECKERLY
Deputy District Attorney
28 Nevada Bar #006163

FILED

JUN 27 2011

Steven D. Grierson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN J. NASBY,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

98C154293-2
NOED
Notice of Entry of Decision and Order
1492500



Case No: 98C154293-2
Dept No: XVIII

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on June 17, 2011, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on June 27, 2011.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: *Heather Ungermann*

Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 27 day of June 2011, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the District Court Clerk of:
Clark County District Attorney's Office
Attorney General's Office - Appellate Division

☒ The United States mail addressed as follows:

Brendan Nasby # 63618
P.O. Box 1989
Ely, NV 89301

Heather Ungermann
Heather Ungermann, Deputy Clerk

ORIGINAL

FILED

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Ann L. Smith
CLERK OF THE COURT

98C154293-2
FCL
Finding of Fact and Conclusions of Law
1478415

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN NASBY,
#1517690

Defendant.

CASE NO: 98C154293-2

DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: May 11, 2011
TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable Douglas E. Smith, District Judge, on the 11th day of May, 2011, the Petitioner nor defense counsel, Anthony P. Sgro, being present, the Respondent being represented by DAVID ROGER, District Attorney, by and through JAY RAMAN, Deputy District Attorney, the Court having considered the matter, including briefs, transcripts, no argument, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The State charged Brendan Nasby ("Defendant") by way of Information with Count 1 - Conspiracy to Commit Murder (Felony - NRS 199.480, 200.010, 200.030) and Count 2 - Murder With Use of a Deadly Weapon (Open Murder)(Felony - NRS 200.010, 200.030, 193.165).

CLERK OF THE COURT

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2 returned with a verdict of guilty on both counts.
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7 has prejudiced the State.

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16 require a careful review of the record, successive petitions may be dismissed based
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22 State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349,
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15 P.2d 1268 (1984), that "petitions [] filed many years after conviction are an
16 unreasonable burden on the criminal justice system. The necessity for a workable
17 system dictates that there must exist a time when a criminal conviction is final."


18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
20 Relief shall be, and it is, hereby DENIED.

21 DATED this 16th day of June, 2011.

22
23 
DISTRICT JUDGE DS

24 DAVID ROGER
25 DISTRICT ATTORNEY
Nevada Bar #002781

26 BY 
27 PAMELA WECKERLY
Deputy District Attorney
28 Nevada Bar #006163



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578-3136-H. Phone

Crystal Marie Bradley

W. Washington ← Wild Flower Apartment
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Las Vegas, NV 89122

576-37-6349-SS#

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Las Vegas, NV 89115

Tanesha Banks

Bri-tney Keshia Adams / Porsche Nichols

1393 Honey lake St.

Las Vegas, NV 89110

+ 53-2442-H. Phone

359-76-6441-SS#

T-pot

233-0822

Tiffany

360-9176

Shank

573-8371

Mack

644-1912

Lto

432-3727

DJ

876-1160

Kelly + Sherell

564-1106

Amber + Alicia

396-7453 / 253-8581

Michelle

396-7017

Dizzzy

547-1619

G. ROB

Martha

Vince
565-9499
564-7162
Ansel

COB
459-0150

432-3777
L-20

Wood Packer
14

656-6814

564-1106

Kelly
Sherell

TANYA
3300 N. TANYA
- 45 Vega - E 207 -
59120

Alien - T fare

547-9100

Burnside

Tony

399-3517

The girl's statement



I Met Shugg at the 7-11 on 15thth at Fremont. I knew him for about a week before the murder happened. He was always a ~~heavy~~ heavy drinker every time I saw him he was drinking. On the night of the murder he had on a black T-shirt, black pants (dickies), and black converse with black laces. On that night (July 16, 1998) me and Shugg met at the ~~bus~~ bus station on Stewart & Las Vegas Blvd. I had my homegirl drop me off there on her way to ~~the~~ Fremont. After me and Shugg met that night ~~at~~ at the bus stop around 9:00 P.M. We hopped on the Martin L. King BUS and took it to ~~the~~ Craig and M.L.K.. When we got off we went to an AM/PM gas station and Shugg paged someone. I think he paged Woods. Me and Shugg waited for about up there for about 20 ~~minutes~~ minutes then Woods came and picked us up in a dark red car (burgundy) with Droop in the back seat, T-Bone in the ~~front~~ front seat, his other Joe-T in the back behind ~~T-Bone~~ T-Bone. I hopped in the back & Shugg hopped in the front with ~~T-Bone~~ T-Bone. Now Woods was driving T-Bone next to him and then Shugg next to T-Bone in the back seat it was Droop behind Woods, me next to Droop, then Joe-T on my right. Shugg ~~and~~ said that they wanted to go to school.

nine that Shugg had. Nobody minded because we were smoking and drinking the whole way up to the desert. I don't ~~from~~ remember which desert it was but I remember that it was off of Alexander somewhere. When we got there Shugg, Woods, and Droop got out. Me, T-Bone, ~~Joe-T~~ and Joe-T stayed in the car smoking and drinking. 10 minutes later I started to get out of the car and saw Woods sitting on the hood of the car. Droop standing in front of the edge of the cliff and Shugg put the gun up to Droop's head area and shot him. After that one shot I hopped back in the car. I heard another shot but I didn't want to look anymore so I didn't see where he shot him the second time. But as ~~as~~ all this was happening ~~to~~ T-Bone and Joe-T both were wondering what was going on. Then Woods and Shugg got in the car, but Shugg hopped back out and shot ~~at~~ Droop again. Then he got back in the car and we headed back to the AM/PM. Now it was Woods driving & Shugg next to him. In the back seat it was Me behind Wood, Joe-T next to me in the middle, and T-Bone on the right behind Shugg. When we got to the AM/PM Me and Shugg got out. Shugg told me to ~~stay~~ shut up and stay quiet about what happened. Woods, T-Bone, and Joe-

~~She~~ left us there. Me and Shugg didn't talk any more that night. I called my ride that took me to the bus ~~stop~~ station and told her to come and get me. I left ~~the~~ shugg at the gas station and haven't talked to him since. On July 16th, That was my first time meeting Droop, T-Bone ~~and~~ Joe-T, and Woods but I couldn't take it any more. The fact that I knew somethin was eating me up inside. I would have told sooner but I was scared of Shugg. ~~The~~ T-Bone had a blue 22 ~~Jersey~~ Jersey and black ~~pant~~ pants. Joe-T had on a striped blue shirt on and blue pants. I don't know what kind of shoes ~~they~~ they had on because they never got out of the car. Wood had on white shorts with a with tang top and white nike shoes. I don't remember what kind of nike shoes but I know they were low top all white nike ~~shoes~~ shoes.

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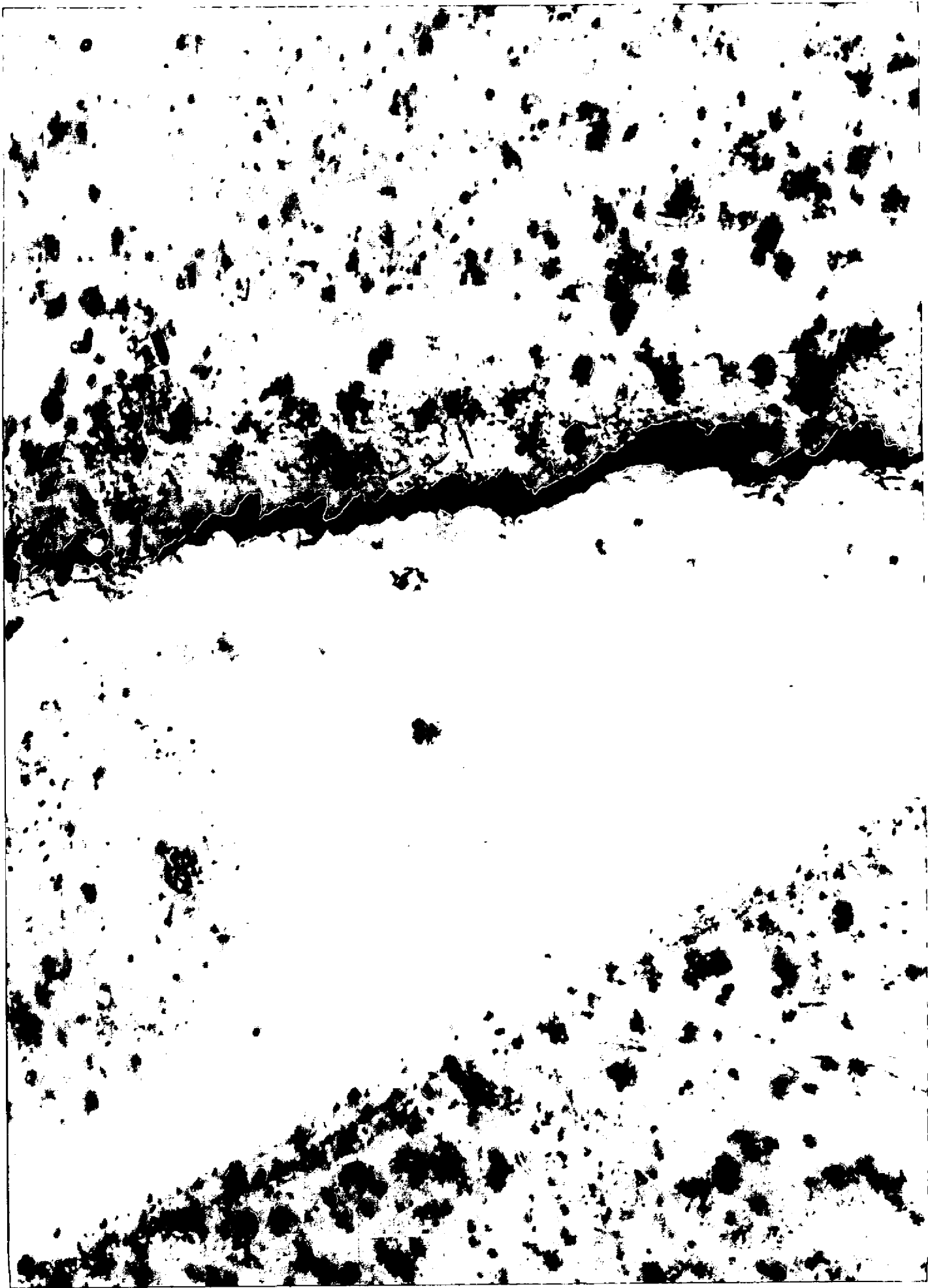
STATE'S
EXHIBIT

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0154293

10-13-99

IFICATION
EXHIBIT



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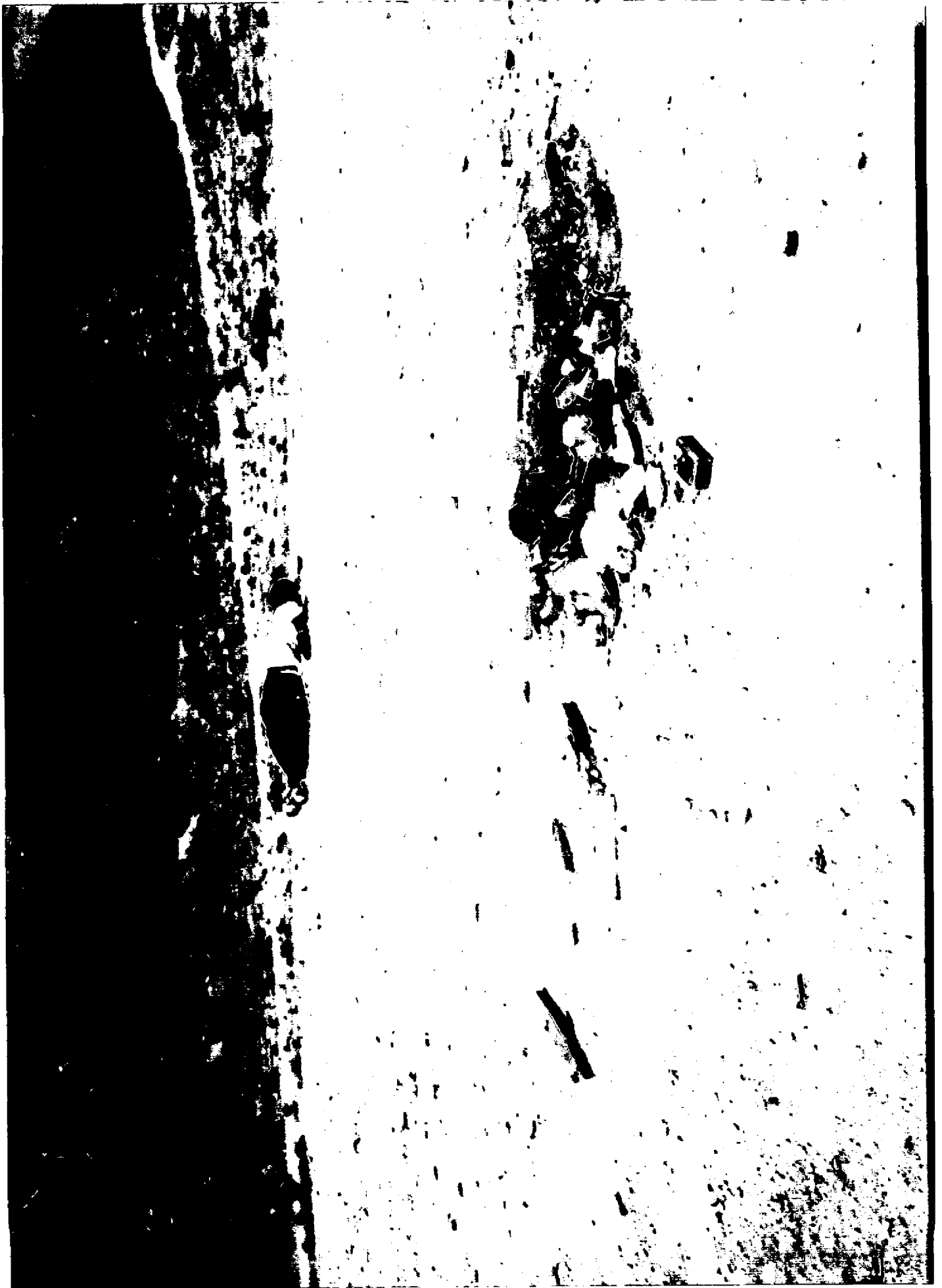
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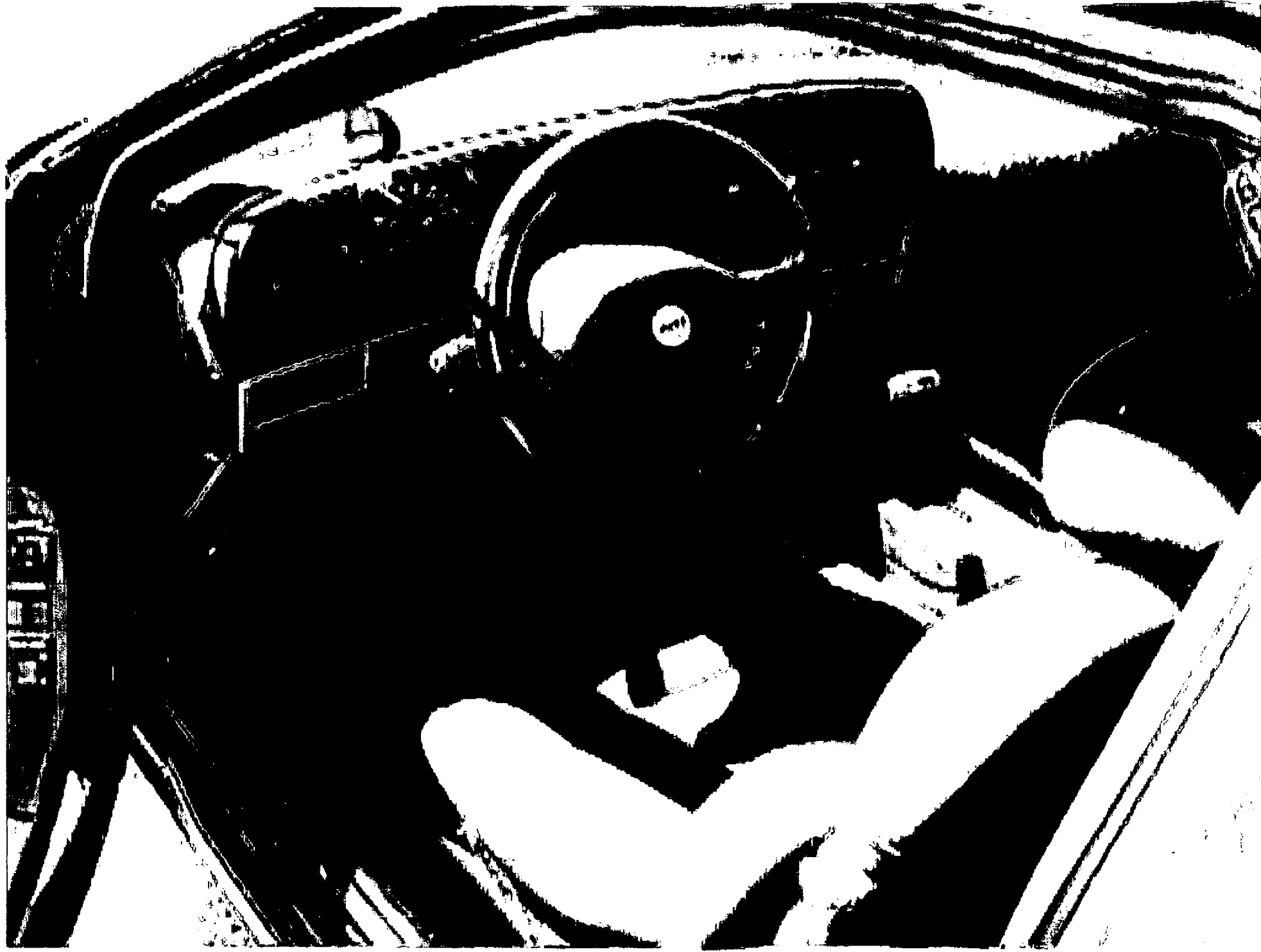
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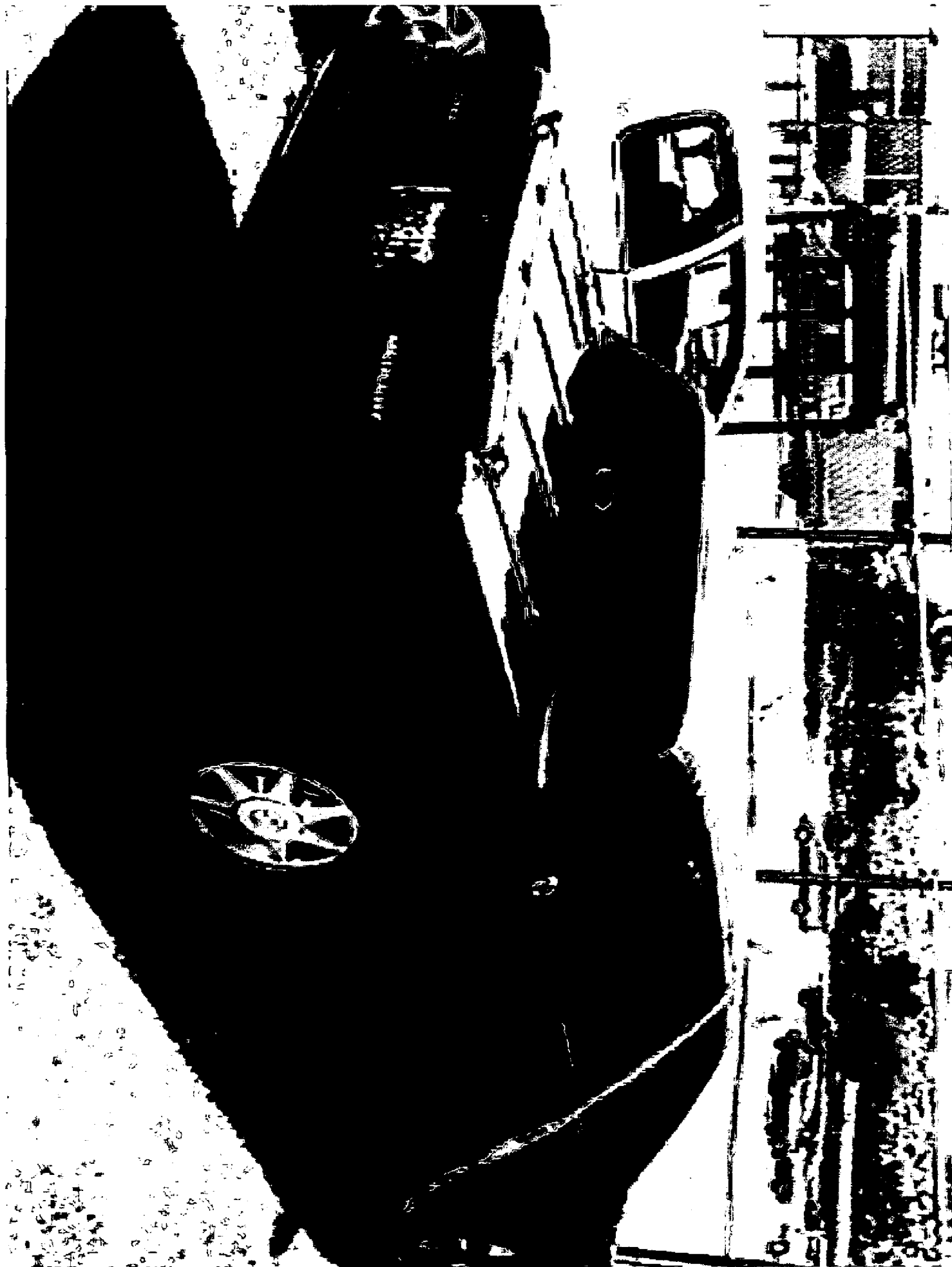
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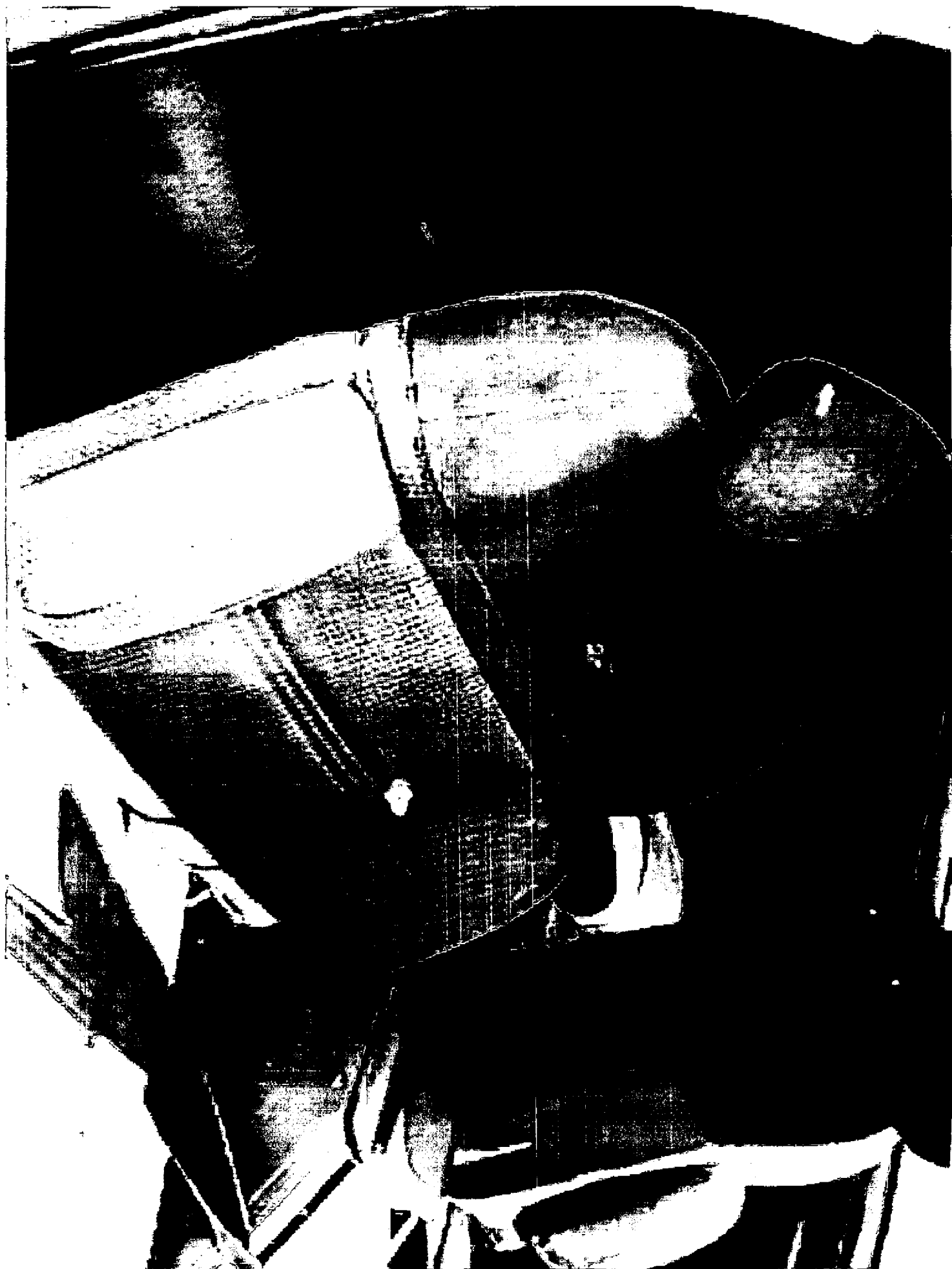
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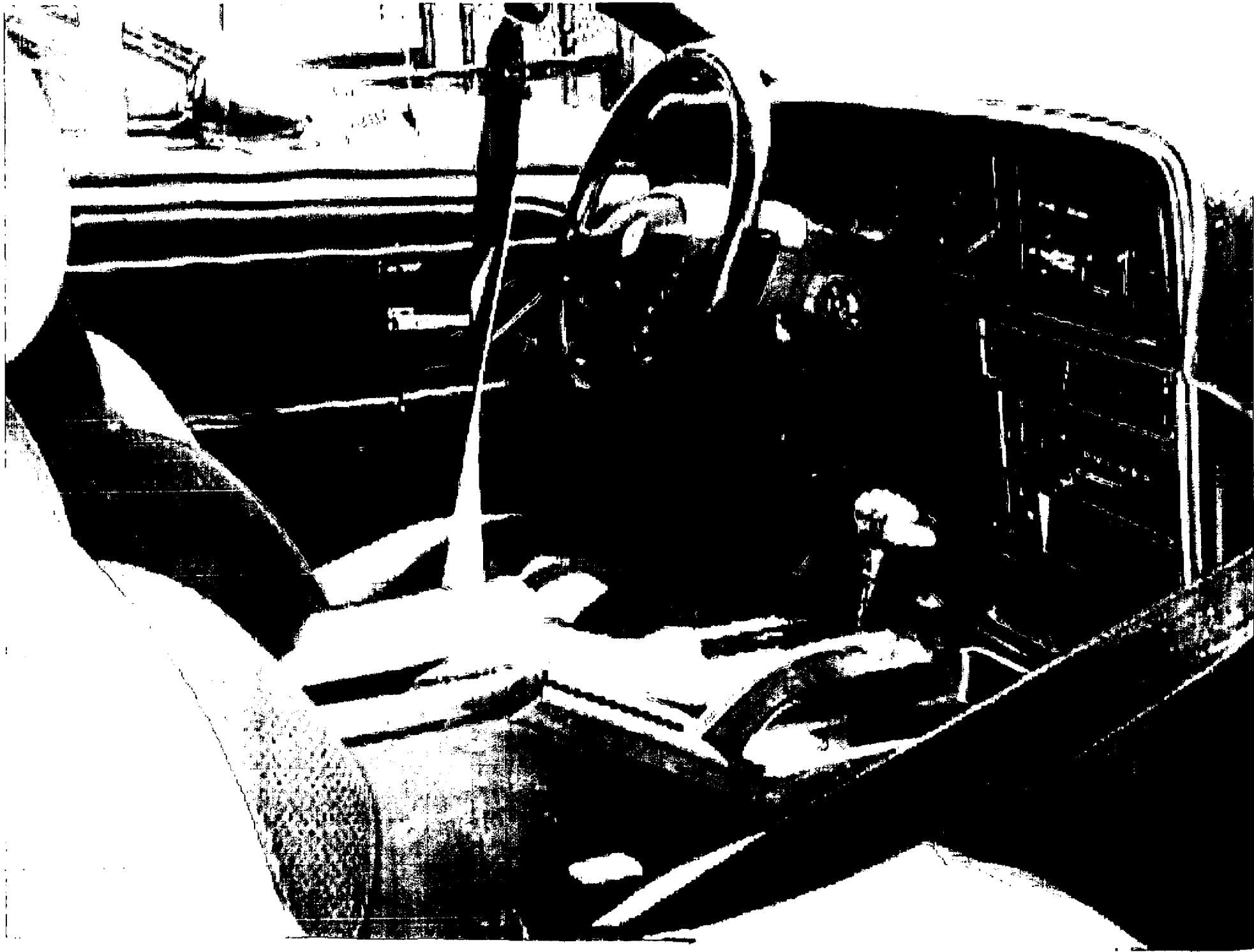
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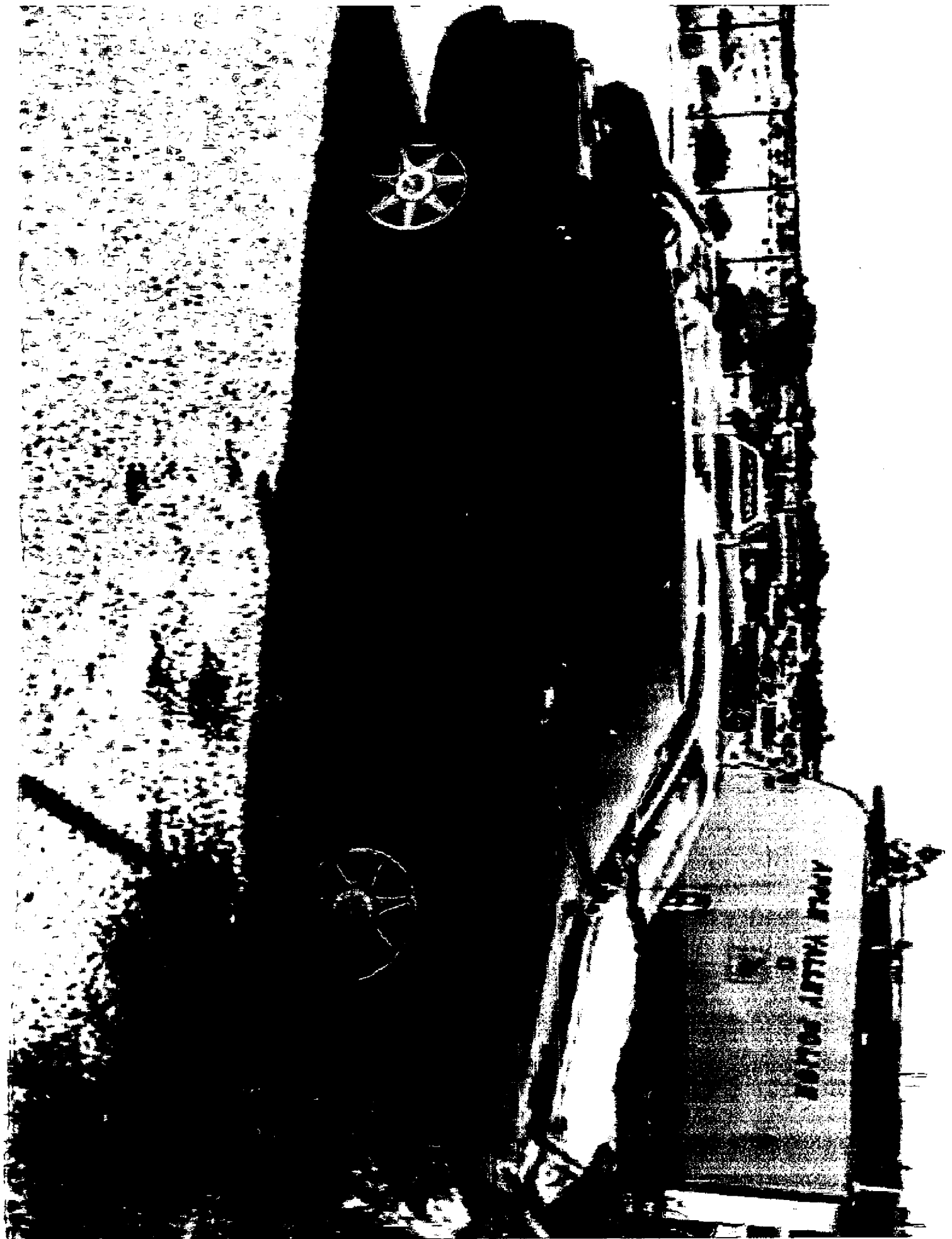
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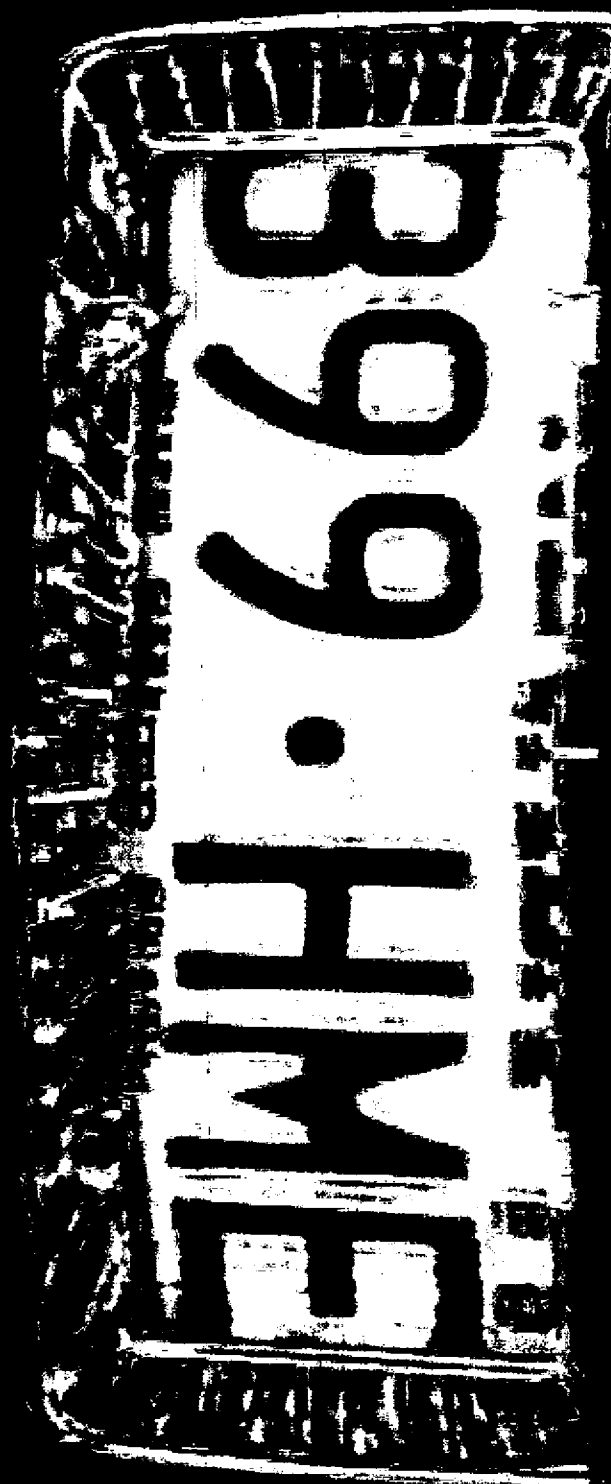


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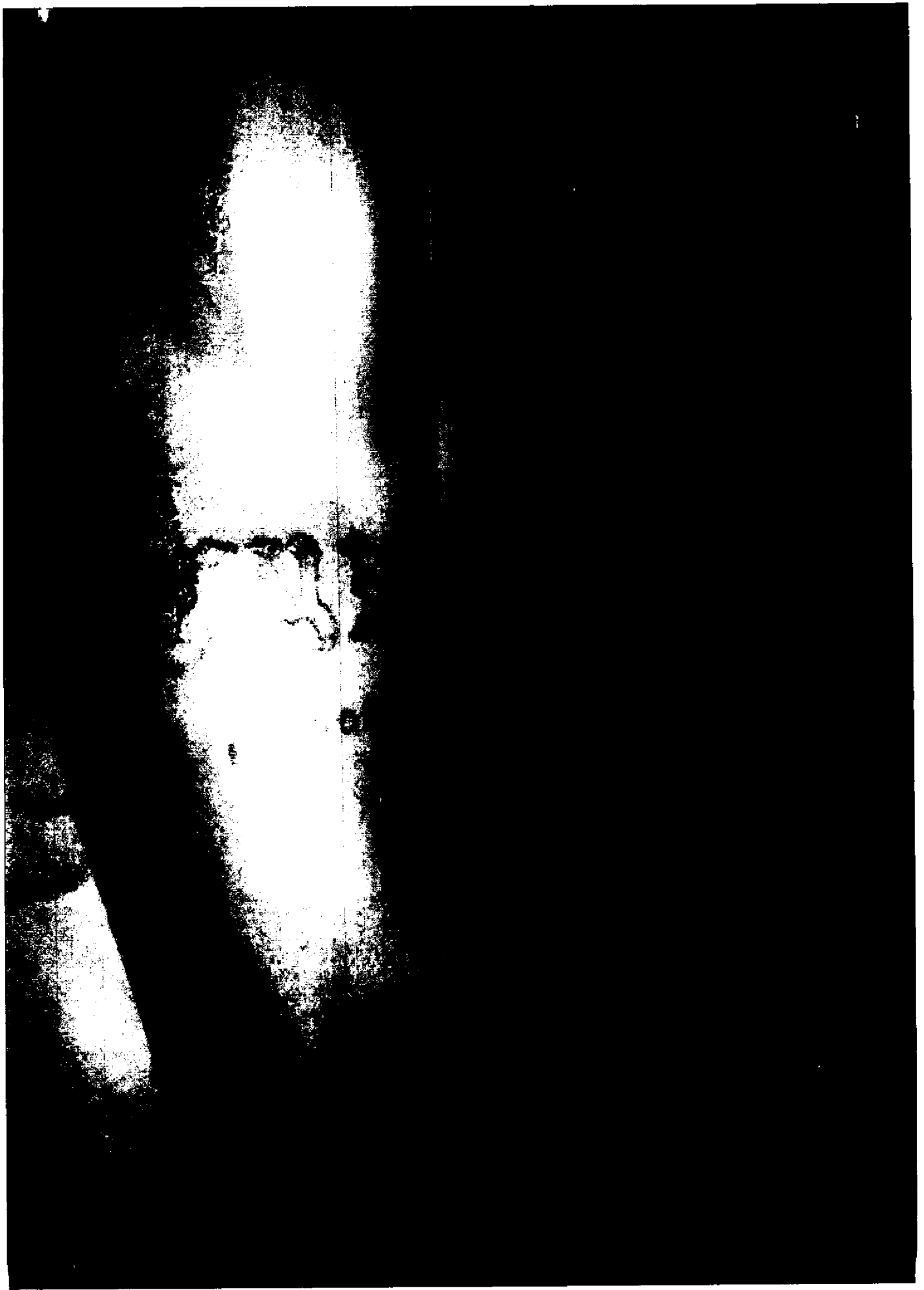
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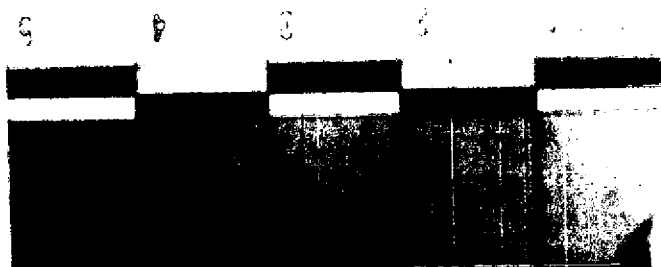
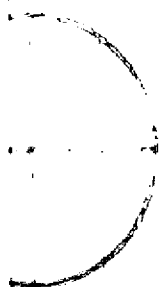
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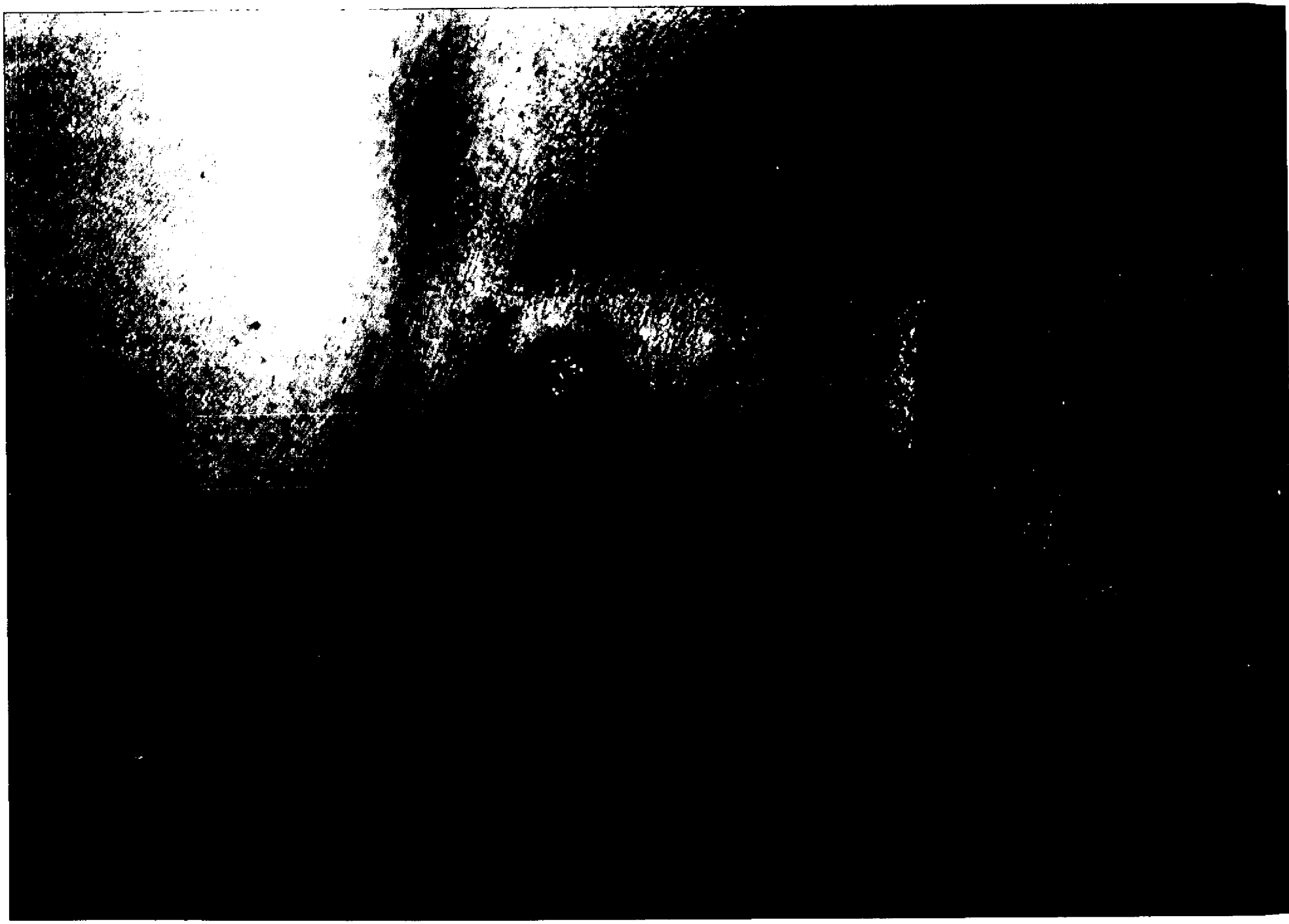
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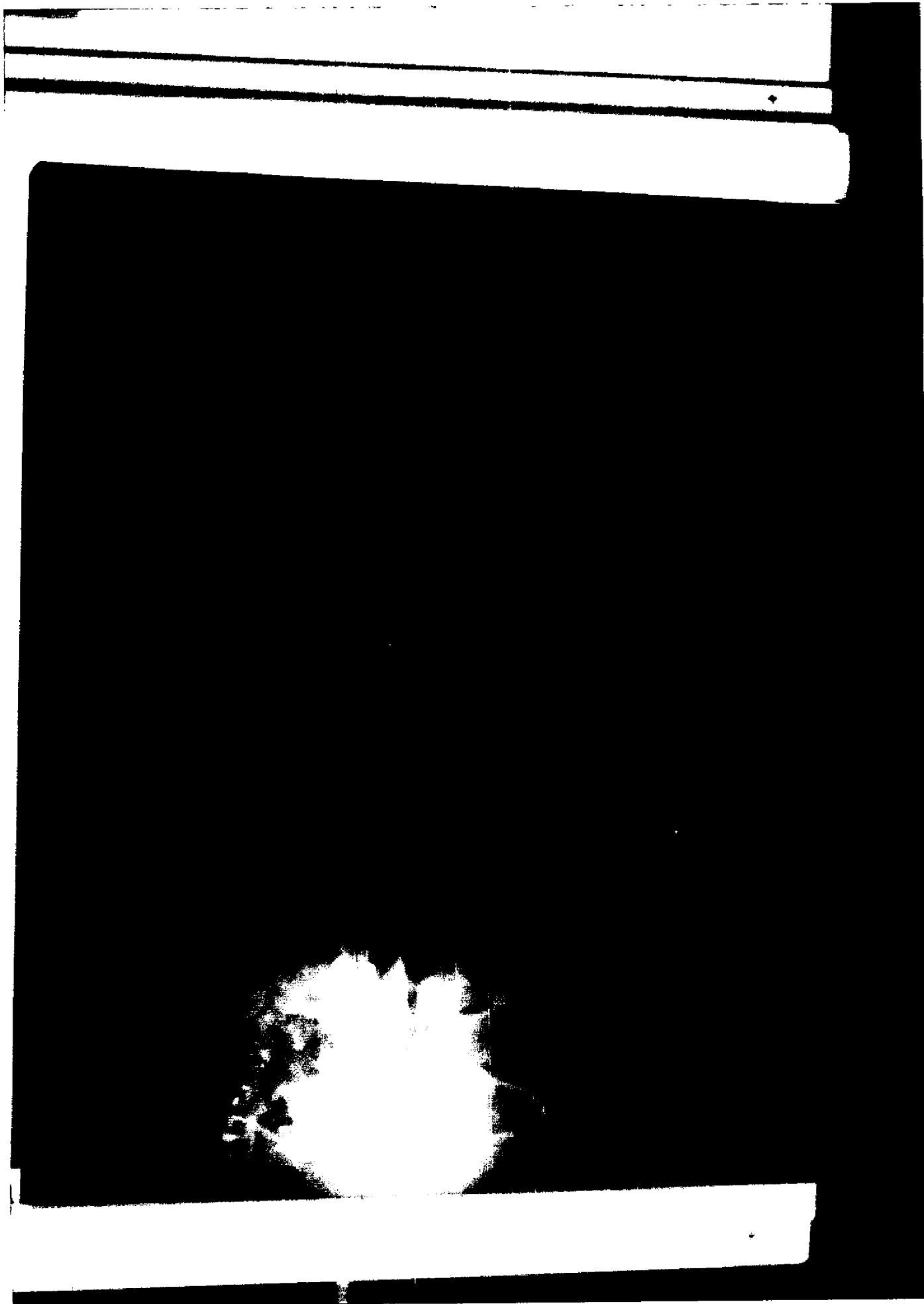


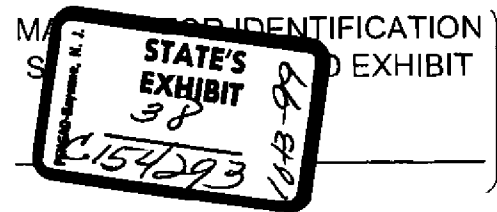
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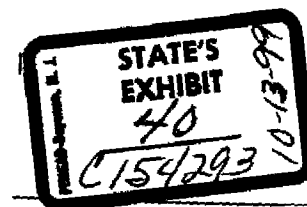
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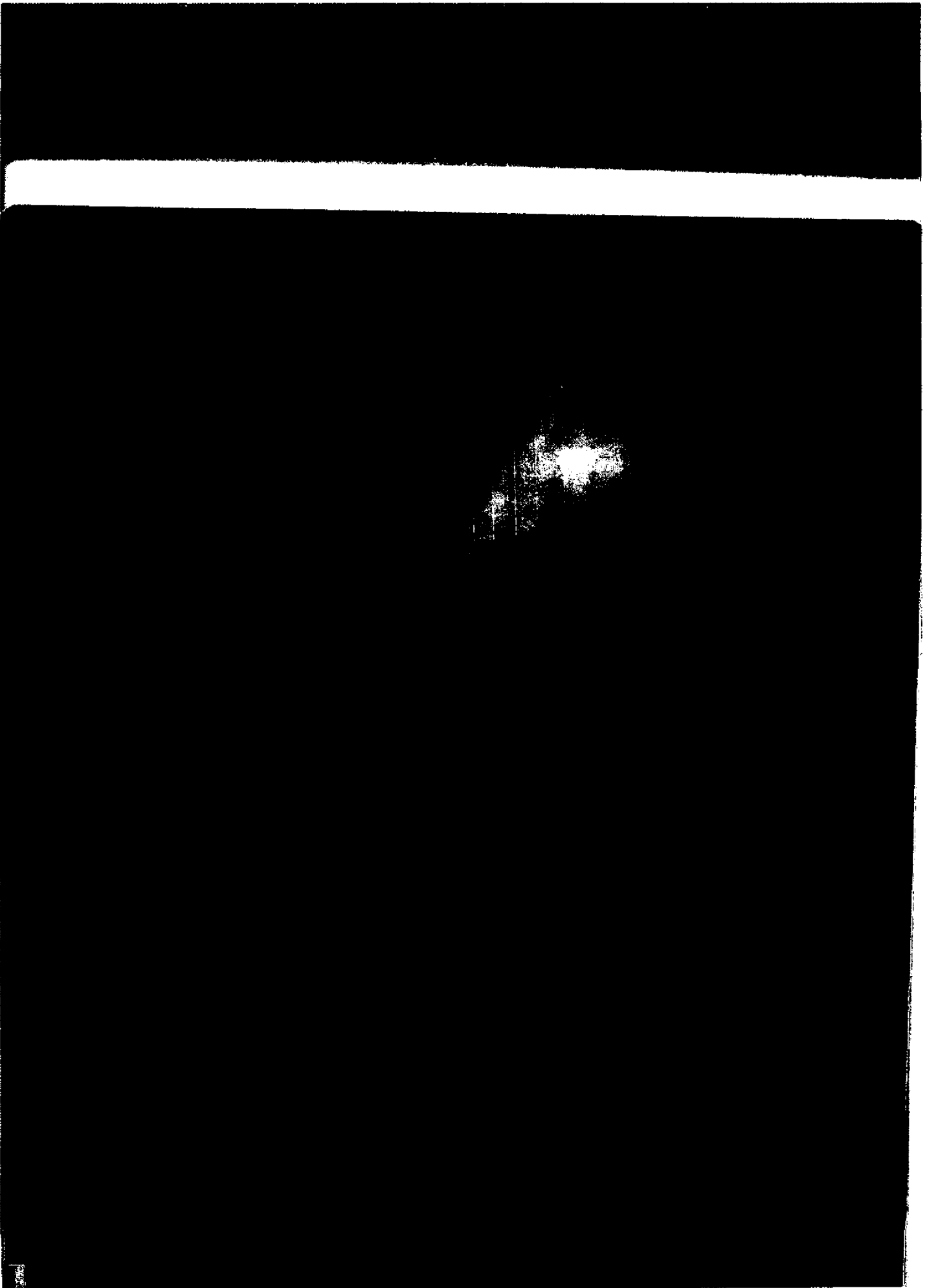




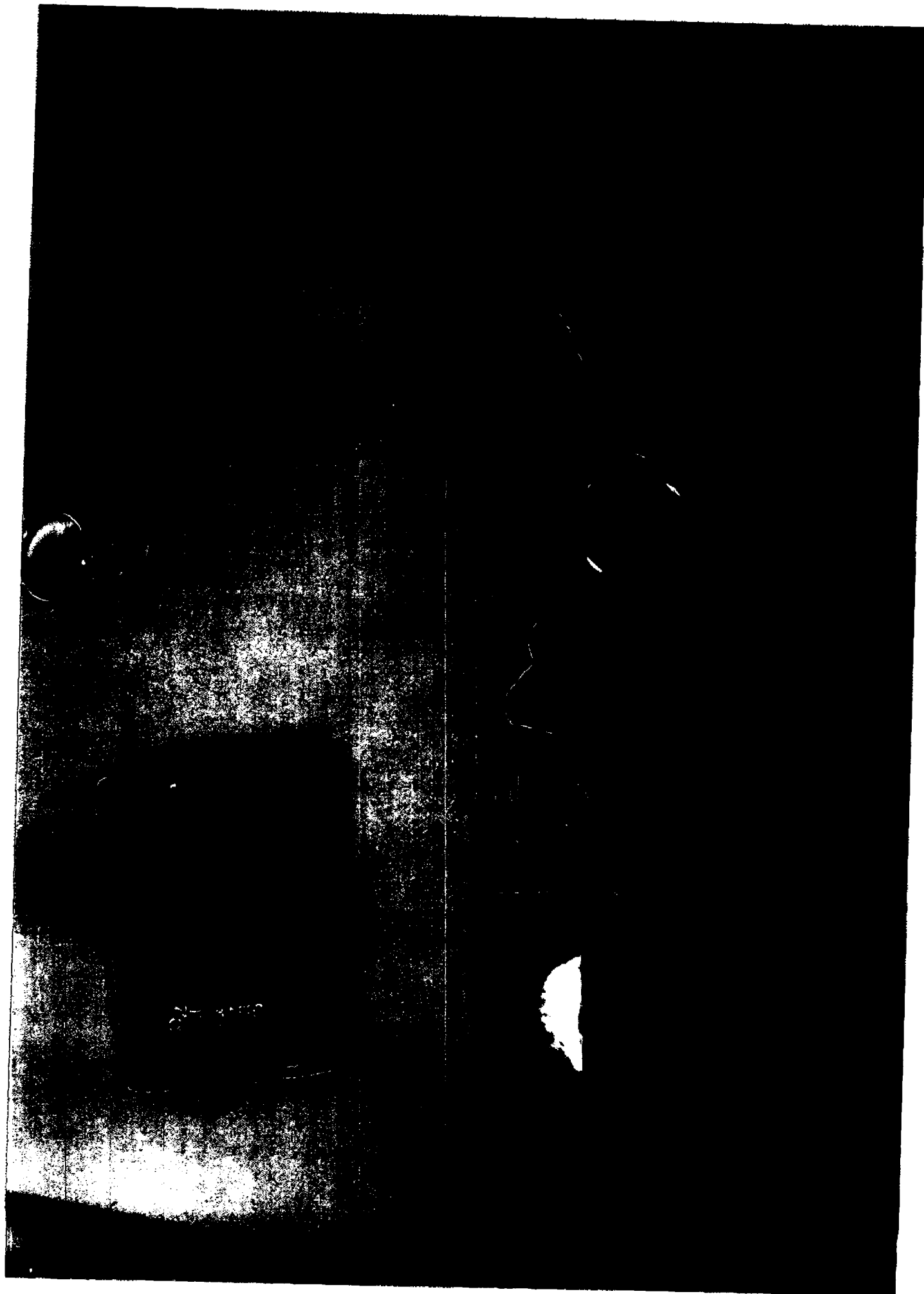




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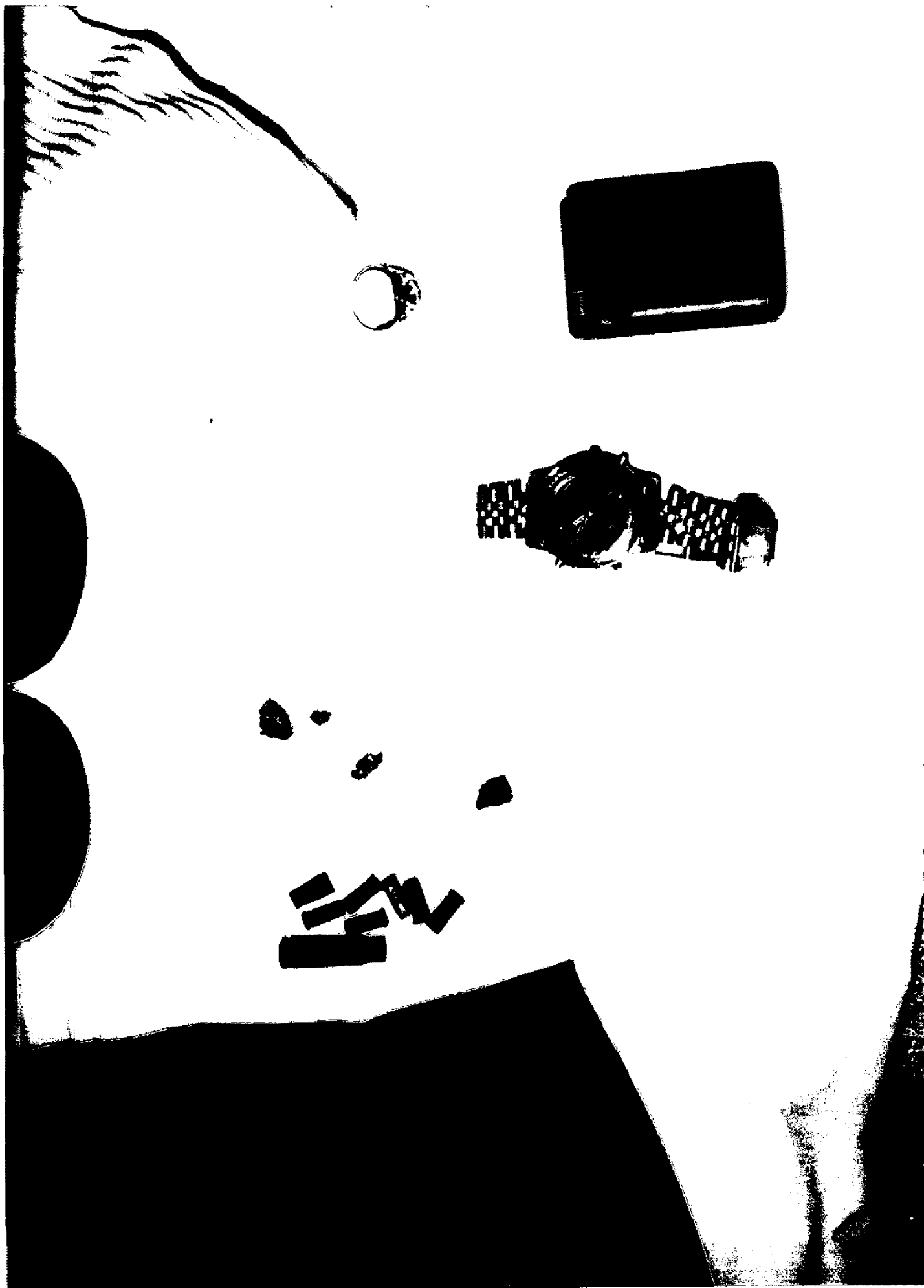


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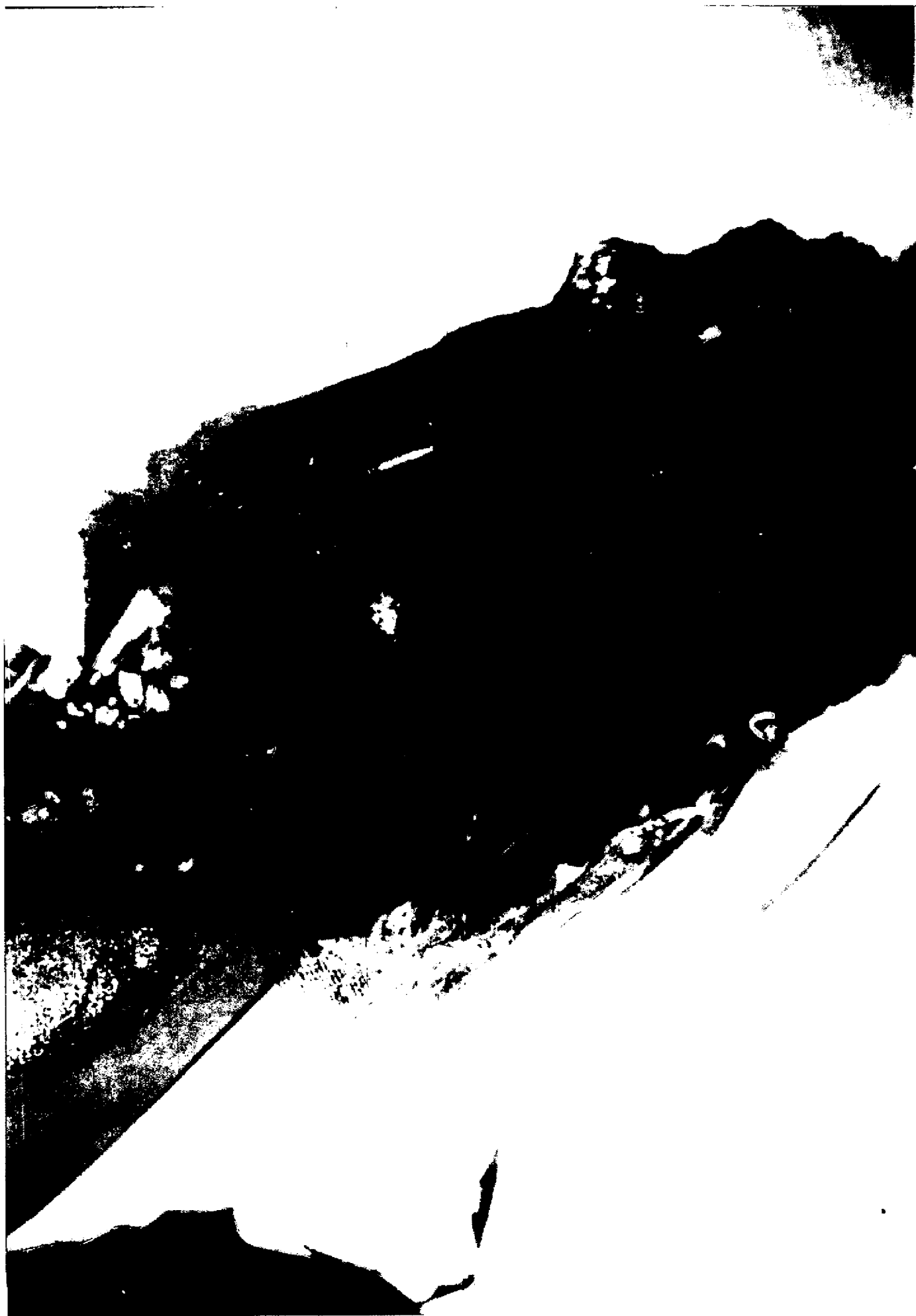
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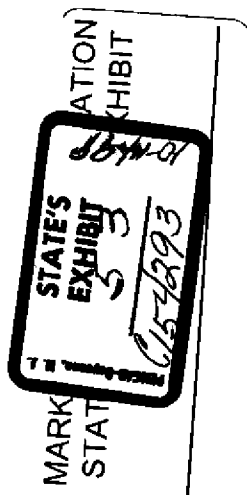
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MARK STATE'S EXHIBIT 51 C154/293 10-13-99



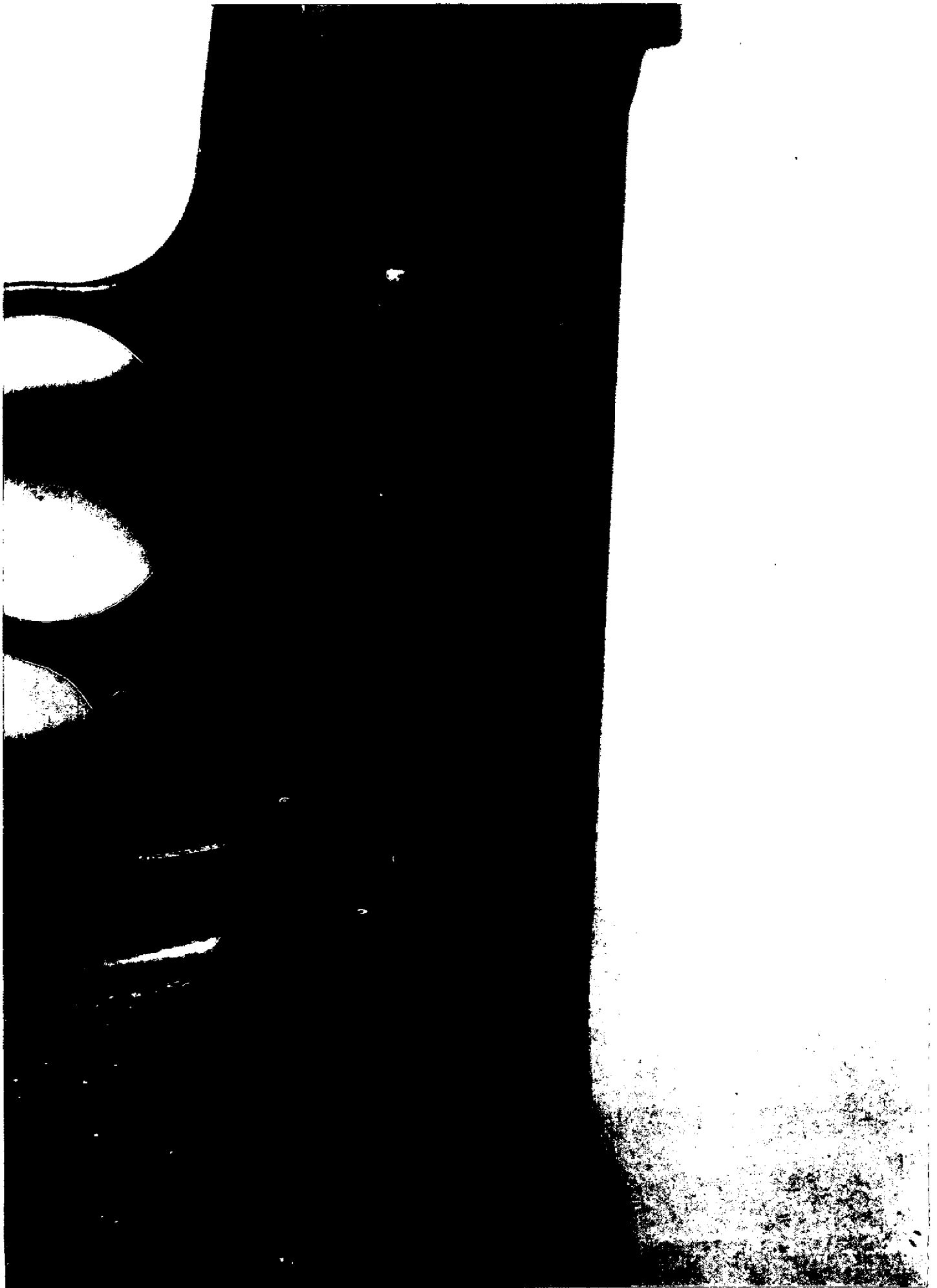




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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION

NAME: BRENDAN, Nasby (suspect)
BURNSIDE, Tommie (suspect)
BURNSIDE, Jotee (suspect)
BEASLEY, Michael (victim)

CASE: 98 0717-0541
AGENCY: LVMPD
ANALYSIS DATE: August 10, 1998

INCIDENT: Homicide

BOOKED BY: Neil/5410
REQUESTED BY: Homicide/Thowson

SEP 14 1998

I, THOMAS A. WAHL, do hereby declare:

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That on October 14, 1996, I first qualified in the Eighth Judicial District Court of Clark County, Nevada, as an expert witness;

That I received evidence in the above case and completed an examination on the following items:

TAW 1 - Sealed manila envelope (pkg 1 of 2) booked by Neil containing:

- Item 1 - cigarette butt (Winston brand)
- Item 4 - cigarette butt (Winston brand)
- Item 7 - cigarette butt (Winston brand).

TAW 2 - Sealed DNA Buccal Swab kit from Tommie Burnside.

TAW 3 - Sealed DNA Buccal Swab kit from Jotee Burnside.

TAW 4 - Sealed DNA Buccal Swab kit from Brendan Nasby.

TAW 5 - Sealed DNA Buccal Swab kit from Michael Beasley.



CONCLUSION:

1. Human DNA was recovered from the three cigarette butts of TAW 1.
2. DNA typing results were inconclusive on two of the cigarette butts.
3. A DNA profile was obtained on the remaining cigarette butt.

Tommie Burnside, Jotee Burnside, Brendan Nasby, and Michael Beasley are excluded as the source of the DNA recovered from this cigarette butt.

I returned the evidence to the vault.

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

Executed on: Sept 1, 1998

Thomas A. Wahl
THOMAS A. WAHL, #5019
Criminalist II

[Signature]
Witness

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION

****SUPPLEMENTAL****

NAME: DESKIN, Jeremiah (suspect)
BEASLEY, Michael (victim)

CASE: 98 0717-0541
AGENCY: LVMPD
DATE: November 11, 1998

INCIDENT: Homicide

BOOKED BY: Buczek
REQUESTED BY: Homicide/Buczek

NOV 16 1998

I, THOMAS A. WAHL, do hereby declare:

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That on October 14, 1996, I first qualified in the Eighth Judicial District Court of Clark County, Nevada, as an expert witness;

That I received evidence in the above case and completed an examination on the following items:

TAW 6 - Sealed DNA Buccal Swab Kit from Jeremiah Deskin.

CONCLUSION:

1. Jeremiah Deskin is excluded as the source of the human DNA recovered from the Winston brand cigarette butt (TAW1 item #4; previously examined - see report executed on Sept. 1, 1998).

I returned the evidence to the vault.

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

Executed on: Nov. 12, 1998

Thomas A. Wahl
THOMAS A. WAHL, #5019
Criminalist II

Brenda Cherry
Witness



JOCP
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

Shirley B. Pangburn

MAR 15 1 56 PM '99

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TOMMIE C. BURNSIDE, JR.,
#1591598

Defendant.

Case No. C154293C
Dept. No. III
Docket H

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 10th day of December, 1998, the Defendant TOMMIE C. BURNSIDE, JR., appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s) of ACCESSORY TO MURDER (Category C Felony), committed on the 17th day of July, 1998, in violation of NRS 195.030, 195.040, 200.010, 200.030 and

WHEREAS, thereafter on the 4th day of March, 1999, the Defendant being present in court with his counsel DAYVID FIEGLER, Special Public Defender, and FRANK JOHAN COUMOU, Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum term of Twelve (12) months and a maximum term of Thirty-six (36)) months in the Nevada Department of Prisons with 139 days credit for time served.

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MAR 12 1999



1 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
2 Judgment of Conviction as part of the record in the above entitled matter.

3 DATED this 6 day of March, 1999, in the City of Las Vegas, County of Clark,
4 State of Nevada.

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7 DISTRICT JUDGE
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DA#98-154293C/mst
LVMPD EV#9807170541
ACCESS TO MURDER
(TK 3)

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Laetha L. Luman
CLERK

1 INEO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 12/10/98
10 8:30 A.M.
11 PD/SPEC. PD

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

15 -vs-

16 TOMMIE C. BURNSIDE, JR. #1591598,
17 JOTEE BURNSIDE,

18 Defendant.

Case No. C154293C,D
Dept. No. III
Docket E

INFORMATION

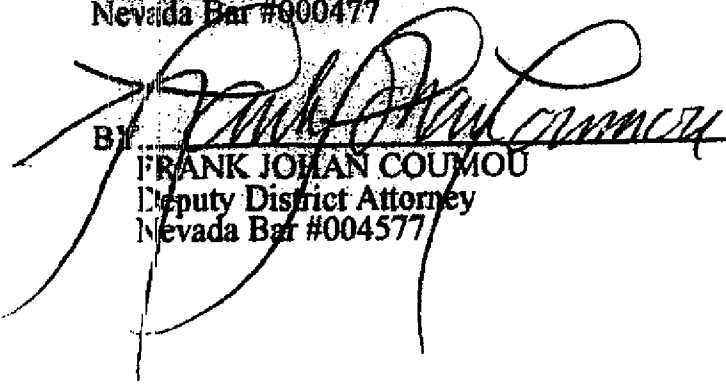
19 STATE OF NEVADA }
20 } ss:
21 COUNTY OF CLARK }

22 STEWART L. BELL, District Attorney within and for the County of Clark, State of
23 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

24 That TOMMIE C. BURNSIDE, JR. and JOTEE BURNSIDE, the Defendant(s) above
25 named, having committed the crime of **ACCESSORY TO MURDER (Felony - NRS 195.030,**
26 **195.040, 200.030, 200.010)**, on or about the 17th day of July, 1998, within the County of Clark,
27 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
28 provided, and against the peace and dignity of the State of Nevada, Defendants did wilfully,
unlawfully, and feloniously harbor, conceal or aid BRENDAN JAMES NASBY, to-wit: by both
Defendants informing Las Vegas Metropolitan Police Department Detectives of a false version
of the facts leading to the death of Michael Beasley, and by stating that someone named
"Sugarbear" actually was the killer when knowing that that version was false, with intent that
the said BRENDAN JAMES NASBY might avoid or escape from arrest, trial, conviction or

1 punishment having knowledge that the said BRENDAN JAMES NASBY had committed a
2 felony, to-wit: Murder, and was liable to arrest therefore.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

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26 DA#98F11168C,D/msr
27 LVMPD EV#9807170541
28 ACC MURD - F
(TK3)

CLERK

1 JOCP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 435-4711
8 Attorney for Plaintiff

Shirley B. Pungineer

FEB 26 12 01 PM '99

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JOTEE BURNSIDE,

12 Defendant.
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Case No. C154293D
Dept. No. III
Docket E

15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 10th day of December, 1998, the Defendant JOTEE BURNSIDE,
17 appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s)
18 of ACCESSORY TO MURDER (Category C Felony), committed on the 17th day of July, 1998,
19 in violation of NRS 195.030, 195.040, 200.010, 200.030 and

20 WHEREAS, thereafter on the 25th day of February, 1999, the Defendant being present
21 in court with his counsel HOWARD BROOKS, Public Defender, and FRANK JOHAN
22 COUMOU, Deputy District Attorney, also being present; the above entitled Court did adjudge
23 the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00
24 Administrative Assessment Fee, sentenced Defendant to a minimum term of Twelve (12) months
25 and a maximum term of Thirty (30) months in the Nevada Department of Prisons with 121 days
26 credit for time served.

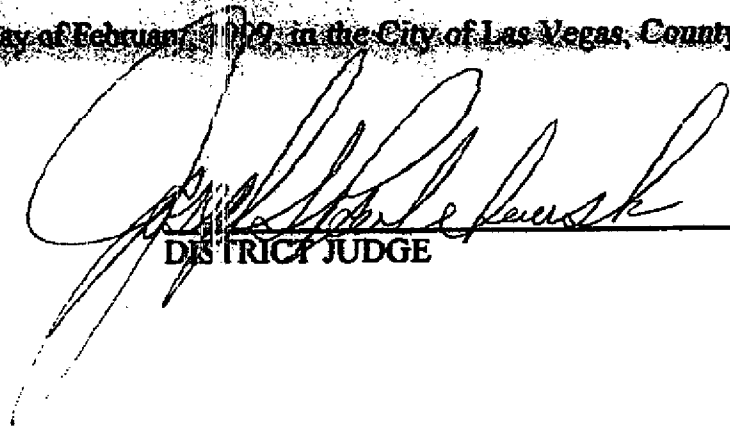
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1 **THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this**
2 **Judgment of Conviction as part of the record in the above entitled matter.**

3 **DATED this** 26 **day of February, 1999, in the City of Las Vegas, County of Clark,**
4 **State of Nevada.**

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DISTRICT JUDGE

26
27 DA#98-154293D/msr
28 LVMPD EV#9807170541
ACC TO MURD - F
(TK3)

FILED
SEP 9 1999

1999 SEP -9 A 10:45

CLERK

ORIGINAL

FILED

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DEC 3 11 52 AM '98

Letta L. L...
CLERK

9 I.A. 12/10/98
10 8:30 A.M.
11 PD/SPEC. PD

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,
14 -vs-
15 TOMMIE C. BURNSIDE, JR. #1591598,
16 JOTEE BURNSIDE,
17 Defendant.

Case No. C154293C,D
Dept. No. III
Docket E

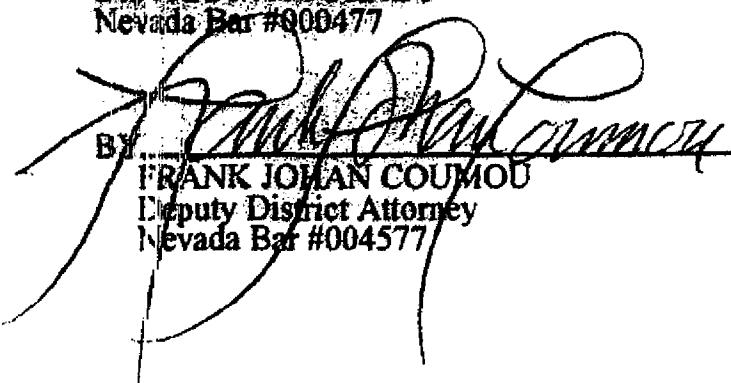
INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK }ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:
22 That TOMMIE C. BURNSIDE, JR. and JOTEE BURNSIDE, the Defendant(s) above
23 named, having committed the crime of **ACCESSORY TO MURDER (Felony - NRS 195.030,**
24 **195.040, 200.030, 200.010)**, on or about the 17th day of July, 1998, within the County of Clark,
25 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
26 provided, and against the peace and dignity of the State of Nevada, Defendants did wilfully,
27 unlawfully, and feloniously harbor, conceal or aid BRENDAN JAMES NASBY, to-wit: by both
28 Defendants informing Las Vegas Metropolitan Police Department Detectives of a false version
of the facts leading to the death of Michael Beasley, and by stating that someone named
"Sugarbear" actually was the killer when knowing that that version was false, with intent that
the said BRENDAN JAMES NASBY might avoid or escape from arrest, trial, conviction or

1 punishment having knowledge that the said BRENDAN JAMES NASBY had committed a
2 felony, to-wit: Murder, and was liable to arrest therefore.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577
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LVMPD EV#9807170541
ACC MURD - F
(TK3)

CLERK

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

July 18, 1998

Case No. 98-3679

AUTOPSY REPORT

PATHOLOGICAL EXAMINATION ON THE BODY

OF

MICHAEL L. BEASLEY

DIAGNOSES

1. Gunshot wound to the head.
2. Gunshot wound to the back into the chest, through and through.

OPINION

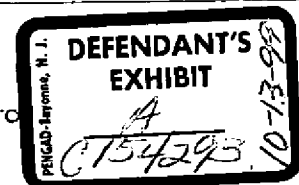
It is my opinion that Michael L. Beasley died of gunshot wounds (2) to the head and chest, homicide.

Robert A. Jordan, M.D.

Robert A. Jordan, M.D., Deputy Medical Examiner

/ng

MARKED FOR
Defendant's Pro



CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

July 18, 1998

Case No. 98-3679

POSTMORTEM EXAMINATION OF THE BODY OF

MICHAEL L. BEASLEY

PRESENT AT AUTOPSY: Detectives Thowsen, Buczek and Crime Scene Analyst Norman, Las Vegas Metropolitan Police Department.

HISTORY: This 18-year-old black male was found lifeless approximately 2.1 miles northwest of Alexander Road and Jensen Street in the desert with multiple gunshot wounds.

AUTOPSY: The autopsy is performed by Robert A. Jordan, M.D., Deputy Medical Examiner, at 1130 hours, 18 July 1998, at the Clark County Morgue.

EXTERNAL EXAMINATION: The body is that of a well developed, well nourished, adult black male measuring 74 inches in length and weighing 163 pounds. The physical age appears compatible with the chronologic age of 18 years. There is full body rigor. There are signs of early decomposition characterized by multiple areas of skin slip. The scalp is covered with short cropped black hair which measures up to 1/4 inch in length at the crown. The sclerae are white. The pupils are round, regular and equal. The irides are brown. The nasal bones are intact. Natural teeth in good repair are present. A faint mustache is present. The neck is long, thin and symmetrical. The neck veins are not distended. The anteroposterior diameter of the thorax is within normal limits. The intercostal spaces are not prominent. The abdomen is soft and flat. A band of blackish discoloration is present at the level of the umbilicus. The genitalia are normal male, circumcised type. The lower extremities are symmetrical. There is no ankle edema. A CCCME ID tag bearing the inscription John Doe, Case No. 98-3679, is attached to the right great toe. The upper extremities are symmetrical. There are no old or recent needle puncture marks in the antecubital fossae or at the wrists. There are no abrasions, lacerations or contusions of the hands, wrists or forearms. Tattoos are present on the outer surface of the left shoulder, outer surface of the left arm and outer surface of the right arm. There is posterior, unfixed, faint, pink-purple lividity.

EVIDENCE OF RECENT MEDICAL/SURGICAL INTERVENTION: None.

EVIDENCE OF RECENT TRAUMA: There is an entrance type gunshot wound to the left supraorbital ridge located 1-1/4 inches above the nasion and 2-1/4 inches to the left of the anterior midline. The wound measures 1/4 inch in greatest width and is surrounded by a well defined, blackened, crusted abrasion collar measuring up to 1/16 inch in greatest width. There is no obvious powder burning or stippling. There is no corresponding exit.

There is an entrance gunshot wound on the upper back located 11 inches below the top of the head and 1 inch to the right of the anterior midline. The wound measures 1/4 inch in greatest width and is surrounded by a well defined circumferential abrasion collar measuring up to 1/16 inch in width. There is no powder burning or stippling.

There is a corresponding exit wound on the right upper chest located 11 inches below the top of the head and 2 inches to the right of the anterior midline. The wound is somewhat elongated and graze-like at the medial aspect measuring 1 inch in total length. Tissue shreds protrude from the wound and edges are blackened and dried.

X-RAY: Review of a single anteroposterior view of the skull reveals tiny metallic fragments extending from the left supraorbital ridge toward the midline. Fragments of core and jacket are present. A single anteroposterior view of the chest reveals multiple tiny opaque fragments of metal in the region of the medial aspect of the right clavicle.

INTERNAL EXAMINATION: The superficial abdominal fat measures 1/2 inch in thickness at the umbilicus. There is no free fluid within the abdominal cavity, and the serosal surfaces are smooth and glistening. The appendix is present at the tip of the cecum. The diaphragm is intact. The right lung is displaced forward by approximately 1 quart of fluid blood free in the right hemithorax. There is a gunshot track through the right upper lobe of the lung as well as through the right subclavian artery. A gunshot wound is present through the medial portion of the first rib. The sternum is intact.

HEART: The heart weighs 360 grams and is covered with a thin layer of transparent epicardium. The myocardium is uniformly red-brown and soft. The ventricular chambers are empty. The valvular measurements are within normal limits. The coronary vessels are normal in course, patency and distribution. The coronary ostia are widely patent. The thoracic and abdominal aorta is unremarkable.

LUNGS: Both lungs weigh together 820 grams. There is a through and through gunshot track through the right upper lobe. The surrounding parenchyma is hemorrhagic and friable. The remaining pleural surfaces are pink-red to dark red-purple, smooth and the interlobar fissures are well demarcated. On section, both organs are well aerated and no free fluid exudes from the cut surface. The mucosa of the trachea and major bronchi is covered with a thin layer of blood-tinged mucus. There is no obstruction. The pulmonary vessels are unremarkable.

LIVER: The liver weighs 1650 grams and is red-brown. The capsule is smooth. On section, the parenchyma is of similar coloration and the lobular markings are indistinct. The gallbladder contains 15 milliliters of green, viscid bile. There are no calculi.

ADRENALS: Both adrenals consist of orange-brown cortices surrounding gray-white medullae. There are no adenomas.

PANCREAS: The pancreas is of normal size and configuration. On section, the parenchyma is lobular in appearance.

SPLEEN: The spleen weighs 140 grams and is purple. The capsule is smooth. On section, the pulp is purple and the follicles are indistinct.

GENITOURINARY TRACT: Both kidneys are similar in size and shape and weigh totally 350 grams. Both organs are covered by a thin, partially transparent capsule which strips with ease, revealing smooth, dark red-brown parenchymal surfaces. On section, the pelves are not dilated. The urinary bladder is empty. Both testes are similar in size and shape and the tubules string with normal elasticity.

GASTROINTESTINAL TRACT: The esophageal mucosa is gray and intact. The stomach contains 200 milliliters of partially digested food material. Rice and vegetable particles are recognized. The rugal pattern is well preserved. There is no ulceration or hemorrhage. The remainder of the tubular gastrointestinal tract, including the duodenum, jejunum, ileum, and large bowel are unremarkable.

ORGANS OF THE NECK: There is no perilaryngeal hemorrhage. The hyoid bone and thyroid cartilage are intact. The tongue, epiglottis, and vocal cords are intact and unremarkable.

HEAD: There is universal subarachnoid hemorrhage. The brain weighs 1500 grams. Upon removal of the brain a gunshot track is present through the left orbital plate extending posteriorly along the base of the brain through the left lobe of the cerebellum macerating the adjacent brain stem. The gunshot track measures approximately 3/8 inch in width and the surrounding cortex is hemorrhagic and friable. Multiple fragments of jacket and core are recovered from the base of the skull as well as from the posterior dura. The vessels at the base are intact. The cerebrospinal fluid is grossly bloody.

DESCRIPTION OF INJURIES: A bullet entered the left side of the head traveling from front to back and slightly left to right into the brain, disintegrating and lodging in the posterior cranial fossa. Multiple fragments of a medium caliber bullet are recovered.

A bullet entered the back traveling from back to front in a straight line into the chest, through the right lung and subclavian artery to exit the front of the chest. No bullets are recovered.

PATIENT BEASLEY 98-3679, MICHAEL

APL ROUTE

SPC00

1084

AGE/SEX 18Y M

REFERRED BY

CC CORONERS OFFICE P055240

COLLECTED 07/18/1998 11:30

ACCESSION NO.

01733330

1704 PINTO LANE

RECEIVED 07/19/1998 09:16

MED. RECORD NO.

0006212692

LAS VEGAS, NV 89106

ICOLOGY NO. 98-050644

CHART NO.

SS NO.

TOXICOLOGY REPORT

TEST NAME - SPECIMEN

COMPREHENSIVE BLOOD SCREEN

RESULTS: ETHANOL = NEGATIVE

98-07-24 14:35 RCVD

NO DRUGS IDENTIFIED IN BLOOD.

THE FOLLOWING BLOOD SCREEN FOR ACIDIC, NEUTRAL AND BASIC DRUGS INCLUDES BUT IS NOT LIMITED TO:

Amitriptyline	Amphetamine	Benzoyllecgonine
Cocaine	Codeine	Desipramine
Diphenhydramine	Hydrocodone	Hydromorphone
Imipramine	Lidocaine	Meperidine
Methadone & Metabs	Methamphetamine	Methaqualone
Morphine	Nortriptyline	Oxycodone
Pentazocine	Phencyclidine	Phenylpropanolamine
Propoxyphene & Metabolites		
Acetaminophen	Amobarbital	Barbital
Butabarbital	Butalbital	Carbamazepine
Chlordiazepoxide	Diazepam	Ethchlorvynol
Ethosuximide	Glutethimide	Mephobarbital
Meproamate	Methaqualone	Methsuximide
Methyprylon	Nordiazepam	Pentobarbital
Phenobarbital	Phenytoin	Salicylate
Secobarbital	Theophylline	Valproic Acid

FORENSIC URINE DRUG SCREEN

RESULTS: NO DRUGS IDENTIFIED IN URINE.

THIS SPECIMEN HAS BEEN SCREENED FOR THE FOLLOWING DRUGS:

Acetaminophen	Amitriptyline	Amobarbital
Amphetamine	Barbital	Benzoyllecgonine
Butabarbital	Butalbital	
Cannabinoids (THC/Marijuana)		Chlordiazepoxide
Cocaine	Carbamazepine	Desipramine
Diazepam	Dihydromorphinone	Diphenhydramine
Ethchlorvynol	Ethosuximide	Glutethimide
Imipramine	Lidocaine	Meperidine
Mephobarbital	Meproamate	Methadone & Metabolite
Methamphetamine	Methaqualone	Methsuximide
Morphine	Methyprylon	Nordiazepam
Nortriptyline	Oxycodone	Pentazocine
Pentobarbital	Phencyclidine (PCP)	Phenobarbital

PATIENT BEASLEY 98-3679, MICHAEL APL ROUTE SPC00 1084
AGE/SEX 18Y M REFERRED BY CC CORONERS OFFICE P035240
COLLECTED 07/18/1998 11:30 ACCESSION NO. 01733330 1704 PINTO LANE
RECEIVED 07/19/1998 09:16 MED. RECORD NO. 0006212692 LAS VEGAS, NV 89106
TOXICOLOGY NO. 98-050644 CHART NO.
SS NO.

TOXICOLOGY REPORT

TEST NAME - SPECIMEN

=====

Phenylpropanolamine	Phenytoin	
Propoxyphene & Metabolite		Salicylate
Secobarbital	Theophylline	Valproic Acid

ANY OTHER DRUGS OR TOXINS DETECTED ARE ALSO INCLUDED IN THIS REPORT.

h

REPORT OF INVESTIGATION
OFFICE OF THE CORONER MEDICAL EXAMINER, CLARK COUNTY, NEVADA
1704 Pinto Lane, Las Vegas, Nevada 89106

DECEDENT BEASLEY, MICHAEL LAMONT AKA DOE "POWER POLE #X40Status S DOB 01/21/1980
 Residence Address 3327 ALTA POINT, LAS VEGAS, NV
 Tel No. (702) 648-2498 Desc: Sex M Race N Age 18 SS # Height 74.00
 Weight 163.00 Hair BLACK Eyes BROWN

Scars/Tattoos & Other identifying features

ULA: T ZONE, URA: CYN DROOP

Rigor Mortis FULL BODY

Liver Mortis NOT PERCEPTIBLE

Decomposed? No

Clothing BLUE PANTS, BLUE SHORTS, MULTI-COLORED UNDERWEAR, WHITE SHIRT, WHITE SOCKS, BLACK & WHI

Drugs & Medications

UNKNOWN

Occupation UNKNOWN

Employed by UNKNOWN

Agency Reporting LVMPD

Date & Time Reported 07/17/98 10:00

Location of body 2.1 MILES N/W OF ALEXANDER RD. AND JENSEN ST.

Type of Death V At Work: N

CIRCUMSTANCES	DATE	TIME
Reported to Agency by	07/17/98	07:45
Name & Address	UNKNOWN PASSERBY	
Last Seen Alive by		
Name & Address	UNKNOWN	
Found Dead by	07/17/98	07:40
Name & Address	UNKNOWN PASSERBY	
Pronounced Dead by	07/17/98	10:55
Name & Address	JOHN L. STALLINGS, CCCME	
Body Viewed by	07/17/98	10:55
Name & Address	JOHN L. STALLINGS, CCCME	
Identified by	07/18/98	08:30
How Identified	POSTMORTEM PHOTOGRAPH	
Name & Address	JAMES EPPS, UNCLE	
Witnesses		

Law Enforcement Agency LVMPD

Event # 980717-0541

Officers DET. SGT. K. HEFNER, DET. T. THOWSEN, DET. BUCZEK,

CSA A. CABRALES, CSA. J. SAMS, CSA. K. NEIL

Property Receipt # 056820

In Custody of ALL PROPERTY LEFT W/ BODY & SEALED W/ SEAL #857182

CUSTODY OF BODY: Removed by DESERT

To CCCME

Driver C. ARENCIBIA

Assisted by A.J. JONES

Requested by PER ROTATION

DEATH NOTIFICATION

N.O.K. VELMA BEASLEY

Address 8519 S. MAIN ST., #2, LOS ANGELES, CA 90003

Other #1

Address

Other #2

Address

Means

CONTACTED V. BEASLEY BY TELEPHONE AT HER RESIDENCE

Notification Made by JOHN L. STALLINGS, CCCME

Date 07/17/98 Time 16:00

Relationship MOTHER

Tel No. (213) 971-6588

Relationship

Tel No.

Relationship

Tel No.

VEHICULAR DEATHS: Deceased was

Vehicle

Accident location

SAFETY EQUIPMENT USED: Seat belt

point Air bag

Seat Location

Lic No

Date

Other

State

Time

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

NAME BEASLEY, MICHAEL L. AGE 18 DATE 07/17/98 CASE # 98-03679

Today, 07/17/98, at approximately 1000 hours I received a call of a reported homicide death that was located approximately 2.1 miles Northwest of Alexander Road and Jensen Street in the desert. Las Vegas Metropolitan Police Department (LVMPD) Homicide Detective Sgt. K. Hefner reported the death. I responded at approximately 1010 hours.

Upon my arrival at approximately 1050 hours, I viewed a Negro male lying supine on the ground at that location in the desert. I found no life signs and trauma was noted in the form of penetrating wounds on the right side of his neck, bottom hair line of his left eyebrow and just to the right of his midline back between his shoulder blades. He was hot to the touch and full body rigor was present. Lividity was not perceptible. He was fully clothed and I pronounced death at 1055 hours.

I spoke with LVMPD Homicide Detective T. Thowsen and he related the following information to me. At approximately 0745 hours today LVMPD received an anonymas telephone call from an unknown person stating that he was in the area of where the decedent was found, jogging and running with his dog. He located the body and stated it appeared the decedent had been shot several times.

LVMPD responded to the area and located the decedent. LVMPD Homicide Division was contacted. No paramedics responded to the scene.

One spent projectile was located between the decedent's skin and his shirt on the right side of his body near his neck area. There were several spent casings that were being impounded by LVMPD Crime Scene Analyst (CSA) that were processing the scene.

No identification was located on or near the decedent.

The decedent was wrapped in a new sheet that had been provided by the LVMPD Crime Scene Analyst (CSA) at the scene. He was then placed into a body bag and the body bag was sealed with Coroner Seal #857182.

The decedent was removed and transported to the Clark County Coroner/ Medical Examiner's Office (CCCME) by Desert Memorial

Continued:

CLARK COUNTY CORONER MEDICAL EXAMINER
1704 PINTO LANE
LAS VEGAS, NEVADA 89106

NAME BEASLEY, MICHAEL L. AGE 18 DATE 07/17/98 CASE # 98-03679

Continued Page Two:

Mortuary, per rotation. We left the scene at approximately 1125 hours and arrived at CCCME at approximately 1200 hours.

All property was left with the decedent and he was sealed in a body bag per Property Receipt #056820.

LVMPD Event #980717-0541.

EXAMINING PHYSICIAN JORDAN AUTOPSY YES VIEW NO

JB


JOHN L. STALLINGS - CORONER INVESTIGATOR

I hereby certify this is a true and correct copy of the original
10 page document on record with the Office of the
Coroner-Medical Examiner.

Barbara Williams 8-18-98
NAME Office Specialist II DATE

CERTIFICATE OF CUSTODIAN OF RECORDS

(NRS 52.260)

State of Nevada)
) ss.
County of Clark)

NOW COMES Barbara Williams, who after first
being duly sworn deposes and says:

1. That the deponent is the Office Specialist of the Clark
County Coroner-Medical Examiner's Office and in her capacity as
Office Specialist is a custodian of the records of the
Administrative Division of the Clark County Coroner-Medical
Examiner's Office.

2. That the Clark County Coroner-Medical Examiner's Office is
an employer within the meaning of NRS 52.260(6)(b).

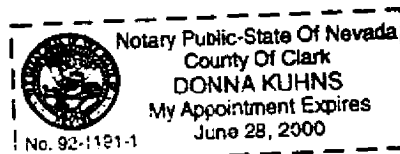
3. That the deponent has made or caused to be made a true and
exact copy of the original records and that the reproduction of
them attached hereto is true and complete.

4. That the original of those records was made at or near the
time of the act, event, condition, opinion or diagnosis recited
therein by or from information transmitted by a person with
knowledge, in the course of a regularly conducted activity of the
Clark County Coroner-Medical Examiner's Office.

Barbara Williams

Subscribed and sworn to before me, a Notary Public, on this 18th
day of August, 1998.

Donna Kuhns



**PLEADING
CONTINUES
IN NEXT
VOLUME**

Electronically Filed

Tracie K. Lindeman

VS.

Case No: C154293-2
SC No: 58579

Docket 58579 Document 2011-24410

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10-5-99

Well, I spoke with you again yesterday, and like always, it was a joy to hear your voice. We didn't talk much, you were washing your hair and taking a bath. I wish I could've been there to help you wash your naked buttucks. ~~I~~ I hope you did something about the redness on the inside of your thighs. I told your ass about humping the arm of the ~~couch~~ couch. ~~!!~~

Well, Colleen came to see me last night. She took the notes that need to be shared with all of you. If she hasn't given them to you yet → call her and get them from her, please. Anyways! She didn't bring my daughter. She said that she was gonna ~~be~~ put a \$100.00 dollars on my books, but she got upset because I cussed her out about bring my "enemies" over my house and fucking them in my room and in my bed. Not only that, but in front of Lynae, too. This ~~bitch~~ bitch showed all of my enemies where I lived and then fucked in front of my daughter, and she had the nerve to get mad at me for yelling at her! Then she said that just because I cussed her out, that she was going to go fuck one of my enemies right now. I used to shoot at the nigga's that she's bring over my house. What kind of shit is that? She's so threw now. When I come out for free time today, my main concern will be to find a few ~~people~~ people to knock that hooker out. I'm going to try

my hardest, too. They say that it's a thin line between love and hate. → Well, I hate that bitch! She's threw ~~me~~ with money! I talked to her about the way that she be treating Lynae, too, and all she could say is → "So what if I beat her and cuss at her! She's my daughter!" Then, to add injury to insult → she say, "if you were out here then you could be raising your daughter." I swear that I be wanting to choke that bitch out! But Anyways! I don't think that she put the money on my books. Wait! Do you know that that bitch put a cigarette out on my ~~daughter~~ daughter? I have to take Lynae when I get out. I'll set the bitch up, if I have to. I'm taking Lynae! → By all means ~~not~~ necessary!

I can't wait until I get out of this place. That is → If I get out. But if I do, I got so many things to do, and I can't wait to get started. I don't even really know where to start, but the very ~~the~~ first thing that I'm doing is going straight to church and thanking God. After that → who knows. I guess I'll just go with the flow and take advantage of whatever comes first. At least I know that I do have a house and a job waiting for me. If something goes wrong with that I'll just come live with you and let you take care of me.

Two of my homieboys just left from out of here today. One went to the joint and the other one.

just moved to another module. Peep? Todd didn't really get 30 years. He was just messing around with me. Actually, his trial is going pretty good. The D.A. was mad and started to physically choke Todd, during trial. So now, that makes the D.A. look like the bad guy, instead of Todd. He said that he doesn't see the D.P. getting a conviction, but they might get another hung jury. Either way, looks good for Todd. I just hope God blesses me with the same luck and sets me free.

Boo-Boo? I'm sending you a tape and I want you to go get one of those mini-tape recorders and play it for me over the phone. I found it in my legal files. I don't know what's on it, but it may be something I need to know. I'm trying to find a way to send it to you without it looking like I'm mailing something suspicious. I'll figure out something. Anyway? I think that's it. I should've told you everything else over the phone. It's still early. So I'm going to get at you later on. I love you.

Love,
Brenda
Abby

P.S. - The reason that I put "Wayne" as the return address is because I didn't want the police intercepting this letter or the tape. I love you?

Be Gentle!
~~Legal Documents~~
Inside.

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

RAY STEFAN, being first duly sworn deposes and states that he is the affiant herein and is an Investigator with the Clark County District Attorney's Office presently assigned to the Major Violators Unit, Criminal Division. That I have been employed with the Clark County District Attorney's Office for the past eight years and eight months.

There is probable cause to believe that certain property hereinafter described will be found at the following described premises, to-wit:

Clark County Detention Center
330 S. Casino Center
Las Vegas, Nevada 89101

The property referred to and sought to be seized consists of the following:

A standard white envelope addressed to a Crystal Sobrian with a California address with purple ink marked "Gentle-legal material inside" containing a letter and micro cassette tape which was believed written and recorded by Inmate Brendan James Nasby, ID#1517690.

The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offense of Conspiracy to Commit Murder and Murder With Use of a Deadly Weapon have been committed by Brendan Nasby.

In support of your affiant's assertion to constitute the existence of probable cause, the following facts are offered:

That on July 16, 1998, Michael Beasley was murdered in Clark County, Nevada, and Brendan Nasby was subsequently arrested for the aforementioned crimes.

EXHIBIT "2"

That on or about July 29, 1999, your affiant received a "Notice of Alibi Witness" from Deputy District Attorney Frank Coumou listing Brenda Nasby and Colleen Warner as witnesses. This notice was followed by (2) "Supplemental Notice of Alibi Witnesses" listing Nina Hogue, Crystal Sobrian, and Chris LaFrambroise as witnesses.

That on October 7, 1999, your affiant was contacted by Deputy District Attorney Frank Coumou regarding contraband confiscated at the Clark County Detention Center by a correction officer from Inmate Nasby.

On October 7, 1999 at 6:30 p.m., your affiant contacted night shift Lt. Charlene O'Rourke, P#3548, about the property.

Lt. O'Rourke stated inmate Nasby attempted to mail out a letter with a improper return address and with inadequate postage for the weight of the letter. The envelope also had a decided bulge to it. The officer taking the letter from Inmate Nasby, Shawn Judd, P#5064, took the unopened letter to Lt. O'Rourke.

Believing to contain contraband, Lt. O'Rourke opened the envelope pursuant to Clark County Detention Center policy and found it to contain a micro cassette tape and a five (5) page letter addressed to Crystal Sobrian, one of the alibi witnesses.

The possession of this micro cassette by an inmate would be not allowed for security reasons per the policy of the Clark County Detention Center.

Lt. O'Rourke read the letter in part and it appeared that the letter contained instructions and coaching on the part of Inmate Nasby to his girlfriend, Colleen, as to how the alibi witnesses should testify.

Lt. O'Rourke played the micro cassette in part, although the recording is somewhat distorted, it appeared that Inmate Nasby was making threats regarding testimony.

Lt. O'Rourke prepared a memo to her C.O. Captain Henry Hoogland and left the seized property in his office.

That the search warrant is necessary to ensure that the above correspondence is not destroyed and to seize the same, to be used as evidence in the prosecution of Brendan Nasby.

WHEREFORE, affiant requests that a Search Warrant issue directing a search for and seizure of the aforementioned items at the location set forth herein between the hours of 7:00 a.m. and 7:00 p.m.


RAY STEFAN

SUBSCRIBED and SWORN to before me this 20th day of October, 1999.


JUDGE

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY 

FRANK JOHAN COUMOU
Deputy District Attorney
Nevada Bar #004577

SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark. Proof by Affidavit having been made before by RAY STEFAN, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely:

A standard white envelope addressed to a Crystal Sobrian with a California address with purple ink marked "Gentle-legal material inside" containing a letter and micro cassette tape which was believed written and recorded by Inmate Brendan James Nasby, ID#1517690.

is presently located at:

Clark County Detention Center
330 S. Casino Center
Las Vegas, Nevada 89101

and as I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the Affidavit attached hereto there are sufficient grounds for issuance of the Search Warrant.

Your are hereby commanded to search forthwith said premises for said property, serving this warrant between the hours of 7:00 a.m. and 7:00 p.m. and if the property be there to seize it, prepare a written inventory of the property seized and make a return for me within ten days.

DATED this 25th day of October, 1999.


JUDGE

I:\MVU\SW\Nasby.wpd\kjh

EXHIBIT "3" 70 (C154293)

8/31/98

OK,

West Tupper Girl? How you been these last couple days? I'm hanging in here. I'm just dealing with the lie say, lie say bullshit.

I read your state ment that you told the police. Even though it's not the same exact story you told me, it was very good. Now if you get called into court, you have to tell the exact same story you told the police or else they will lock you up for perjury. The only thing you said wrong was that it happened on the 27th, when Droop died on the 17th of July. But all you have to say in court is that you got the dates mixed up. And If you didn't already, don't tell the police nothing else, and don't change your story.

I hope you haven't had second thoughts about me killing the homing Droop (L.P.), because you know I didn't. And what ever the police and other people are saying, is a big oh pile of bullshit. The police are lying to everyone, just to get more information from other people. Like when they told you that said That you mopped up that bitch Tweety,

at shit was all a lie. But peep this, our little cousin told the police the whole org. If you don't believe me then I'll put it on my daughter, Lynae M. Nasby. Now you see I wouldn't blow her up. You know that would never say no shit like that. And the people on the streets are just talking off their asses. None of them know what happened. No body knows what's being said about my case. I'll tell a couple of people this and tell a couple of people that, just to throw the snitches off. Honestly, the only people that know anything about the case would be me and my attorneys, and that's how it's going to stay. My mother, my sister, Colleen, the homies; none of them know the deal. So whatever's being said on the streets about me is bullshit, including what Colleen says.

B.K., I care about you, Droop (RIP), and all the rest of the homies. I even care about O. Cent, Shugg, and Mazzy. Even though Mazzy said he was going to kill me if I do get out. But for one thing, nobody can tag me without me getting them first. I'm simply untouchable. And another thing is that I know Mazzy doesn't know the real deal. That's why he wants to kill me, he just don't know what's going on. I hope you could understand.

I this. I wouldn't want to lose another
and behind me being falsely accused. Goldie
is suppose to be hating on me too. I
couldn't believe that. People are lying on all
the say the say bullshit?

Anyways? How's your little cousins
going. I hope they're alright.

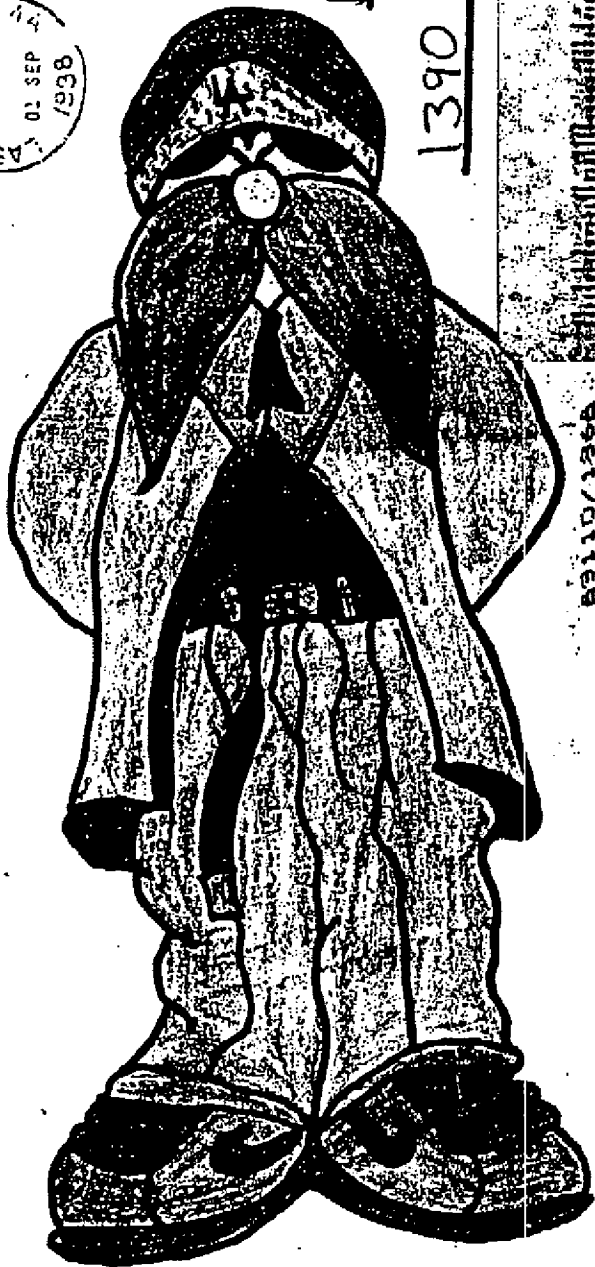
Oh? Don't be worried. The police
only check incoming mail. So they don't
check the letters I'm sending out. But when
you write me, If you write me, don't talk
to specific about the case. But at least
let me know if you're still on my team.

How's your case going with that
battery charge? They said that bitch was
sent into an unconscious state. B.K., that
bitch was sleep.

Anyways? Hit me up and let me
know how shit's going. If you can stop by
my house and check up on my mom, Colleen,
and the baby. Make sure they're alright.

PS - Pray for
me, as I pray
for you each
day. I Love
you Cuzz?
Be safe.

Much Love
Loc,
BLUE
Loc #1



Brittany Adams

1390 Honey Lake St

RECYCLED PAPER

9901/0110

RECYCLED

STEVIE NUSBY
C.C.D.C. #1517690-7F:23-L
330 Casino Ctr. Blvd.
Las Vegas, NV 89101

The girl's statement

I Met Shugg at the 7-11 on 15th and Fremont. I knew him for about a week before the murder happened. He was always a ~~heavy~~ heavy drinker every time I saw him he was drinking. On the night of the murder he had on a black T-Shirt, black pants (dickies), and black converse with black laces. On that night (July 16, 1998) me and Shugg met at the ~~bus~~ bus station on Stewart & Las Vegas Blvd. I had my homegirl drop me off there on her way to ~~the~~ Fremont. After me and Shugg met that night ~~at~~ at the bus stop around 9:00 P.M.. We hopped on the Martin L. King BUS and took it to ~~the~~ Craig and M.L.K.. When we got off we went to an AM/PM gas station and Shugg paged someone. I think he paged Woods. Me and Shugg waited for about up there for about 20 ~~minutes~~ minutes then Woods came and picked us up in a dark red car (burgundy) with Droop in the back seat, T-Bone in the ~~front~~ front seat, his other Joe-T in the back behind ~~T-Bone~~ T-Bone. I hopped in the back & Shugg hopped in the front with ~~T-Bone~~ T-Bone. Now Woods was driving to him and then Shugg next to T-Bone. In seat it was Droop behind Woods, Droop, then Joe-T on my right. Shugg

#59

EXHIBIT "4" id that then

nine that Shugg had. Nobody minded because
we were smoking and drinking the whole way
to the desert. I don't ~~from~~ remember
if it was but I remember that
was off of Alexander somewhere. When we
t these Shugg, Woods, and Droop got out. Me
-Bone, ~~and~~ and Joe-T stayed in the car smok-
g and drinking. 10 minutes later I started
get out of the car and saw Woods sittin'
on the hood of the car Droop standing
front of the edge of the cliff and Shugg put
a gun up to Droop's head area and shot him.
ter that one shot I hopped back in the car.
heard another shot but I didn't want to look
more so I didn't see where he shot him
a second time. But as ~~every~~ all this was
appening ~~to~~ T-Bone and Joe-T Both where wonde-
g what was going on. Then Woods and Shugg
pt in the car, but Shugg hopped back out
nd shot ~~at~~ Droop again. Then he got back
n the car and we headed back to the AM/PM
ow. It was Woods Driving & Shugg next to
m. In the Back seat it was Me behind Wood
e-T next to me in the middle, and T-Bone
the right behind Shugg. When we got to
e AM/PM Me and Shugg got out. Shugg
old me to ~~say~~ shut up and stay quiet
bout what happened. Woods, T-Bone, and Joe-

5

~~They~~ left us there. Me and Shugg didn't talk any more that night. I called my 'ide that took me to the bus ~~stop~~ station and told her to come and get me. I left ~~the~~ shugg at the gas station and haven't talked to him since. On July 16th, That was my first time meeting Droop, T-Bone ~~and~~ Joe-T, and Woods but I couldn't take it any more. The fact that I knew something was eating me up inside. I would have told sooner but I was scared of Shugg. ~~The~~ T-Bone had a blue 22 ~~jersey~~ Jersey and black ~~pant~~ pants. Joe-T had on a striped blue shirt on and blue pants. I don't know what kind of shoes ~~at~~ they had on because they never got out of the car. Wood had on white shorts with a white tang top and white nike shoes. I don't remember what kind of nike shoes but I know they were low top all white nike ~~shoe~~ shoes.

● ORIGINAL ●

1 **ORDER**

2 FREDERICK A. SANTACROCE, ESQ.
3 Nevada Bar No. 5121
4 706 S. Eighth Street
5 Las Vegas, Nevada 89101
6 (702) 598-1666
7 Attorney for Defendant

FILED

APR 8 4 23 PM '02

Shirley S. Pangione
CLERK

6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 BRENDAN JAMES NASBY,)

11 Defendant.)

CASE NO: C154293
DEPT NO: XVII
DOCK NO: 33

12 **ORDER**

13 This matter coming on for hearing on the 8th day
14 of April, 2002 and for good cause appearing:

15 IT IS HEREBY ORDERED that counsel's Motion to Withdraw as
16 Attorney of record is granted;

17 IT IS FURTHER ORDERED that all future pleading and
18 correspondence shall be served upon Defendant's last known
19 address of Brendan James Nasby #63618, Ely State Prison P.O. Box
20 1989, Ely, Nevada 89301

21 DATED this 8 day of April, 2002.

22 *Om Datta*
23 DISTRICT COURT JUDGE

24 RESPECTFULLY SUBMITTED:

25 _____
26 FREDERICK A. SANTACROCE, ESQ.
27 706 S. Eighth Street
28 Las Vegas, Nevada 89101
29 (702) 598-1666

RECEIVED

APR 8 2002

COUNTY CLERK

Brendan Nasby
I.D. No.63618
P.O.Box 1989
Ely, Nevada 89301
Petitioner In Pro Se

20
FILED

APR 19 2 41 PM '02

Shirley D. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby,

Petitioner,

vs.

E.K. McDaniel et. al.

Respondent.

CASE No.C154293

DEPT. No.XVIII

PETITIONER'S REPLY TO STATE'S
OPPOSITION TO WRIT OF HABEAS CORPUS (POST CONVICTION)

Date of Hearing:

Time of Hearing:

Comes Now, Brendan Nasby, Petitioner in propria persona with this Reply to State's Opposition to Writ of Habeas Corpus (Post-Conviction), and respectfully moves this Court for an order granting relief request in his Petition for Habeas Corpus.

This reply is made and based upon all papers and pleadings on file herein, the attached points and authorities in support hereof, and Oral Argument at the time of hearing.

RECEIVED
APR 19 2002
COUNTY CLERK

POINTS AND AUTHORITIES

ARGUMENT

I. Petitioner's Equal Protection, Prosecutorial Misconduct and Due Process Claims Are Cognizable.

The State asserts that Petitioner has waived or otherwise defaulted these claims pursuant to N.R.S. 34.810 (1) and (3). This Argument lacks merit.

Petitioner raises very strong assignments of error under Prosecutorial Misconduct, involving, but not limited to:

- A) Presenting false testimony
- B) Tampering with and intimidating Defense Witnesses
- C) Failure to investigate other suspects
- D) Unconstitutional use of Jail House Informant
- E) Vouched for State Witness Credibility
- F) Cumulative effect of these errors.

Petitioner's Equal Protection and Due Process claims are equally strong, and serious. Petitioner's claims are not merely colorable as the State would have the Court think. Instead, they involved the total destruction of Fairness at Petitioner's Trial.

Therefore, even if the Court finds that any of these claims could have been raised in an earlier proceeding, it must also find that either Appellate or Trial Counsel; was ineffective for failing to raise them.

A showing of Ineffective Assistance of Appellate Counsel; hinges on the merit of the claim omitted. While Counsel does not have a duty to raise weak issues or every conceivable issue, Counsel does have a duty to raise meritorious claims. Miller v. Keeney 882 F.2d 1428, 1434 (9th Cir. 1989), Lucas v. O'Dea 179 F.3d 412, 419 (6th Cir. 1999), and

U.S. v. Cook 45 F.3d 388,395 (10th Cir. 1995). The State contends that Petitioner made no effort to comply with N.R.S. 34.810 (3), and show prejudice resulting from Counsel's failure to raise the claims now alleged. However, Petitioner asserts that if the Court finds merit in any of Petitioner's Due Process, Equal Protection, or Prosecutorial Misconduct claims then he has satisfied the prejudice showing. The Court may approach the merits of Petitioner's claims from either direction, but the merit of the claim should be reached given their serious nature.

II. Petitioner's Claim that the Jury was Improperly Instructed on the Elements of Premeditation is not barred by Law of the case.

In the petition before the Court, Petitioner argues that the Jury Instructions regarding Premeditation, violates his Federal Constitutional Due Process Rights. This claim has never been presented to any Court. State claims and Federal claims are not the same, even if similiar facts are alleged. See Hiivala v. Weed 195 F.3d 1098,1106 (9th Cir. 1999) And Lyons v. Crawford 232 F.3d 666,668 (9th Cir. 2000).

The issue now before the Court is a Federal claim, distinct from the State issue raised before the Nevada Supreme Court. Moreover, Federal Law is not identical to State Law on this claim. Thus, Petitioner respectfully request this Court to hear his Constitutional claim.

III. Defense Counsel Was Ineffective.

The ~~State~~^{state} grossly misstates Petitioner's claim of Ineffective Trial Counsel. The State seems to think that Petitioner is only alleging that Counsel failed to call alibi witnesses and presumes to

speaking for Petitioner's trial Counsel. The State's version of why Trial Counsel did not call any witnesses must be rejected, as there is no Sworn Affidavit from Petitioner's Trial Counsel attached to the State's Response. The only way to know why Counsel acted as he did, is to hold an Evidentiary Hearing and allow Counsel to explain his actions himself. Furthermore, the letters attached to the State's Response purportedly written by Petitioner, are immaterial, as they are not evidence and were not admissible at Trial. The only relevance these letters have is the fact that the State used them to convince Defense Witness, Colleen Warner, not to testify. The State seems to see those letters as some type of protection, for they always pull them out to shield themselves.

Defense Counsel failed to put on any defense at all, far from just not calling alibi witnesses. Defense Counsel did not call Petitioner, rebuttal witnesses, or witnesses who could testify truthfully to inconsistencies and falsehoods in the State's case. See Affidavits attached to petition.

Certainly, Defense Counsel is ineffective for failing to present any defense at all in Petitioner's behalf. See U.S. v. Cronin 466 U.S. 648, 660 (1985).

More importantly, the State failed to address several of Petitioner's claims. For example: The State conveniently forgot to address Petitioner's Conflict of Interest claim, wherein Petitioner's Trial Counsel accepted employment for the Public Defender's Office while representing Petitioner. The Public Defender's Office also represented witnesses testifying against Petitioner. Thus, Trial Counsel's loyalties were divided and he represented the interest of witnesses

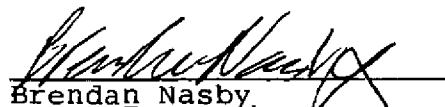
testifying against Petitioner. This, in itself, is reversible error. See Cuyler v. Sullivan 446 U.S. 335,350 (1980); Freund v. Butterworth 117 F.3d 1543 (11th Cir. 1997); and U.S. v. Ross 33 F.3d 1507 (11th Cir. 1994). The prejudice resulting is sufficiently alleged in petition.

IV. Conclusion

The State's Response does nothing to further the Court's understanding of Petitioner's claims. The only way for the Court to Apprehend the facts underlying Petitioner's claims is to hold an evidentiary hearing. Otherwise, Petitioner respectfully request the Court to treat the State's failure to address the entire writ as an admission of the facts contained therein, and grant the Relief Requested in the writ.

Dated this 15 day of April 2002.

Respectfully Submitted,


Brendan Nasby
I.D. No.63618
P.O.Box 1989
Ely, Nevada 89301
Petitioner In Pro Se

CERTIFICATION OF MAILING

I hereby certify that I placed a correct copy of the foregoing
Reply in the hand of a correctional officer for mailing to the Respondents
at their last known address as follows;

Stewart L. Bell
District Attorney
200 S. Third Street
Las Vegas, Nevada 89155

Dated this 15 day of April 2002.

Respectfully Submitted,

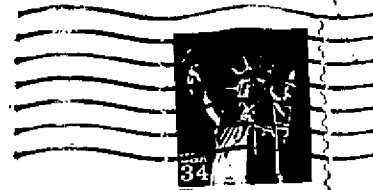
By: *Harold W. [Signature]*
Petitioner In Pro Se

Brendan Nasby #63618

P.O.Box 1989

Ely, NV 89301-1989

Ely State Prison



Shirley B. Parraguirre

County Clerk

200 S. Third St.

P.O.Box 551601

Las Vegas, NV 89155-1601

89155/1601



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Shirley B. Rungius
CLERK

OPI
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,
ID#1517690

Defendant.

Case No. C154293
Dept. No. XVIII

ORDER FOR PRODUCTION OF INMATE
BRENDAN JAMES NASBY, BAC #63618

DATE OF HEARING: 6-24-02
TIME OF HEARING: 9:00 A.M.

TO: GEORGE GRIGAS, Warden, Northern Nevada Correctional Center;

TO: JERRY KELLER, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART L. BELL, District Attorney, through FRANK JOHAN COUMOU, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that GEORGE GRIGAS, Warden of Northern Nevada Correctional Center shall be, and is, hereby directed to produce BRENDAN JAMES NASBY, Defendant in Case No. C154293, on a charges of CONSPIRACY TO COMMIT MURDER and MURDER wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said Defendant is currently incarcerated in the Northern Nevada Correctional Center located in Carson City, Nevada and his presence will be required in Las Vegas, Nevada commencing on Monday, June

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1 24, 2002, at the hour of 9:00 o'clock A.M. and continuing until completion of the prosecution's
2 case against the said Defendant.

3 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada,
4 shall accept and retain custody of the said Defendant in the Clark County Detention Center, Las
5 Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order
6 of this Court; or in the alternative shall make all arrangements for the transportation of the said
7 Defendant to and from the Nevada State Prison facility which are necessary to insure the
8 Defendant's appearance in Clark County pending completion of said matter, or until further
9 Order of this Court.

10 DATED this 17 day of May, 2002.

11 
12 _____

13 DISTRICT JUDGE

14 STEWART L. BELL
15 DISTRICT ATTORNEY
16 Nevada Bar #000477

17 BY 

18 FRANK JOHAN COUMOU
19 Chief Deputy District Attorney
20 Nevada Bar #004577
21
22
23
24
25
26
27
28

ORIGINAL

1 ORD

2 Lori C. Teicher
3 State Bar #6143
4 ROBERT L. LANGFORD & ASSOCIATES
5 616 South 8th Street
6 Las Vegas, NV 89101
7 (702) 471-6535

FILED

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DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley E. Langford
CLERK

7 BRENDAN NASBY,

Appellant,

Case No. C154293

8 vs.

Dept. No. XVIII

9 STATE OF NEVADA,

Respondent.

11 ORDER APPOINTING COUNSEL

12
13 Good cause appearing, it is hereby ordered that Lori C. Teicher be appointed as
14 counsel for Appellant Brendan Nasby for his writ of habeas corpus of conviction. This
15 appointment was made in open court on July 1, 2002. Mr. Nasby's previous counsel are
16 directed to provide Ms. Teicher with Mr. Nasby's complete file, including all notes,
17 investigative documents, pleadings, and all other documents.

18 Dated this 6 day of August, 2002.

Don Saitta

District Court Judge Saitta

21 Submitted by:

22
23 *Lori C. Teicher*
24 Lori C. Teicher
25 State Bar #6143
26 ROBERT L. LANGFORD & ASSOCIATES
27 616 South 8th Street
28 Las Vegas, NV 89101
(702) 471-6535

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COUNTY CLERK

8/5

Lori C. Teicher, Esq.
Nevada Bar #6143
ROBERT L. LANGFORD & ASSOCIATES
616 South 8th Street
Las Vegas, Nevada 89101
(702) 471-6535

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Shirley B. Langford
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN J. NASBY,
Petitioner,

-vs-

CASE NO. C154293

JAMES SCHOMIG, WARDEN,
HIGH DESERT STATE PRISON;
JACKIE CRAWFORD, DIRECTOR
OF NEVADA STATE PRISON;
THE STATE OF NEVADA
Respondents

DEPT NO. XVIII

NUNC PRO TUNC ORDER APPOINTING COUNSEL

Good cause appearing, it is hereby ordered that Lori C. Teicher be appointed as counsel for Petitioner Brendan J. Nasby for representation in his Petition for a Writ of Habeas Corpus. This appointment was made in open court on July 1, 2002. Mr. Nasby's prior counsel are directed to provide Ms. Teicher with Mr. Nasby's complete file, including all notes, investigative documents, pleadings, and all other documents.

Dated this 16 day of July, 2002.

Jim Saitta

DISTRICT COURT JUDGE SAITTA

Respectfully submitted by:

Lori C. Teicher
Lori C. Teicher, Esq.
ROBERT L. LANGFORD & ASSOCIATES
Nevada State Bar #: 006143
616 South 8th St.
Las Vegas, Nevada 89101
(702) 471-6535

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AUG 16 2002

CLERK

CLERK

JUL 30 2002

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1 MOT
2 Lori C. Teicher
3 State Bar #6143
4 ROBERT L. LANGFORD & ASSOCIATES
5 616 South 8th Street
6 Las Vegas, Nevada 89101
7 (702) 471-6535

DISTRICT COURT
CLARK COUNTY, NEVADA

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CLERK

7 BRENDAN NASBY,

Appellant,

Case No. C154293

8 vs.

Dept. No. XVIII

9 STATE OF NEVADA,

Respondent.

11
12 **EX-PARTE MOTION FOR APPOINTMENT**
13 **OF INVESTIGATOR AND EXCESS FEES**

14 COMES NOW, Defendant, by and through his attorney, Lori C. Teicher, Esq., on
15 behalf of Defendant, BRENDAN NASBY, and hereby requests this Honorable Court to
16 issue an Order, pursuant to NRS 7.135, appointing JIM THOMAS, to investigate, represent
17 and prepare the above-captioned case for the hearing in this matter. Plaintiff also requests
18 that the Order authorize payment to the investigator not to exceed One Thousand Five
19 Hundred Dollars (\$1,500.00).

20 This Motion is made and based on the attached Points and Authorities.

21 DATED this 30th day of October, 2002.

22 Respectfully submitted by,

23 *Lori C. Teicher*

24 LORI C. TEICHER, ESQ.
Nevada Bar #6143
ROBERT L. LANGFORD & ASSOCIATES
616 S. 8th Street
Las Vegas, Nevada 89101

COUNTY CLERK

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1 POINTS AND AUTHORITIES

2 The Defendant, BRENDANNASBY was found guilty at trial of First Degree Murder
3 with use of a Deadly Weapon, and Conspiracy to Commit Murder and sentenced to two (2)
4 consecutive terms of life with parole eligibility and a consecutive forty-eight (48) to one
5 hundred twenty (120) months on November 29, 1999. His direct appeal to the Nevada
6 Supreme Court was affirmed and a remittur was issued on March 6, 2001. A proper person
7 habeas petition was filed January 30, 2002, and the undersigned counsel was appointed on
8 August 19, 2002

9 Considering the magnitude of the crime and issues involved in this case, it would be
10 far more efficient for a trained investigator to perform the necessary investigation rather
11 than counsel, Lori C. Teicher, Esq. Specifically, investigative services are needed to locate
12 and interview potential laywitnesses for the evidentiary hearing, as well as the service of
13 subpoenas in this matter.

14 Lori C. Teicher, Esq. has contacted Jim Thomas, and he has agreed to perform the
15 necessary investigative services at an hourly rate of \$30.00, not to exceed a total of One
16 Thousand Five Hundred Dollars (\$1,500.00), an entirely reasonable amount considering the
17 services needed.

18 Based on the foregoing, Defendant respectfully requests this Honorable Court to:

- 19 1. Order the appointment of Jim Thomas, as the investigator in the case at bar;
20 2. Authorize payment to the investigator not to exceed One Thousand Five
21 Hundred dollars (\$1,500.00).

22 DATED this 30th day of October, 2002.

23
24 LORI C. TEICHER
25 LORI C. TEICHER, ESQ.
26 Nevada Bar #6143
27 ROBERT L. LANGFORD & ASSOCIATES
28 616 S. 8th Street
Las Vegas, Nevada 89101
Attorney for Defendant Brendan Nasby

1 ORDR
Lori C. Teicher
2 State Bar #6143
ROBERT L. LANGFORD & ASSOCIATES
3 616 South 8th Street
Las Vegas, Nevada 89101
4 (702) 471-6535

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DISTRICT COURT
CLARK COUNTY, NEVADA

5
6
7 BRENDAN NASBY,

Appellant,

Case No. C154293

8 vs.

Dept. No. XVIII

9 STATE OF NEVADA,

Respondent.

10
11
12 ORDER

13 Based upon the Ex-Parte Motion for Appointment of Investigator filed by Lori C. Teicher,
14 Esq., on behalf of Defendant, BRENDAN NASBY, and good cause appearing therefore;

15 IT IS HEREBY ORDERED that Defendant's Ex-Parte Motion for Excess Investigator Fees
16 is granted appointing JIM THOMAS; IT IS FURTHER ORDERED that investigative services
17 shall not exceed One Thousand Five Hundred Dollars (\$1,500.00), which will be billed at Thirty
18 Dollars (\$30.00) per hour.

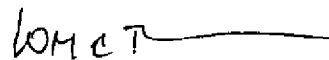
19 DATED this 5th day of October, 2002.

over

20
21 

22 DISTRICT COURT JUDGE

23 Respectfully submitted by:

24
25 

26 Lori C. Teicher, Esq.,
Nevada Bar #6143
27 ROBERT LANGFORD & ASSOCIATES
616 South Eighth Street
28 Las Vegas, Nevada 89101
(702) 471-6535

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1 Lori C. Teicher, Esq.
Nevada Bar No. 006143
2 ROBERT L. LANGFORD & ASSOCIATES
616 South 8th Street
3 Las Vegas, NV 89101
(702)471-6535
4 Attorney for Defendant Brendan Nasby

FILED
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Shirley B. Pagnone
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

8 BRENDAN NASBY,
9 Petitioner,
10 vs.
11 STATE OF NEVADA,
12 Respondent.

Case No. C154293
Dept. No. XVIII

14 **MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL PETITION**

15 Comes now Petitioner Brendan Nasby, by and through his counsel of record, and
16 respectfully requests a 90 day extension of time for the filing of Supplemental Petition For
17 Writ of Habeas Corpus (Post-conviction). This motion is based upon the attached
18 declaration of counsel.

19 Dated this 3rd day of December, 2002.

20
21
22 *Lori C. Teicher*
23 Lori C. Teicher
24 Nevada Bar No. 006143
25 ROBERT L. LANGFORD & ASSOCIATES
26 616 South 8th Street
27 Las Vegas, NV 89101
28 (702) 471-6535

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DATED this _____ day of December, 2002.

18 RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged
19 this _____ day of December, 2002.

By _____

FILED

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ORIGINAL
Shirley B. Paragines
CLERK

Lori C. Teicher, Esq.
Nevada Bar No. 006143
ROBERT L. LANGFORD & ASSOCIATES
616 South 8th Street
Las Vegas, NV 89101
(702)471-6535
Attorney for Defendant Brendan Nasby

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,	Case No.	C154293
Petitioner,	Dept. No.	XVIII
vs.		
STATE OF NEVADA,		
Respondent.		

STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the time allowed for Petitioner to file his Supplemental Petition shall be extended to February 20, 2003, a period of ninety days, that the time allowed for Respondent to file their Opposition to said Petition shall be extended to April 21, 2003,

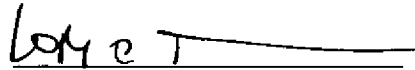
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1 a period of sixty days, and Petitioner's Reply to said Opposition to be filed May 21, 2003,

2 a period of thirty days, with a hearing date set thereafter for June 25 2003. ^{10 am.}

3 Dated this/ 8 day of December, 2002.

4
5 

6 Lori C. Teicher
7 State Bar #6143
8 ROBERT L. LANGFORD & ASSOCIATES
9 616 South 8th Street
10 Las Vegas, NV 89101
11 (702) 471-6535

12 

13 H. Leon Simon
14 Deputy District Attorney
15 CLARK COUNTY DISTRICT ATTORNEY
16 200 South 3rd Street
17 Las Vegas, NV 89101
18 (702) 455-4843

19 **ORDER**

20 **GOOD CAUSE APPEARING,**

21 **IT IS HEREBY ORDERED** that the above briefing schedule and hearing date be
22 followed in the aforementioned case.

23 

24 The Honorable Nancy M. Saitta
25
26

1 Lori C. Teicher, Esq.
2 Nevada Bar No. 006143
3 ROBERT L. LANGFORD & ASSOCIATES
4 616 South 8th Street
5 Las Vegas, NV 89101
6 (702)471-6535
7 Attorney for Defendant Brendan Nasby

OF NINA

2
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Shirley B. Paragimino
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

7 BRENDAN NASBY,

Petitioner,

Case No. C154293

8 vs.

Dept. No. XVIII

9 STATE OF NEVADA,

Respondent.

11
12 **STIPULATION AND ORDER**
13 **(Second Defense Request)**

14 It is hereby stipulated and agreed by and between the parties hereto, through their
15 respective counsel, that the time allowed for Petitioner to file his Supplemental Petition
16 shall be extended to April 21, 2003, a period of sixty days, that the time allowed for
17 Respondent to file their Opposition to said Petition shall be extended to June 20, 2003,

18 ///

19 ///

20 ///

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COUNTY CLERK

1 a period of sixty days, and Petitioner's Reply to said Opposition to be filed July 18, 2003,
2 a period of thirty days, with a hearing date set thereafter for _____.

3 Dated this 25 day of February, 2003.

4
5 Lori C. Teicher
6 Lori C. Teicher
7 State Bar #6143
8 ROBERT L. LANGFORD & ASSOCIATES
9 616 South 8th Street
10 Las Vegas, NV 89101
11 (702) 471-6535

12 H. Leon Simon
13 H. Leon Simon
14 Deputy District Attorney
15 CLARK COUNTY DISTRICT ATTORNEY
16 200 South 3rd Street
17 Las Vegas, NV 89101
18 (702) 455-4843

19 **ORDER**

20 **GOOD CAUSE APPEARING,**

21 **IT IS HEREBY ORDERED** that the above briefing schedule and revised hearing
22 date be followed in the aforementioned case, and that the hearing date presently set for
23 June 25, 2003, be vacated.

24 Nancy M. Saitta
25 The Honorable Nancy M. Saitta
26

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FILED

APR 8 3 52 PM '03

Shirley L. Langford
CLERK

Lori C. Teicher, Esq.
Nevada Bar No. 006143
ROBERT L. LANGFORD & ASSOCIATES
616 South 8th Street
Las Vegas, NV 89101
(702)471-6535
Attorney for Defendant Brendan Nasby

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,

Petitioner,

Case No. C154293

vs.

Dept. No. XVIII

STATE OF NEVADA,

Respondent.

SUBSTITUTION OF ATTORNEYS

ROBERT L. LANGFORD, ESQUIRE, does hereby agree to be substituted
in the place of LORI C. TEICHER, ESQ., as attorney of record for the Defendant,
BRENDAN NASBY, in the above-entitled matter.

DATED this 8 day of April, 2003.

ROBERT L. LANGFORD & ASSOCIATES

BY:

[Signature]
ROBERT L. LANGFORD, ESQUIRE
Nevada Bar #003988
616 South Eighth Street
Las Vegas, Nevada 89101

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COUNTY CLERK

LORI C. TEICHER, ESQ., Attorney of Record for the above-named Defendant, **BRENDAN NASBY**, consents to the substitution of **ROBERT L. LANGFORD, ESQ.**, for the Defendant, **BRENDAN NASBY**, in the above-entitled matter in place and stead. She is leaving the firm to accept a position at the Federal Public Defender's Office.

DATED this 4th day of April, 2003.

ROBERT L. LANGFORD & ASSOCIATES

BY: 094 E 7
LORI C. TEICHER, ESQ.
Nevada Bar #006143
616 South Eighth Street
Las Vegas, Nevada 89101

1 Lori C. Teicher, Esq.
Nevada Bar #6143
2 ROBERT L. LANGFORD & ASSOCIATES
616 South 8th Street
3 Las Vegas, Nevada 89101
(702) 471-6535

FILED

MAY 29 4 10 PM '03

DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK

6 BRENDAN J. NASBY,

Petitioner,

-vs-

CASE NO. C154293

8 JAMES SCHOMIG, WARDEN,
9 HIGH DESERT STATE PRISON;
10 JACKIE CRAWFORD, DIRECTOR
OF NEVADA STATE PRISON;
THE STATE OF NEVADA

Respondents

DEPT NO. XVIII

ORDER AUTHORIZING FIRST INTERIM PAYMENT

13 Having reviewed the Claim for Compensation and Fees filed by Lori C. Teicher,
14 attorney for Brendan Nasby and good cause appearing:

15 **IT IS ORDERED** that payment of \$1,307.26 be made to Lori C. Teicher. This sum
16 represents the \$1,106.25 in attorney's costs and \$201.01 in fees which have been incurred by
17 Ms. Teicher during the representation of Brendan Nasby for his post-conviction petition for
18 writ of habeas corpus proceeding. It is recognized that attorney Robert L. Langford, Esq. has
19 substituted as counsel and will be billing subsequently to this first interim payment for Mr.
20 Nasby, and that this is Ms. Teicher's first and final payment for her representation of this case.

21 Dated this 9 day of May, 2003.

Nancy Saitta

District Judge Nancy Saitta

26 By:

Lori C. Teicher
Lori C. Teicher

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MAY 29 2003

Brendan Nasby
I.D. NO. 63618
P.O. Box 650
Indian Springs, NV 89018
Petitioner in Pro Se

FILED

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Shirley E. Langina
CLERK

District Court
Clark County, Nevada

Brendan Nasby,
Petitioner

Case No. C154293
Dept No. ~~III~~ 18
Docket E

-Vs.-

James M. Schomig, et. Al.,
Respondents

Motion For Substitute Counsel

Comes now Brendan Nasby, Petitioner in propria
persona with this instant motion for substitute
counsel and respectfully moves this court for an order
granting said motion. This motion is based upon all
papers and pleadings on file herein, and the following
Points and Authorities.

2/2/04
9:00 AM

Dated this 13th day January, 2004

By: *[Signature]*
Brendan Nasby #63618
Petitioner in Pro SE

(54)

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COUNTY CLERK

Memorandum

Points and Authorities

Petitioner brings this motion on the basis of communications between his appointed counsel and his family.

While Petitioner would certainly prefer his appointed counsel to none at all, it appears on credible information that his appointed counsel lacks the time and interest needed to effectively litigate Petitioner's case.

Inte Alia, counsel has related a complete unfamiliarity with the legal theories in which Petitioner's post-conviction petition is based on. Furthermore, he has also displayed an unwillingness to do the necessary research to become acquainted with them. Moreover and most importantly Counsel has shown an extreme lack of interest in Petitioner's petition. Counsel has not responded to Petitioner's correspondence, telephone calls or request for meeting. Petitioner has never spoken with counsel since his court appointment in April 2003. On that basis and in the interest of fairness, Petitioner respectfully requests that this court appoint him another attorney, preferably David Michael Schieck.

Conclusion

This is not a Motion to Dismiss Counsel, but an effort to obtain counsel with knowledge of the claims made in Petitioner's Post-Conviction Petition. Petitioner is aware that he has no right to counsel in Post-Conviction proceedings. If he must, Petitioner will proceed with his current attorney. Nevertheless, Petitioner prays this honorable Court will consider the contents of this motion and provide substitute counsel. Based on research conducted by Petitioner's family, Petitioner request that the court appoint, as Petitioner's new counsel, David Michael Schieck. Petitioner's life is hanging in the balance and Petitioner does not want to lose it to a disinterested and dispassionate attorney.

Dated this 13th day of January, 2004

By: 

Brendan Nasby #63618


Petitioner in Pro Se

Certificate of Service

I hereby certify that I mailed a copy of the foregoing motion by placing it in the hand of a guard employed at N.D.O.P. for mailing to the Respondents at their last known address as follows;

David Roger
District Attorney
200 South 3rd Street
Las Vegas, Nevada 89155

Dated this 13th day of January 2004


Declarant

Brendan Nasby #63618

P.O.Box 650

Indian Springs, NV 89018

H.D.S.P.



Shirley B. Parraguirre

County Clerk

200 S. Third Street

P.O.Box 551601

Las Vegas, NV 89155-1601

89155+1601



ORIGINAL

3

1 **RSPN**
 2 **DAVID ROGER**
 3 **Clark County District Attorney**
 4 **Nevada Bar #002781**
 5 **CHRIS J. OWENS**
 6 **Chief Deputy District Attorney**
 7 **Nevada Bar #001190**
 8 **200 South Third Street**
 9 **Las Vegas, Nevada 89155-2211**
 10 **(702) 455-4711**
 11 **Attorney for Plaintiff**

Shirley B. Pangione

JAN 28 9 58 AM '04

FILED

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690

Defendant.

CASE NO: C154293

DEPT NO: XVIII

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBSTITUTION OF
 ATTORNEYS

DATE OF HEARING: 2/2/04
 TIME OF HEARING: 9:00 a.m.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
 CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
 and Authorities in Opposition to Defendant's State's Response To Defendant's Motion For
 Substitution Of Attorneys.

This response is made and based upon all the papers and pleadings on file herein, the
 attached points and authorities in support hereof, and oral argument at the time of hearing, if
 deemed necessary by this Honorable Court.

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

Brendan Nasby, hereinafter Defendant, was charged by an Amended Criminal

COUNTY CLERK

JAN 28 2004

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1 Complaint, filed on August 27, 1998, with Conspiracy To Commit Murder and Murder With
2 Use Of A Deadly Weapon. An Information, filed on November 9, 1998, charged Defendant
3 with Conspiracy To Commit Murder and Murder With The Use Of A Deadly Weapon.

4 A jury found Defendant guilty of Conspiracy To Commit Murder and First Degree
5 Murder With Use Of A Deadly Weapon. On July 29, 1999, Defendant was sentenced to a
6 maximum of one hundred twenty (120) months, with a minimum parole eligibility of forty-
7 eight (48) months, in the Nevada Department of Prisons on the Conspiracy To Commit
8 Murder count. On the First Degree Murder count Defendant was sentenced to a consecutive
9 term of Life with the possibility of parole, with a consecutive term of Life with the
10 possibility of parole for the deadly weapon enhancement. A Judgment Of Conviction was
11 filed on December 2, 1999.

12 Defendant appealed his conviction to the Nevada Supreme Court. Defendant's
13 conviction was affirmed on February 7, 2001. A Remittitur issued on March 6, 2001.

14 Counsel for the direct appeal, Frederick Santacroce, was relieved of representing the
15 Defendant after the remittitur was issued. On August 19, 2002, Lori Teicher was appointed
16 and a briefing schedule was set.

17 ARGUMENT

18 I

19 DEFENDANT NOT ENTITLED TO COUNSEL OF HIS CHOICE

20 Defendant is not entitled to counsel of his own choosing.

21 In *Thomas v. State*, this court held that a defendant's right to
22 substitution of counsel is limited:

23 "A defendant is not entitled to reject his court-appointed
24 counsel and request substitution of other counsel at public
25 expense absent a showing of adequate cause for such a change."
26 *Junior v. State*, 91 Nev. 439, 441, 537 P.2d 1204 (1975). The
27 decision whether friction between counsel and client justifies
28 appointment of new counsel is entrusted to the sound discretion
of the trial court and should not be disturbed on appeal in the
absence of a clear showing of abuse.

Gallego v. State, 117 Nev. 348, 23 P.3d 227, 237 -238 (2001) (footnotes omitted).

Further, the Gallego court held that:

1 Thomas is consistent with other case law on this topic. An
2 indigent defendant "has a right to substitution only upon
3 establishing 'good cause, such as a conflict of interest, a complete
4 breakdown of communication, or an irreconcilable conflict
5 which [could] lead ... to an apparently unjust verdict.' The mere
6 loss of confidence in his appointed counsel does not establish
7 'good cause.' " Good cause is not "determined solely according
8 to the subjective standard of what the defendant perceives. While
9 loss of trust is certainly a factor in assessing good cause, a
10 defendant seeking substitution of assigned counsel must
11 nevertheless afford the court with legitimate reasons for the lack
12 of confidence." "Attorney-client conflicts justify the grant of a
13 substitution motion only when counsel and defendant are so at
14 odds as to prevent presentation of an adequate defense."

15 Gallego v. State, 117 Nev. 348, 23 P.3d 227, 237 -238 (2001).

16 Defendant has failed to allege any facts that would lead to an appropriate situation
17 requiring the mandatory removal of counsel and appointment of new counsel. "A defendant
18 is not entitled to reject his court-appointed counsel and request substitution of other counsel
19 at public expense absent a showing of adequate cause for such a change." Junior v. State, 91
20 Nev. 439, 441-442, 537 P.2d 1204, 1206 (1975).

21 Defendant complains that his current court-appointed counsel is unfamiliar with the
22 legal theories the Defendant's post-conviction petition is based on. However, the instant
23 motion is silent in giving details that support such an accusation. Finally, Defendant is
24 without a legal basis to have a particular attorney appointed to represent him.


25 CONCLUSION

26 For the reasons set forth above, the instant motion should be denied.

27 DATED this 27 day of January, 2004.

28 Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY 
CHRIS J. OWENS
Chief Deputy District Attorney
Nevada Bar #001190

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 27 day of January, 2004, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BRENDAN NASBY #63618
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS NV 89018

BY M. B.
Secretary for the District Attorney's Office

/mb

ORIGINAL

9

1 NOT
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 003811
4 PATTI & SGRO, P.C.
300 East Charleston Blvd., Suite 105
Las Vegas, Nevada 89104
(702)385-9595

FILED

FEB 4 4 52 PM '04

Shirley A. [Signature]
CLERK

5 Attorney for Defendant

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

Case No.: C154293

Dept No.: XVIII

12 BRENDAN NASBY,)

13)
14 Defendant)
15)

16 NOTICE OF CONFIRMATION OF APPOINTMENT OF COUNSEL

17 PLEASE TAKE NOTICE that ANTHONY P. SGRO, ESQ., of the law firm of PATTI
18 & SGRO, P.C., has accepted his appointment by this Court as counsel for Defendant, BRENDAN
19 NASBY, in the above-captioned matter.
20

21 DATED this 4 day of February, 2004.

22 *[Signature]*
23 DISTRICT COURT JUDGE

24 Respectfully Submitted by:

25 *[Signature]*
26
27 ANTHONY P. SGRO, ESQ.
28 Nevada Bar No. 003811
PATTI & SGRO, P.C.
300 East Charleston Blvd., Suite 105
Las Vegas, Nevada 89104

RECEIVED

FEB 11 2004

CLERK

ORIGINAL

1 **ORDR**

2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 003811
4 PATTI & SGRO, P.C.
300 East Charleston Blvd., Suite 105
Las Vegas, Nevada 89104
(702)385-9595

5 Attorney for Defendant

FILED

FEB 4 4 52 PM '04

Shirley A. Longenecker
CLERK

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

Case No.: C154293

Dept No.: XVIII

12 BRENDAN NASBY,)

13)
14 Defendant)
15)

16 **ORDER APPOINTING COUNSEL**

17 IT IS HEREBY ORDERED that ANTHONY P. SGRO, ESQ., of the law firm of PATTI &
18 SGRO, P.C., is appointed by this Court as counsel for Defendant BRENDAN NASBY, in the
19 above-captioned matter.
20

21 DATED this 24 day of February, 2004.

Ann Saitta

DISTRICT COURT JUDGE

22
23
24 Respectfully Submitted by:

25
26
27 *[Signature]*
28 ANTHONY P. SGRO, ESQ.
Nevada Bar No. 003811
PATTI & SGRO, LTD.
300 East Charleston Blvd., Suite 105
Las Vegas, Nevada 89104

RECEIVED

FEB 11 4 2004

GOULDER CLERK

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff

vs.

DESKIN, Jerimiah John

Defendant

FILED

2004 NOV -2 P 1:27

Amy Wright
CLERK

PETITION

To the Honorable Judge Nancy M. Saitta, of the Eighth
Judicial District Court of the State of Nevada, in and for the County of Clark, the Undersigned
Chief Probation Officer for the State of Nevada now reports as follows concerning the above Defendant: Said Defendant was
placed on probation by order of this Court for a term of 5 years, said Order being dated the 28th
day of October, 1999. Said Probationer has satisfactorily completed all of the conditions of
probation, while under supervision in the State of Nevada.

THEREFORE, the undersigned recommends that said Probationer be Honorably discharged and released from further
supervision.

Dated this _____ day of _____, 20__

Amy K. Jackson
for: Amy Wright, Chief Parole and Probation Officer

ORDER HONORABLY DISCHARGING PROBATIONER

In accordance with NRS 176A.850

With Restoration of Civil Rights

In this cause it appearing that the above-named Defendant was heretofore placed on probation under the authority of the
Chief Parole and Probation Officer of the State of Nevada, and it further appearing from the petition of said Probation Officer
that the period of such probation expired on October 28, 2004.

IT IS HEREBY ORDERED that said Probationer be honorably discharged from said probation.

IT IS FURTHER ORDERED that as of the date this order is signed by the Court, said probationer is restored to his civil rights to vote
and serve as a juror in a civil action;

IT IS FURTHER ORDERED that FOUR YEARS from the date this order is signed by the Court, said probationer will be restored his
civil rights to hold office;

IT IS FURTHER ORDERED that SIX YEARS from the date this order is signed by the Court, said probationer will be restored his
civil rights to serve as a juror in a criminal action.

Nancy M. Saitta

District Judge

COUNTY CLERK
NOV 12 2004
Dated this 25th day of October, 2004

ORIGINAL

RECEIVED IN
CLERK'S BOX

2004 NOV -3 P 4:41

Shirley B. Paragines

1 ANTHONY P. SGRO, ESQ.
2 Nevada Bar No. 003811
3 PATTI & SGRO, P.C.
4 300 East Charleston Blvd., Suite 105
5 Las Vegas, Nevada 89104
6 (702)385-9595
7 Attorney for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 -vs-)

14 BRENDAN NASBY,)

15 Defendant)

Case No.: C154293

Dept No.: XVIII

16
17
18 AFFIDAVIT IN SUPPORT OF EX PARTE MOTION FOR EXTENSION
19 OF TIME TO FILE POST CONVICTION
MEMORANDUM OF POINTS AND AUTHORITIES

20 STATE OF NEVADA)

21 COUNTY OF CLARK)

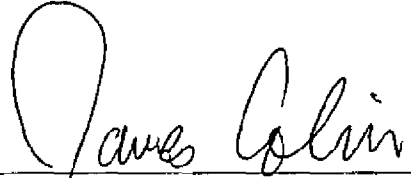
22 I, James Colin, Esq., being first duly sworn deposes and states as follows:

23 I. I am an attorney at the law firm of Patti & Sgro. I have personal knowledge of the
24 facts set forth herein and I am competent to testify thereto and could and would so testify under
25 oath of called to do so.
26

27 ///

1 2. My office called the District Attorney's office twice in an effort to stipulate to an
2 extension of time for two weeks until November 17, 2004, to file a post conviction memorandum
3 of points and authorities. I have not received any response from the District Attorney's office.
4

5 FURTHER YOUR AFFIANT SAYETH NAUGHT

6
7 
8 JAMES A. COLIN, ESQ.
9

10 SUBSCRIBED and SWORN before me
11 this 3 day of November, 2004.

12 
13 NOTARY PUBLIC in and for said
14 County of State
15
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ORIGINAL

RECEIVED IN
JULY BOX

2004 NOV -3 P 4: 41

Anthony P. Sgro

1 **EXPT**
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 003811
4 PATTI & SGRO, P.C.
5 300 East Charleston Blvd., Suite 105
6 Las Vegas, Nevada 89104
7 (702)385-9595
8 Attorney for Defendant

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 BRENDAN NASBY,)

13 Defendant)
14)
15)
16)

Case No.: C154293

Dept No.: XVIII

17 **EX PARTE MOTION FOR EXTENSION OF TIME TO FILE POST CONVICTION**

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 COMES NOW, the Defendant Brendan Nasby, by and through counsel Patti & Sgro,
20 respectfully moves this Court for an ex-parte order for an extension of time allowing until
21 November 17, 2004, for the filing of the post conviction memorandum of points and authorities.
22

23 The counsel for Defendant attempted to contact the District Attorneys Office in an
24

25 ///

26 ///

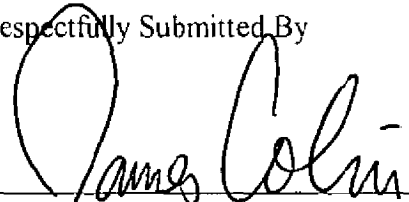
27 ///

28 ///

1 attempt to obtain a Stipulation. However, the District Attorney did not contact Defendant's
2 counsel's office in response.

3 DATED this 3 day of November, 2004.
4

5 Respectfully Submitted By

6
7 
8 ANTHONY P. SGRO, ESQ.
9 Nevada Bar No. 003811
10 PATTI & SGRO, P.C.
11 300 E. Charleston Blvd., Suite 105
12 Las Vegas, Nevada 89104
13 (702) 385-9595
14
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19
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ORIGINAL

10

ORD

ANTHONY P. SGRO, ESQ.

Nevada Bar No. 003811

PATTI & SGRO, P.C.

300 East Charleston Blvd., Suite 105

Las Vegas, Nevada 89104

(702)385-9595

Attorney for Defendant

FILED

2004 NOV -5 P 12:09

Shirley R. Hargrave
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN NASBY,

Defendant.

Case No: C154293

Dept No. XVIII

ORDER GRANTING EX PARTE MOTION FOR EXTENSION OF TIME TO FILE

POST CONVICTION MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW, based upon the Motion of the Counsel for Defense and the Affidavit of Counsel, and good cause appearing, this Court hereby:

ORDERS, ADJUDGES, AND DECREES:

1. That an extension of time is granted for Defendant to file his post conviction memorandum of points and authorities until November 17, 2004.

DATED this ____ day of November, 2004.

[Signature]
DISTRICT COURT JUDGE

Respectfully Submitted By

ANTHONY P. SGRO, ESQ.

Nevada Bar No. 003811

300 E. Charleston Blvd., Suite 105

Las Vegas, Nevada 89104

COUNTY CLERK

NOV 15 2004

RECEIVED

ORIGINAL

2

STIP

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 003811
PATTI & SGRO, P.C.
300 East Charleston Blvd., Suite 105
Las Vegas, Nevada 89104
(702)385-9595
Attorney for Defendant

FILED

2004 NOV 10 P 2:32

Shirley B. Paragimmes
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN NASBY,

Defendant

Case No.: C154293

Dept No.: XVIII

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between ANTHONY P. SGRO, ESQ., counsel for Defendant, BRENDAN NASBY, and H. LEON SIMON, ESQ., Deputy District Attorney, that the Defendant's Brief in the above-captioned matter, may now be filed and served on or before November 17, 2004. State's Reply may now be filed and served on the Defendant's on or before January 17, 2005. Defendant's Reply may now be filed and served on or before January 31, 2005.

1522

RECEIVED
NOV 10 2004
COUNTY CLERK


1 IT IS FURTHER STIPULATED AND AGREED that the appearance in this case,
2 currently scheduled for January 10, 2005, at 9:00 a.m. is to be vacated. The new date shall be re-set
3 for February 9, 2005 at 9:00 am/pm.
4

5 IT IS FURTHER STIPULATED AND AGREED that this delay is for good cause because
6 Defendant's counsel, ANTHONY P. SGRO, ESQ., needs the additional time to complete the legal
7 and factual research necessary to competently provide effective representation. This has not yet been
8 accomplished because the Public Defender's office file was incomplete concerning the appellate
9 record.
10

11 DATED this 4 day of November, 2004.
12

13 PATTI & SGRO

DISTRICT ATTORNEY'S OFFICE

14
15 
16 ANTHONY P. SGRO, ESQ.
17 Nevada Bar. No. 003811
18 300 E. Charleston Blvd., Suite 105
19 Las Vegas, NV 89104

20
21 
22 H. LEON SIMON, ESQ.
23 Nevada Bar. No. 000411
24 Deputy District Attorney
25 200 S. Third Street
26 Las Vegas, NV 89155

27 IT IS SO ORDERED.
28

29 DATED this 10th day of November, 2004.

30
31 

DISTRICT COURT JUDGE

32 Respectfully Submitted by:

ORIGINAL

1 ANTHONY P. SGRO, ESQ.

2 Nevada Bar No. 003811

3 PATTI & SGRO, P.C.

4 300 East Charleston Blvd., Suite 105

5 Las Vegas, Nevada 89104

6 (702)385-9595

7 Attorney for Defendant

FILED AFTER HOURS

NOV 17 2004

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BRENDAN NASBY,

13 Defendant

Case No.: C154293

Dept No.: XVIII

14
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17
18 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
19
20 PETITIONER'S POST CONVICTION RELIEF
21
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1
2
3 **STATEMENT OF THE CASE**

4 On August 11, 1998, Brendan James Nasby (hereinafter referred to as "Nasby"), was
5 charged by Criminal Complaint with Conspiracy to Commit Murder and Murder with Use of
6 Deadly Weapon (Open Murder). After a trial by jury in the Eighth Judicial District Court, which
7 began on October 13, 1999, Nasby was found guilty of all counts. Subsequently, a penalty
8 hearing was held. The Court imposed a maximum term of 120 months with a minimum of 48
9 months for Count I Conspiracy to Commit Murder and one life sentence with the possibility of
10 parole for Count II Murder with the use of a Deadly Weapon, plus an equal and consecutive term
11 of life with the possibility for use of a deadly weapon. The Judgment of Conviction was filed on
12 December 2, 1999.
13

14 Nasby appealed to the Nevada Supreme Court which upheld his sentence and conviction
15 in an affirming opinion filed on February 7, 2001.
16

17
18 **STATEMENT OF FACTS**

19 **A. Overview**

20 On the night of July 16, 1998, around 10:30 p.m., appellant Nasby, Jeremiah Deskin,
21 Tommie Burnside, and Jotee Burnside, all members of the LA Crazy Rider's gang, were at the
22 Appellant's home. Jeremiah Deskin, Jotee Burnside, and Tommie Burnside drove to Michael
23 Beasley's home at approximately 10:00 p.m. Mr. Michael Beasley, (hereinafter Beasley) also a
24 member of the LA Crazy Riders, would ultimately be shot and killed in the desert that night.
25 Deskin and the Burnside brothers found Beasley at his home with his six month-old baby. Deskin
26
27
28

1 and the Burnside Brothers lured Beasley to go for a ride under the pretense that they would drive
2 into the desert to shoot a new gun and smoke marijuana. Beasley asked his aunt to watch the
3 baby, while he went with his friends.
4

5 Mr. Deskin testified tentatively that in June of 1998, some conversation took place in
6 which Nasby asked the gang members whether Beasley should be killed. This conversation
7 allegedly took place approximately one month prior to Mr. Beasley's death. When directly
8 asked whether he had a say about Beasley being killed, Deskin stated: "No, I was never asked."
9 (T.T., Vol. III., pages 78 & 79).
10

11 Deskin testified that after picking up Beasley, the four men drove to Nasby's home and
12 picked him up. Nasby was picked up by the group and they drove to the desert. (T.T. Vol. III, p.
13 94, lines 8-11) Once the group arrived at the desert, Deskin testified that he saw Nasby shoot
14 Beasley. (T.T. Vol. III., p. 101, lines 19-20). Then Deskin, the Burnside Brothers, and Nasby
15 drove back to Nasby's house. (T.T. Vol. III, p. 109, lines 2 - 5). Nasby has always maintained
16 that he was not in the desert and that he was not involved in the murder.
17

18 Police interviewed both Jotee and Tommie Burnside, who told the police the shooter was
19 Damien Von Lewis aka "Sugar Bear." Mr. Von Lewis was also a member of the LA Crazy
20 Riders. (T.T., p. 109, line 3, p. 110, line 17 and p. 128, lines 12-18). After negotiating deals with
21 the State, the Burnside Brothers changed their statements and implicated Nasby in the shooting.
22

23 On or about August 4, 1998, the police executed a search warrant on the residence of
24 Nasby. (T.T. Vol. IV., p. 148, lines 14-21) Mr. Nasby was arrested at that time. Mr. Nasby
25 voluntarily showed Detective Buczek a nine millimeter pistol. (T.T. Vol. IV., p. 153, lines 9-16)
26 Nasby told the officers that he had purchased the weapon after the death of Beasley from an
27
28

1 individual named "Sugar Bear." (T.T. Vol. IV., p. 154, lines 19-21). In fact, Detective Buczek
2 stated that Nasby was cooperative with him and not disruptive or violent in any way. (T.T. Vol.
3 IV, page 154, lines 3-5).

4 The weapon was later identified as the murder weapon. (T.T., Vol. V., p. 29, lines 8-18).
5 Nasby's fingerprints were not found on the murder weapon. (T.T. Vol. IV, p. 97, lines 2-15).
6 At the crime scene, in addition to bullet casings, the crime scene analyst impounded three Winston
7 cigarette butts and photographed two footwear impressions. (T.T. Vol. V., p. 244, lines 1-3; p.
8 245, lines 18-22 and p. 246, lines 12-20).
9

10 When the police executed the search warrant at the Nasby residence, the crime scene
11 analyst impounded and photographed approximately seven pairs of shoes. (T.T. Vol. IV., p. 74,
12 lines 10-20). The shoes seized from Nasby's residence did not match the footwear impressions at
13 the scene of the murder. (T.T. Vol. IV, p. 97, lines 16-20).
14

15 The crime scene analyst also retrieved multiple cigarette butts from the Nasby residence.
16 They were Kool, Benson & Hedges and a generic brand. No Winston cigarettes were found in
17 the Nasby residence. (T.T. Vol. IV., p. 75, line 12; p. 76, line 1).
18

19 **B. The Trial**

20 **1. State's Case**

21 On October 11, 1999 through October 18, 1999 the Defendant's jury trial took place.
22 Seventeen witnesses were called by the State. The following summarizes the evidence put forth by
23 the State to support its case-in-chief:
24

- 25 • James Carroll, Sergeant for the Las Vegas Metro Police Department,
26 testified that he arrived at the scene in his patrol car and found Mr. Beasley
27

1 dead. He sealed off the area and called for the detectives.(T.T. Vol. III, p.
2 10, lines 16-22).

- 3 • Kelly Neil, Crime Scene Analyst for the Las Vegas Metro Police
4 Department, testified that he found shiny cartridges and three Winston
5 Cigarette butts that appeared new. He also found the partial footwear
6 impressions. He photographed the scene and the victim. There were no
7 finger prints found on the shell casings. (T.T., Vol. III, page 57, line 24,
8 page 58,. Line 1).
- 9 • Jerimiah Deskin, a co-defendant in the matter, testified that there was a
10 meeting in June of 1998, in which Nasby asked the members of the gang
11 whether or not Beasley should be killed. (T.T. Vol. III, page 77, lines 3-7).
12 Deskin testified that on July 16, 1998, he was asked by Nasby to pick up
13 Beasley "to shoot him." (T.T. Vol. III, page 80, lines 22-24, and page 81,
14 lines 1-2). Deskin testified that Nasby would forgive a \$100 debt if Deskin
15 picked up Beasley. (T.T. Vol. III, page 82, lines 10-15). Deskin testified
16 that they were going to tell Beasley that they would go into the desert to
17 smoke weed and shoot off Beasley's gun. (T.T. Vol. III, page 84, lines 8-
18 10). Deskin testified that he saw Beasley's son, and that Beasley appeared
19 proud of his baby son just before Deskin took him to the car. (T.T. Vol.
20 III, page 88, lines 12-14). Deskin testified that he witnessed Nasby shoot
21 Beasley three times. (T.T. Vol. III, pages 101-106). Deskin testified that he
22 fled to California after the murder.
23
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- (b)
- Dr. Robert Jordan, a retired forensic pathologist who was the Clark County Coroner/Medical Examiner on July 18, 1998, testified that he conducted the autopsy and that Michael Beasley died from gunshot wounds to the head and chest. (TT, Vol III, page 170, lines 9-10).
 - Sheree Norman, Senior Crime Scene Analyst for the Las Vegas Metro Police Department, testified as to her documentation of the autopsy. She testified that she removed a projectile from between the victims skin and the shirt. (TT, Vol. III, page 214, lines 10-13).
 - Jomeka Beavers, victim Michael Beasley's aunt, testified that on July 16, 1998, she was living with her mother, step-father, and Michael Beasley. She testified that on July 16, 1998, she answered the phone and talked to a male, who requested to speak with Beasley. Beasley then asked his aunt to watch the baby for about 30 minutes while he went out with his friends. She testified that she saw Mr. Deskin pick up Beasley that evening.
 - Tanesha Banks, former girl friend of the victim and the mother of the victim's child testified that Michael Beasley came to pick up his son for the child's first over night visit with his father on July 16, 1998. (T.T. Vol. IV., page 9, lines,16-18). She testified that she was on a three-way phone call with her friend Crystal and Nasby. Nasby told her that Beasley was out of the L.A. Crazy Rider's gang. She also testified that she was beaten up by a Brittny Adams on August 1, 1998, and that Ms. Adams told her to keep her mouth shut about Nasby. (T.T. Vol. IV, page 22, lines 1-22).

- 1 • Crystal Bradley was a member of the LA. Crazy Riders gang. She testified
2 that on July 17, 1998, Nasby told her over the phone that he had killed
3 Beasley because he was taking his clout. (T.T. Vol. IV, page 43, lines 4-8).
4 She further testified that she called Tanesha and told her what Nasby had
5 just relayed over the phone. (T.T. Vol IV, page 48, lines 5-10).
6
- 7 • Randall McPhail, crime scene analyst with the Las Vegas Metro Police
8 Department, testified that he impounded a Browning style Ingles nine
9 millimeter semi-automatic handgun and two empty magazines. He also
10 impounded seven pairs of shoes from the room and three different brands
11 of cigarettes; Kool, Benson & Hedges, and a no-name brand. He testified
12 that no Winston brand cigarettes were found. (T.T. Vol IV. Page 74, lines
13 15-23, page 75, lines 14-24). He also testified that no prints were
14 recovered from the firearm and that there was no match made from the
15 seven pairs of shoes to the footwear impressions at the scene. (T.T., Vol.
16 IV, page 97, lines 1-19).
17
- 18 • Fred Boyd, latent print examiner of the Las Vegas Metro Police
19 Department, testified that he found no prints on the gun or on the
20 magazine. (T.T. Vol. IV, page 116, lines 23-24, page 117, lines 1-7). He
21 also testified that the seven shoes did not match the footprints at the scene.
22 Further, no other shoes were sought for testing, including all of the other
23 co-defendants' shoes. (T.T. Vol. IV, page 136, lines 1-24).
24
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- 1 • James Buczek, a homicide detective with the Las Vegas Metro Police
2 Department, arrested Nasby and testified that Nasby told him where the
3 gun was in his home. (T.T., Vol. IV, page 153, lines 7-11). Nasby told the
4 officer that he had purchased the gun following Beasley's death from Sugar
5 Bear. (T.T. Vol. IV, page 154, lines 19-21). He testified that DNA was run
6 on the Winston Cigarettes that were recovered at the scene and that there
7 was NO match to Tommie Burnside, Jotee Burnside, Brendan Nabsy,
8 Jeremiah Deskin or the victim Michael Beasley. (T.T. Vol. IV, page 161,
9 lines 1-12).
- 10 • Torrey Johnson, a criminalist who worked in the forensic laboratory for the
11 Las Vegas Metro Police Department, testified that he worked in the
12 firearm detail. Mr. Johnson testified that he could not say for sure that the
13 casings were fired in the specific .22 caliber handgun that was retrieved
14 from Nasby's home. However, his testimony was that the bullets from the
15 victim's body were fired by the gun. (T.T. Vol V, pages 71, lines 21 & 22,
16 page 72, Lines 1-2).
- 17 • Tommie Burnside, a co-defendant, testified that his brother Jotee, Nasby,
18 the victim, Deskin, and himself drove to the mountains. He testified that
19 Beasley was shot and that he, his brother, and Deskin did not shoot
20 Beasley. He also testified that on August 4, 1998, he gave a prior
21 inconsistent statement implicating Sugar Bear as the shooter and as the
22
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1 person who planned to kill Beasley. (T.T. Vol. V, page 111, lines 12-14)
2 (T.T., Vol. V, page 110, lines 7-17).

- 3 • Jotee Burnside, a Co-defendant, testified that he traveled with his brother
4 Tommie, and Deskin, to pick up Beasley at his home. (T.T. Vol V, page
5 121, lines 15-18) He testified that the five of them, Nasby, him, his brother,
6 Deskin, and the victim traveled to the desert. (T.T. Vol. V, page 122, lines
7 10-12). He testified that he had given another version of the story to the
8 police on August 4, 1998, in which he implicated Sugar Bear. He received
9 a 12-30 month sentence for his involvement and had received parole for his
10 participation in the conspiracy to commit murder. (T.T. Vol V, page 139,
11 lines 9-18).

- 14 • Brittney Adams, a member of the L.A. Crazy Riders testified that she was
15 very good friends with the victim Beasley and that they would beat up
16 people for each other. (T.T. Vol. V, page 152, lines 3-6). She also
17 testified that Nasby told her that Sugar Bear killed Beasley with the
18 assistance of Chrystal and Tanesha. (T.T. Vol. V, page 153, lines 21-23).
19 She testified that Nasby told her that Sugar Bear, Tanesha, and Chrystal
20 went out in to the desert with Beasley and killed him and that Tanesha was
21 blaming Nasby. (T.T. Vol V, page 155, lines 1-14; and page 156, lines 1-
22 4). She testified that upon Nasby's insistence, she went to Tanesha's house
23 and beat her up. She also admitted lying to the police about the story
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1 Nasby told her and pretending that it was her that directly received the
2 information. (T.T. Vol. V, page 162, lines 18-20).

- 3 • John R. Holmes, an inmate from the Clark County Detention Center, who
4 was arrested for an unrelated robbery with the use of a deadly weapon,
5 testified that he spoke with Nasby while incarcerated, and Nasby admitted
6 that he killed Beasley. (T.T. Vol. V, page 212 lines, 21-23).
- 8 • Thomas Thowsen, a police officer with the Las Vegas Metro Police
9 Department homicide section, testified that he was in charge of the crime
10 scene investigation. As the investigation unfolded, Metro received a call
11 from Tanesha Banks who told the police that Nasby was threatening her
12 not to testify. Mr. Thowsen examined Tanesha's caller ID and identified
13 that the call came from CCDC from the telephone banks right next to
14 where Mr. Nasby was housed. (T.T. Vol. V, page 258, lines 1-10).

17 **2. Defense Case**

18 Nasby's defense centered on his assertion that he was not present at the time of the
19 murder. His defense focused on the fact that many witnesses had implicated Sugar Bear for the
20 murder, then each one later changed their stories to implicate Brendan Nasby. The co-defendants
21 all received favorable charging and sentencing in exchange for their testimony against Nasby. The
22 only witness who did not change their story was Deskin. Deskin fled to California immediately
23 following the murder. He implicated Nasby when he was arrested for murder.

25 Nasby had intended to call his former girl friend, Colleen, who is also the mother of his
26 child. The prosecution showed Colleen a negative letter that was allegedly written by Nasby.

1 Following this interference by the prosecution, Colleen never testified. To Nasby's surprise, his
2 counsel called no witnesses at the time of trial. This was decided unilaterally by his defense
3 counsel. Nasby had also subpoenaed Crystal Sobrian, a potential alibi witness. Please see the
4 affidavit of Crystal Sobrian attached hereto.
5

6 3. The Verdict

7 The Jury ultimately concluded Defendant Nasby was guilty of Conspiracy to Commit
8 Murder, and First Degree Murder with the Use of Deadly Weapon.
9

10 4. Penalty Hearing

11 At the subsequent penalty hearing, which began on November 29, 1999, the State
12 presented the pre-sentence report of Nasby, which showed that he had no prior felony or
13 misdemeanor convictions.

14 The Court imposed a sentence of 48 to 120 months for the Conspiracy to Commit Murder
15 and a sentence of two consecutive terms of life with the possibility of parole for the First Degree
16 Murder With Use of A Deadly Weapon Count.
17

18 5. Direct Appeal

19 Nasby appealed his conviction to the Nevada Supreme Court. On February 7, 2001, the
20 court issued its Order of Affirmance. Appellant Nasby now has filed a Petition for Writ of Habeas
21 Corpus and a Supplemental Points and Authorities to the Writ of Habeas Corpus before this
22 District Court.
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ARGUMENT

I. THE CUMULATIVE EFFECT OF PROSECUTORIAL MISCONDUCT VIOLATED PETITIONER'S RIGHTS UNDER THE FOURTH, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 8 OF THE NEVADA CONSTITUTION

Prosecutorial misconduct occurs when a prosecutor used improper methods calculated to produce a wrongful conviction. *Berger v. U.S.* 295 U.S. 78, 88 (1935).

In order for Petitioner to have his conviction reversed, this Court must consider whether the Prosecutor's comments or conduct so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright* 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo* 416 U.S. 637, 643 (1974)). In addition this court must view the Prosecutor's comments in the context of the entire trial. *U.S. v. Young*, 470 U.S. 1, 11-12 (1985).

In the case at hand, Petitioner alleges multiple instances of Prosecutorial Misconduct, that alone or in combination, provide a basis for reversal of his conviction. They are as follows:

A. The State violated the Petitioner's Due Process Rights Under the United States Constitution when the Prosecutor prevented a Defense Witness from Testifying

Where the substance of what the Prosecutor communicates to a defense witness is a threat over and above what the record indicates was timely, necessary, and appropriate, the inference that the State sought to coerce a witness into silence is strong. *See Kitchen v. U.S.*, 227 F.3d 1014, 1022-1023 (7th Cir. 2000).

1 In the instant case, Ms. Colleen Warner was set to testify in the Petitioner's defense
2 regarding how the Petitioner came to possess the murder weapon. Ms. Warner's testimony is
3 crucial to Petitioner's defense, because the Prosecution presented testimony that the Petitioner
4 maintained possession of the gun in question, both before and after the crime. Ms. Warner's
5 testimony would have refuted that claim, especially since the incriminating testimony came from
6 co-defendants testifying in order to receive short sentences. Ms. Warner's testimony also could
7 have shown that the Petitioner had nothing to hide and that is why he so readily gave the police
8 the gun. The fact that Nasby possessed the gun at a moment in time, does not, in and of itself,
9 establish guilt. As such, how he came to possess the gun is key. (*Please see* the attached
10 affidavit from Ms. Warner).

13 Ms. Warner ultimately did not testify because the Prosecutor told her Nasby's co-
14 defendants had beaten him to the punch and implicated him. As a result, the prosecutor
15 suggested, the Petitioner did not have a chance. The Prosecutor also showed Ms. Warner a letter
16 allegedly written by Nasby. The letter contained several harsh and disparaging remarks about Ms.
17 Warner's character.

19 The Prosecutor had previously joked that he might show Ms. Warner the letter. The Trial
20 Court specifically advised him not to. (T.T. Vol. I, page 12, lines 12-18). The Prosecutor,
21 however, did not follow the Court's instructions and showed Colleen the letter in open court in
22 the presence of Mr. Sciscento and Mr. Santacroce, Counsel for the Petitioner, at trial. The
23 Prosecutor then asked her, "How do you feel about testifying now?"

25 The State clearly tampered with Ms. Warner and prejudiced Nasby's right to a fair trial.
26 In *U.S. v. Vavagas*, 151 F.3d 1185 (9th Cir. 1998), the Ninth Circuit ruled that, "whether
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1 substantial government interference with defense witness' choice to testify occurred is a factual
2 determination to be made by the District Court and is reviewed for clear error. A Defendant
3 alleging substantial interference with defense witness' choice to testify is required to demonstrate
4 misconduct by a preponderance of the evidence." Further, according to *U.S. v. Schelei* 122 F.3d
5 994 (11th Cir. 1997), the court stated, "if the witness did not testify and the allegation of
6 intimidation is true, no prejudice need be shown." In the instant case, the prosecutor substantially
7 interfered with the testimony of Ms. Warner.

9
10 **B. The Prosecutor violated Petitioner's Due Process Rights Under the**
11 **United States Constitution when he vouched for the Credibility of**
12 **State Witnesses.**

13 "Improper vouching may occur when government 1) Refers to facts outside the record or
14 implies that veracity of witness is supported by outside facts that are unavailable to jury; 2)
15 implies guarantee of truthfulness; or 3) expresses personal opinion about credibility of witness."
16 See *United States v. Santana* 150 F.3d 860 (8th Cir. 1998).

17 In the case at hand, Petitioner's conviction was based largely on the testimony of persons
18 who traded testimony for plea bargains. During the prosecutor's closing argument he stated: "He
19 [Deskin] has pled guilty to that and he has told police, pursuant to that negotiation, what
20 happened. . . He is guilty of his culpability in this crime and sure he has cooperated with the
21 State." T.T. Vol. VI, page 64, lines 5-7).

22 These statements imply the State's personal endorsement of Mr. Deskin's testimony. The
23 fact that the State connected Mr. Deskin's testimony with the fact that he negotiated with the
24 State, impermissibly lends credibility to his testimony. The Prosecutor later told the Jury that Mr.
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1 Deskin "cooperated" with the State, (T.T. Vol. VI, page 64, line 2) which suggests the State's
2 satisfaction with Mr. Deskin's testimony. Further, the Prosecutor told the Jury, referring to all of
3 the Petitioner's co-defendants and other criminals that testified on behalf of the State, "they told
4 you the truth and the truth came out." There was no objection made by counsel for Nasby. (T.T.
5 vol. VI, Pgs. 64-68).
6

7 In *Rowland v. State*, 118 Nev. 31 (Nev. 2002), the Nevada Supreme Court found that the
8 prosecutor's comments during closing argument of guilt phase describing inmate witness as telling
9 the truth constituted vouching for testimony given, and thus the comments were improper. The
10 Prosecutor in *Rowland* described an inmate witness as "a man of integrity" in closing argument.
11 The *Rowland* case was affirmed only because there was overwhelming evidence of defendant's
12 guilt. In Nasby's situation, there was no evidence to link Nasby to the crime scene except for the
13 testimony of accomplices. All of the accomplices and co-defendants in Nasby's case were inmates
14 awaiting sentencing.
15

16 These type of statements made by the State in Petitioner's case have also been condemned
17 by the Federal Courts. In *United States v. Kerr*, 981 F.2d 1050, 1053 (9th Cir. 1992), the Court
18 discussed Prosecutors vouching for credibility of four government witnesses was reversible error.
19 The witnesses' testimony in *Kerr* was crucial to the Prosecutor's argument because the evidence
20 connecting the defendant to the conspiracy was only indirect. The court further reasoned that
21 vouching occurred when the Prosecutor asserted his own belief of the witnesses credibility
22 through comments including, "I think [the witness] was candid. I think he was honest."
23 Improper vouching also occurs when a Prosecutor supports or implies the State's personal belief
24 in witness credibility. Thus, vouching does not have to be explicit. See also *U.S. v. Francis*, 170
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1 F.3d 546 (6th Cir. 1999). In *Francis*, the court found that the prosecutor improperly vouched for
2 witness' credibility and the court reversed and remanded the convictions.

3 **C. The Prosecutor violated Petitioner's Due Process Rights Under the**
4 **United States Constitution when he referred to things not in**
5 **evidence.**

6 The Prosecutor moved on from vouching to testifying during his closing argument. The
7 Prosecutor, after explaining to the Jury how Deskin's testimony was in keeping with his plea-
8 bargain, tells the Jury that the reason Jotee and Tommie Burnside, (also co-defendants), did not
9 explicitly implicate Petitioner in the crime because they were afraid of being labeled snitches in
10 prison. There was no objection made by Nasby's counsel. He implies that he has special
11 knowledge about their situation, and he continues to emphasize they pled guilty as if that fact
12 means that Petitioner is guilty as well. (T.T. Vol. VI. Pgs. 65-66). None of this portion of the
13 Prosecutor's closing argument was supported by admitted evidence. Closing argument should
14 not refer to matters not presented in evidence. *U.S. v. Taren-Palma*, 997 F.2d 525 (9th Cir.
15 1993). This was a device on the part of the State to vouch for the credibility of the testifying co-
16 defendants and to unfairly fill in the blanks with information that was not presented in evidence.
17 See also *U.S. v. Kerr*, 981 F.2d 1050, 1052-1054 (9th Circuit 1992).

21 In *Sanborn v. State*, 107 Nev. 399 (Nevada 1991), the Court stated at 408 that, the
22 prosecutor's conduct during closing argument was improper and prejudicial. The prosecutor's
23 remarks which were without evidentiary basis, constituted improper conduct. In the case at hand,
24 no evidence or testimony was presented that the Burnside brother's didn't want to be labeled
25 snitches in prison, but the prosecutor stated it as a fact during his closing argument.
26

1 **D. The Prosecutor violated Petitioner's Due Process Rights Under the**
2 **United States Constitution when he misstated the law in closing**
3 **argument.**

4 Repeatedly, the Prosecutor told the Jury that the accomplices all corroborate each other.
5 (T.T. Vol VI, pg. 59.) This is a misstatement of the law. In closing argument the prosecutor
6 stated, "[a]nd all these witnesses corroborate each other one after another showing that the fact
7 that the defendant, in fact, the murderer." (T.T. Vol. VI, page 65, lines 5-7) Accomplices cannot
8 corroborate each other in Nevada. See *Sheriff v. Gordon*, 96 Nev. 205, 206, (Nev 1980), where
9 the Nevada Supreme Court stated, "Witnesses whose testimony requires corroboration may not
10 corroborate each other." See *LaPena v. State*, 92 Nev. 1, 13 (Nev. 1976).
11

12 Further, NRS 175.291 provides:

13
14 "1. A conviction shall not be had on the testimony of an accomplice unless he is
15 corroborated by other evidence which in itself, and without the aid of the
16 testimony of the accomplice, tends to connect the defendant with the commission
17 of the offense; and the corroboration shall not be sufficient if it merely shows the
18 commission of the offense or the circumstances thereof.

19 "2. An accomplice is hereby defined as one who is liable to prosecution, for the
20 identical offense charged against the defendant on trial in the cause in which the
21 testimony of the accomplice is given."

22 **E. The Prosecutor violated the Petitioner's Due Process Rights Under the**
23 **United States Constitution when it presented scripted, and false testimony as**
24 **well as conflicting theories of the case.**

25 The Prosecutor may not "become the architect of a proceeding that does not comport with
26 the Standards of Justice." *Id.* The Prosecutor, therefore, violates the Due Process Clause if he
27 knowingly presents false testimony — whether it goes to the merits of the case or solely to
28 witness credibility. *Thompson v. Calderon* 120 F.3d 1045, 1058 (9th CIR 1997) (quoting *Napue*

1 v. *Illinois* 360 U.S. 264 79 S.Ct. 1173, 3L.Ed.2d 1217 (1959); *Mooney v. Holohan* 294 U.S. 103,
2 55 S.Ct. 340, 19 L.Ed. 791 (1935) n.12.

3
4 Petitioner was tried on the charges of conspiracy to commit murder and first-degree
5 murder with the use of a deadly weapon. Petitioner was alleged to have conspired with Jeremiah
6 Deskin, Jotee and Tommie Burnside. However, the only testimony with regard to a conspiracy
7 came from Deskin. He exchanged testimony against Petitioner for a plea-bargain. He was allowed
8 to plead guilty to accessory to commit murder for a significantly lighter sentence. Indeed, he was
9 originally charged with the exact same crimes as Petitioner.

10
11 Accessory to commit a felony (murder) consist of:

12 "***After the commission of a felony*** harbor, conceals, or aids such an offender with
13 intent that he may avoid or escape from arrest, trial, conviction or punishment,
14 having knowledge that such offender has committed a felony or is liable to arrest,
15 is an accessory to the felony." See N.R.S. 195. 030 (1) (Emphasis added).

16 Deskin's testimony went well beyond what the Prosecutor claimed he was guilty of in
17 connection with Petitioner's case. His testimony also conflicted with the crime the Prosecutor
18 allowed him to plead guilty to. In his closing argument the Prosecutor told the Jury that Deskin
19 had admitted his culpability in this crime. He then defined that culpability to be 'Accessory to
20 Murder...not the actual puller of the trigger'....(T.T. Vol.VI, pages 63-64). That is not the correct
21 definition of Accessory to Commit Murder. N.R.S. 195.030 The crime of Accessory attaches
22 after the crime. When an act occurs before the crime, then it is a conspiracy. See N.R.S. 199.480.
23 Deskin did *not* testify that he was merely an accessory, but a conspirator. Thus, the Prosecutor
24 actually argued to the Jury that Deskin did not conspire with Petitioner, in order to increase
25 Deskin's credibility in the eyes of the Jury. The Prosecutor then emphasized the point by telling
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1 the Jury, "they told the truth," (T.T. Vol. VI page 68), and that Deskin's testimony corroborated
2 all the other witnesses testimony. (T.T. Vol. VI, pages 64 and 68).

3 The Prosecutor here not only misstated the law, *U.S. v. Rodriguez* 159 F.3d 439, 451 (9th
4 CIR 1998), but presented false testimony and conflicting theories of the case. *Thomas v.*
5 *Calderon* 120 F.3d at 1058-59. By prior Judicial Determination at Deskin's change of plea
6 hearing, Deskin's testimony at Petitioner's trial is necessarily false. *Nichols v. Collins* 802 F.Supp.
7 66(S.D. Tex 1992). The Prosecutor's erroneous description of what constitutes Accessory to
8 Commit Murder could have confused the Jury as to the elements of Conspiracy to Commit
9 Murder, leading them to think they are identical crimes and full responsibility was accepted by
10 Deskin's plea. Therefore, in the minds of the Jurors mere knowledge of the crime after the fact
11 would have been the same thing as conspiracy. Accomplices' Jotce and Tommie Burnside also
12 testified at Petitioner's trial.

13 The fact that the Prosecutor agreed to the scripted testimony of Jotce and Tommie
14 Burnside explicitly violates N.R.S. 174.061, that provides in pertinent part: (2) A prosecuting
15 attorney shall not enter into an agreement with a defendant which: (A) limits the testimony of the
16 defendant to a predetermined formula. (B) Is contingent on the testimony of the defendant
17 contributing to a specified conclusion. *Sheriff v. Acuna* 819 P.2d at 200 (Nev. 1991).

18 It was obvious that the prosecutor asked Jotce and Tommie Burnside questions that
19 allowed them to specifically avoid implicating Mr. Nasby. This deliberate violation by the
20 prosecutor violated Nasby's due process rights under the Fourth, Fifth, and Fourteenth
21 Amendments to the United States Constitution.

1 **F. The Prosecutor led Nasby to Believe that Mr. Von Lewis**
2 **Would be a Prosecution Witness and Withheld Vital information Contrary to Brady**

3 The Petitioner's conviction for Conspiracy to Commit Murder is also based on the
4 Prosecutor's misconduct in leading Petitioner's Counsel to believe that Mr. Von Lewis would be
5 called as a witness for the Prosecution. Nasby was prejudiced because Petitioner's trial Counsel
6 believed the prosecutors's deliberate misrepresentation. Therefore, he did not include Von Lewis
7 on the defense witness list. See Also Argument III regarding ineffective assistance of counsel.
8 The State's Witness List had Mr. Von Lewis on it and an ID number, which appeared to indicate
9 that he was incarcerated and that the Prosecutor's office knew Mr. Von Lewis' location.
10

11 At trial, it became obvious that the State had no intention of calling Von Lewis as a
12 witness. The reason remains undisclosed. Counsel for the defense attempted to ascertain the
13 reason during cross-examination of Detectives Buczek and Thowsen. They both testified that they
14 tried, but could not locate him. (T.T. Vol.IV pg. 15-17).
15

16 Petitioner asserts that the detectives were disingenuous about not being able to locate Von
17 Lewis, because he had been in their custody during Petitioner's trial. Had Von Lewis been
18 produced for Petitioner's trial, he could have impeached accomplices Jerimiah Deskin, Jotee and
19 Tommie Burnside's testimony that they were not present during the commission of the crime, as
20 well, impeaching other hearsay testimony by Crystal Bradley and Tanesha Banks. Von Lewis
21 would have also testified to the true ownership of the murder weapon and the nature of his
22 relationships with the victim. For purposes of *Brady*, the prosecution was deemed to have known
23 the true identity of a third person who also a suspect in the case, and that disclosure would have
24 revealed this third person's prior conviction and fugitive status. This *Brady* obligation applies
25

1 when this information was known by a Police detective, whether or not Prosecutor had actual
2 knowledge of the fact. *Smith v. Secretary of New Mexico Dept. of Corrections* 50 F.3d 801,
3 826-27 (10th CIR 1995); *U.S. v Andrews* 824 F.Supp. 1273 (N.D.Ill.1993).

4
5 It is impermissible for governmental authorities knowing of crucial witness who might be
6 helpful to defendant, to conceal witness, *Delgado v. New York City Department of Corrections*
7 842 F.Supp. 711, (SDNY 1993). Compulsory Process and Due Process Right are both implicated
8 where actions of the Government prevents defendant from obtaining material and favorable
9 evidence, as here. This violated Nasby's Fourth, Fifth, and Fourteenth Amendment Rights under
10 the United States Constitution.

11
12 Furthermore, the Prosecutor called Ms. Adams to testify. Ms. Adams testimony was false
13 and scripted because she was under a strong compulsion to testify in the manner that the State
14 wanted. Ms. Adams was originally charged with first degree kidnaping, intimidating a witness,
15 battery with the intent to cause bodily injury, all stemming from a single punch thrown. Ms.
16 Adams did not know that Ms. Banks was to be a witness at the Petitioner's trial and she certainly
17 did not kidnap Ms. Banks. Thus, the State blatantly over charged Ms. Adams with crimes that
18 they had no evidence or intention of proving simply in order to coerce her to testify against the
19 Petitioner. The State was, of course, successful because she changed her story and implicated the
20 Petitioner simply due to the leverage the State wrongly possessed over her. (T.T. Vol Iv, Pgs
21 187-189 and Vol. V. Pg 171).

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24 The Nevada Supreme Court in *Lay v. State*, 110 Nev. 1189, 1193, 886 P.2d 448 (1994).
25 ruled that, "a Prosecutor's intimations of witness intimidation by a defendant are reversible error,
26 unless the Prosecutor also presents substantial credible evidence that the defendant was the source
27

1 of the intimidation." In the case at hand, the State failed to prove that the Petitioner was the
2 source of the intimidation.

3 **G. The State Violated Petitioner's Sixth Amendment Right to Counsel When**
4 **They Placed a Jail House Informant in Close Proximity to Petitioner in**
5 **Order to Gain Incriminating Information Against Nasby**

6 The United States Supreme Court in *Massiah v. U.S.*, 84 S.Ct. 1199, (1964), stated that a
7 Defendant's Fifth and Sixth Amendment rights were violated by the use of incriminating
8 statements which he made to a co-defendant after their indictment for federal narcotics offenses
9 and their release on bail. Also, the statements were made in the absence of defendant's retained
10 counsel. The statements in *Massiah* were overheard on a radio by a government agent without
11 defendant's knowledge that the co-defendant had decided to cooperate with the government.
12

13 The Nevada Supreme Court addressed *Massiah* in *Coleman v. State*, 109 Nev. 1 (Nev.
14 1993), which held that the trial court committed reversible error by admitting statements of an
15 inmate who shared a cell with Defendant, in that the statement was obtained in violation of
16 defendant's Sixth Amendment right to counsel.
17

18 While the Petitioner was housed at the Clark County Detention Center awaiting trial, he
19 was approached by Mr. John R. Holmes, in approximately November of 1998. Mr. Holmes
20 repeatedly asked Petitioner questions about the charges pending against him. Specifically, he
21 wanted to know if Petitioner was guilty, indicating that rumors were circulating that he was. The
22 Petitioner knew he had met Mr. Holmes before, but did not know him well enough to discuss
23 legal strategies. Petitioner never provided Mr. Holmes any information about his personal life or
24 the alleged charge.
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1 Despite Nasby providing Mr. Holmes no information about his legal charges, Mr. Holmes
2 testified at trial that the Petitioner confessed to him on approximately November 5, 1998. (T.T.
3 Vol. V., pages 210-213). Indeed, Mr. Holmes was acting at the behest of the State when he
4 attempted to interrogate the Petitioner at the Detention Center. During the trial, the Prosecutor
5 was allowed to refer to a letter allegedly written by the Petitioner to Mr. Holmes, which requested
6 that Mr. Holmes intimidate several witnesses. The Prosecutor told the Jury that Petitioner had
7 given this letter to Mr. Holmes while confined at the Detention Center. (T.T. Vol II, Pg. 190).
8

9 Mr. Holmes alleged that Petitioner gave him a letter dated November 5, 1998 and that he
10 decided to work with the State following that date. (T.T. Vol. II, Pgs. 20-21). However, Mr.
11 Holmes was working for the State prior to November 5, 1998. Mr. Holmes testified as follows:
12

13 Q: Okay. Now I want to see if I understand this, Prior to November 5 - - prior to
14 getting this letter, (indicated) - - you agreed with police that you were going to
15 work with them and they asked you, in fact, to work for them, correct?
16

17 A: They asked me can I get them information.

18 Q: Okay. So they asked you to go out and get them information?

19 A: Yes (T.T. Vol. II, Pg.23).
20

21 Therefore, Mr. Holmes was admittedly working for the State before he even met the
22 Petitioner in the Detention Center. Detective Buczek testified that he had been contacted by an
23 unnamed officer, who told him Mr. Holmes could provide valuable information against Petitioner.
24 He also testified that he went to visit Mr. Holmes despite the fact he considered the case solved.
25 (T.T. Vol IV., Pgs. 164-165).
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1 Despite the secrecy and lack of details regarding the unnamed officers who visited Mr.
2 Holmes at the Detention Center and the full nature and extent of Mr. Holmes work with the State,
3 both the trial court and the prosecutor were aware that Mr. Holmes was working as an agent of
4 the State when he produced the letter allegedly written by the Petitioner. (T.T. Vol. II, Pgs. 19-
5 21, and 25). The trial judge, however, did not immediately rule regarding the admissibility of the
6 letter. The unfortunate result was the Prosecutor's taking advantage of the Court's misstep as he
7 placed before the Jury information obtained in violation of Petitioner's Sixth Amendment Right to
8 Counsel. Nasby was horribly prejudiced by this reversible error.

11 In *Petrocelli v. State*, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), the Nevada Supreme
12 court stated "before evidence of a prior bad act can be admitted, the State must, by plain, clear
13 and convincing evidence show that the defendant committed the offense." See also N.R.S.
14 48.045(2).

16 The Court eventually ruled in favor of Nasby on this issue. However, the damage was
17 already done, the jury being thoroughly contaminated. Additionally, the prosecutor also elicited
18 testimony on the letter from Britney Adams. (T.T. Vol. V. Pg. 173). It was never made clear if
19 Britney Adams' letter was the same letter or a copy of one the Prosecutor alluded to in his
20 opening statement. It is for this very reason that it prejudiced the Petitioner. The Prosecutor,
21 therefore, continued to make use of information obtained in violation of Petitioner's Right to
22 Counsel, as well as introduce suspect evidence or prior bad act information in violation of
23 Petitioner's Right to Due Process and *Petrocelli*. Also, the improper reference to criminal history
24 is a violation of Due Process and the reviewing Court must determine whether the error was
25 harmless. *Chapman v. California*, 386 U.S. 18, 24 (1967).

1 Here, the error was plainly prejudicial. Information obtained by Mr. Holmes, while acting
2 as an agent for the State, was tantamount to a denial of Counsel during Mr. Holmes' interrogation
3 of the Petitioner. The State's actions in recruiting Mr. Holmes to elicit information from
4 Petitioner denied Nasby both his Federal and State Constitutional Rights. *Thompson v. State*, 105
5 Nev. 151, 156, 771 P.2d 592, 596 (1989); *U.S. v. Henry*, 447 U.S. 264 (1980); and *Kuhlmann v.*
6 *Wilson*, 477 U.S. 436 (1986). United States Constitution Fourth, Fifth, and Fourteenth
7 Amendments.
8

9 Therefore, the State of Nevada, through Mr. Holmes, violated Petitioner's Sixth
10 Amendment Right to Counsel, and Mr. Holmes should not have been allowed to testify at the
11 Petitioner's trial that the Petitioner confessed to him.
12

13 In *Nika v. State*, (Nev. 2004) The Nevada Supreme Court ruled that the Defendant must
14 show that informant acted as agent of the state when he first gained incriminating testimony. In
15 the case at hand, such a showing is easily accomplished simply from the testimony of Mr. Holmes.
16 Indeed, it is obvious from the testimony that Holmes is working for the state prior to receiving the
17 letter and the alleged admission.
18

19 **II. THE COURT ERRONEOUSLY ALLOWED THE INTRODUCTION OF PRIOR**
20 **BAD ACTS EVIDENCE AND FAILED TO PROPERLY INSTRUCT THE JURY**
21 **ON MULTIPLE CRITICAL ISSUES IN VIOLATION OF THE FOURTH, FIFTH,**
22 **SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES**
23 **CONSTITUTION**

24 **A. The Court erroneously delayed a ruling on a letter that showed evidence of**
25 **prior bad acts**

26 At the *Petrocelli* hearing, outside the presence of the jury, the Court was presented with a
27 letter allegedly written by Nasby, which supposedly contained information about a confession and
28

1 possible evidence of witness intimidation. Counsel for Nasby specifically requested that this
2 proposed letter not be presented to the jury. The Trial Court delayed the decision on whether to
3 admit the letter. The Prosecutor, nonetheless, used the letter and referred to witness intimidation
4 in his opening statement. Later, the Trial Judge properly ruled that the same letter and evidence
5 was inadmissible. At that point, the damage was done, the jury heard inadmissible evidence
6 against the Petitioner. This was clearly error, and taken in the context of the whole trial, it cannot
7 be harmless, because there was no curative instruction. *U.S. v. Taren Palma*, 997 F.2d 525, 532
8 (9th Cir. 1993).
9

10
11 **B. The Court Erroneously Allowed the Introduction of Prior Bad Acts Evidence.**

12 N.R.S. 48.045(2) in pertinent part: "Evidence of other crimes, wrongs or acts is NOT
13 admissible as to character of person in order to show that he acted in conformity therewith." The
14 Federal Rules are much the same. See *U.S. v. Schuler*, 813 F2d 978, 981-982 (9th Cir. 1987) and
15 *Chapman v. California*, 386 U.S. 18, 24 (1967).
16

17 During the testimony of Brittny Adams, the Prosecutor elicited testimony from her of
18 prior bad acts of Petitioner that improperly placed Petitioner's character at issue, and since he did
19 not testify, severely prejudiced him. (T.T. Vol. V. Pgs. 158-159).
20

21 Brittny Adams testified as follows:

22 Q. Now you mentioned something about he wanted to kill her?

23 A. Yes.

24 Q. What exactly did he do or say to you?

25 A. Well, before we left, he offered me his gun, one of his guns to kill her.
26
27
28

1 Petitioner's counsel finally objected to this line of questioning and the Court gave a brief
2 curative instruction, but did not explain why the testimony was to be stricken.

3 Immediately after the above testimony, the Prosecutor continued with Ms. Adams:

4 Q. On the way to the house of Tanesha Banks, did he offer anything to you?

5 A. Yes. He offered me a hammer.

6 A few moments later, the Prosecutor asked her what the hammer was for and Ms. Adams
7 stated:

8 A. He said: You can just hit her between the eyes and kill her; just kill her.

9 (T.T. Vol. V, Pgs. 158-159.)

10 Detective Thowsen later testified that Petitioner had tried to intimidate a witness,
11 specifically, Tanesha Banks, but could not prove conclusively it was Petitioner who phoned in the
12 alleged threats. (T.T. Vol. V., Pgs 254-262).

13 The letter that Petitioner allegedly gave Mr. Holmes that revealed alleged prior bad acts,
14 and which the State mentioned in their opening argument, was ruled inadmissible during the
15 testimony of Ms. Adams. (T.T. Vol. V, Pg. 173). Notwithstanding the ruling, the Prosecutor
16 reinforced the same arguments of witness intimidation in his closing arguments. This was
17 extremely prejudicial to NASBY. Ultimately, the letter was *never* provided as evidence to the
18 jury. (T.T. Vol. VI, Pgs 35-36).

19 By the time the Jury had heard all of the Petitioner's alleged, yet unproven, prior bad acts,
20 his character was totally destroyed and the verdict inevitable. *U.S. v. Sanchez*, 176 F.3d 1214,
21 1221 (9th Cir. 1999). (Prosecutor's use of prior bad acts to impeach defendant's testimony was
22 reversible error). Here, Petitioner did not testify, but the Prosecutor, contrary to law, launched a
23

1 furious attack on his character anyway. *U.S. v. LeQuire*, 943 F.2d 1554, 1571 (11th Cir. 1991).
2 (Prosecutor's elicitation of testimony on five occasions about previous convictions of defendant
3 was reversible despite curative instruction). Prior bad acts and convictions are generally
4 inadmissible because they refer to crimes that the Petitioner allegedly committed in the past. In
5 an analogous situation to the letter of Mr. Holmes, in the case of *U.S. v. Spinner*, 152 F.3d 950,
6 960 - 962 (D.C. Cir. 1998), the Court ruled that the prosecutor's questioning of the defendant's
7 girlfriend regarding a letter she sent to him indicating prior bad acts was reversible error, because
8 the prosecutor emphasized the letter in his closing argument. The exact same thing happened
9 here.
10
11

12 In the case at hand, the Prosecutor repeatedly mentioned the Petitioner's prior bad acts in
13 opening and closing statements. This constitutional violation clearly warrants a reversal of the
14 Petitioner's convictions. U.S.C.A.Const.Amend. 4, 5, 14; Nevada Constitution.
15

16 **C. The Court's Failure to give an Accomplice Instruction Violated the**
17 **Petitioner's United States Constitutional Rights.**

18 Incredibly, there was no accomplice instruction, cautionary instruction or curative
19 instruction given. All the accomplices that testified thus appeared more credible than they would
20 have had the proper instructions been given, as required by the Nevada Supreme Court in *Sheriff*
21 *v. Acuna*, 819 P.2d 197 (Nev. 1991). The Prosecution's entire case was based upon his co-
22 defendant's testimony. The *Acuna* court stated, "[I]n accordance with the foregoing, we now
23 embrace the rule generally prevailing in both state and federal courts, and hold that any
24 consideration promised by the State in exchange for a witness's testimony affects only the weight
25 accorded the testimony, and not its admissibility. Second, we also hold that the State may not
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1 bargain for testimony so particularized that it amounts to following a script, or require that the
2 testimony produce a specific result. Finally, the terms of the *quid pro quo* must be fully disclosed
3 to the jury, the defendant or his counsel must be allowed to fully cross-examine the witness
4 concerning the terms of the bargain, and *the jury must be given a cautionary instruction.*"

5
6 Failure to give the accomplice instruction in Petitioner's case was particularly prejudicial
7 to Petitioner's defense.

8 **D. Petitioner's Right to Due Process under the United States**
9 **Constitution was violated when the Court Issued an Erroneous Malice**
10 **Instruction combined with Problematic Reasonable Doubt**
11 **Instruction.**

12 The Nevada Supreme Court has held, in *McCullough v. State* 99 Nev. 72, 75 657 P.2d
13 1157, 1158 (1983), that "use of a disapproved reasonable doubt instruction constituted reversible
14 error, when coupled with "any" other attempt to supplement change, or clarify the statutory
15 reasonable doubt definition. *Id.* At 972 P.2d 342. See *Holmes v. State* 114 Nev. 1357, 972 P.2d
16 337 (Nev. 1998) and N.R.S. 175.211.

17
18 Similarly in *Cordova v. State* 6 P.3d 481 (Nev. 2000) the Court held that the jury
19 instruction defining implied malice, N.R.S. 200.020 (2), is constitutionally valid *as long as the*
20 *jury is properly instructed on the presumption of innocence* and State's burden to prove beyond
21 a reasonable doubt every element of the crime charged. *Id.* At 6 P.3d 483 (quoting *Doyle v. State*
22 113 Nev. 879, 900—02, 921 P.2d 901, 915—16 (1996).

23
24 Pursuant to N.R.S. 200.020, Petitioner had the same malice instruction issued at his trial
25 as was discussed by the Court in *Cordova*. It read as follows; "Malice shall be implied when no
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27
28

1 considerable provocation appears, or when all the circumstances of the killing show an abandoned
2 and malignant heart." Id.

3 Unlike the Petitioner in *Cordova*, the Jury was not properly instructed on the State's
4 burden to prove beyond a reasonable doubt every element of the crime charged. As argued above,
5 the State, therefore, was relieved of its burden to prove beyond a reasonable doubt the elements
6 of willfulness, deliberation, and premeditation to first degree murder. Moreover, while Nevada's
7 reasonable doubt instruction is not unconstitutional alone and on its face, it is certainly
8 problematic. Its various defects have been somewhat cured over the years. *Ramirez v. Hatcher*
9 136 F.3d 1209, 1213-14 (9th CIR 1998). Nevertheless, it still contains language that has been
10 criticized by several courts. Specifically, the "more weighty affairs of life language." When
11 reviewing jury instructions, the Court considers how the Jury would have reasonably understood
12 them in the context of entire trial. *U.S. v. Warren* 25 F.3d 890, 897 (9th Cir. 1994).

13 In *Warren*, the Court analyzed a permissive inference malice instruction and concluded it
14 did not violate the due process clause because the lower court issued curative instructions in close
15 proximity to the malice instruction. *Id.* 25 F.3d at 898.

16 However, no such instruction was issued at Petitioner's trial to cure or explain the
17 challenged malice instruction. In fact, instruction number nine does not even refer to implied
18 malice, but instead lists a veritable cornucopia of facts that purport to define malice aforethought
19 in general. Because instruction number nine does not clarify what *kind* of malice aforethought it's
20 defining, the Jury could have easily thought that all mental states and facts listed in instruction
21 number nine constitute implied malice, or that malice may be inferred from proof of any of those
22 facts. The Jury was almost certainly confused.

1 In *Victor v. Nebraska* 114 S.Ct. 1252—52 (1994), the U.S. Supreme Court criticized the
2 “more weighty affairs of life” language, agreeing with almost all Federal circuits. Indeed, the
3 Nevada Supreme Court itself has suggested that the language is improper. *Bollinger v. State* 901
4 P.2d 671, 674 n.2 (Nev. 1995). Thus, Nevada’s reasonable doubt instruction containing the
5 “more weighty affairs of life” language is problematic and susceptible to being an erroneous
6 definition of the reasonable doubt standard. This questionable and possibly unconstitutional
7 reasonable doubt standard was the instruction issued in Petitioner’s case. Id.

9
10 The malice instruction in question here is what is known as a permissive inference
11 instruction. *Francis v. Franklin* 471 U.S. 307, 105 S.Ct. 1965 (1985). These kinds of
12 instructions can violate due process as well, even though they don’t require a jury to infer a
13 specific conclusion if the Government proves certain predicate facts. Although such an instruction
14 does not shift the burden of proof, it violates due process “if the suggested conclusion is not one
15 that reason and common sense justify in light of the proven fact before the jury.” *In Francis*,
16 471 U.S. at 314-15, 105 S.Ct. at 1971, it was held that a killing, can never be established as a
17 matter of law by proof of other facts.” Like the Petitioner in *Holmes*, supra, the attorney for
18 Petitioner did not put on a defense or call any witnesses. Under these circumstances, Petitioner
19 asserts that plain error was committed by the combination of the problematic reasonable doubt
20 instruction coupled with the permissive inference malice instruction.

21
22
23 The Trial Court failed to give the cautionary accomplice instruction or any other curative
24 instruction. The purpose of the cautionary instruction is, “that, it advises the Jury that it should
25 view as suspect incriminating testimony given by those liable for prosecution for identical charged
26 offense as accused. *Riley v. State* 110 Nev. 638, 653, 878 P.2d 272 (1994).

1 In *Laboa v. Calderon* 224 F.3d 972, 979 (9th Cir. 2000), the court held that violation of a
2 state law prohibiting convictions based upon uncorroborated accomplice testimony can violate the
3 constitution. In Nevada, it is the duty of the Trial Court to issue the accomplice instruction, inter
4 alia, when a defendant is faced with testimony against him by accomplices who have
5 plea-bargained for that testimony. Pursuant to *Sheriff v. Acuna*, 819 P.2d at 200, the language is
6 mandatory and leaves no room for doubt, ("Jury must be given cautionary instruction"). Thus,
7 NASBY's conviction must be reversed.
8

9
10 **III. INEFFECTIVE TRIAL AND APPELLATE COUNSEL VIOLATED**
11 **PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL UNDER THE**
12 **UNITED STATES CONSTITUTION**

13 The Sixth Amendment guarantees the right to effective assistance of Counsel in a criminal
14 proceeding. *Strickland v. Washington* 466 U.S. 668 (1984). The Supreme Court established a
15 two-prong test to evaluate ineffective assistance claims. To obtain reversal of conviction, the
16 Petitioner must prove: (1) that Counsel's performance fell below an objective standard of
17 reasonableness, and (2) that Counsel's deficient performance prejudiced the defendant resulting in
18 an unreliable or fundamentally unfair outcome of the proceeding. *Id.* At 687. The right to
19 effective assistance of Counsel is guaranteed even if Petitioner retains his own counsel. *Stouffer v.*
20 *Reynolds* 168 F.3d 1155 (10th Cir 1999).
21

22 Petitioner must allege specific errors or omissions of Counsel to prove ineffective
23 assistance of counsel. *U.S. v. Cronin* 466 U.S. 648, 665 (1984). What follows is a catalog of
24 Counsel's errors, and law that supports Petitioner's position, mandating reversal here:
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3 **A. At Trial Petitioner's Counsel Failed to Call Any Witnesses**

4 Petitioner's defense was two-pronged, with each prong related. First, that someone else
5 committed the crime and second, that an alibi existed. Petitioner's alibi defense was that a time
6 line of his whereabouts whereas proves he could not have committed the crime charged.

7 At trial, Petitioner's Counsel failed to call a single witness, in fact Counsel offered no
8 defense at all. "If counsel entirely fails to subject the prosecution's case to meaningful adversarial
9 testing, then that has been a denial of Sixth Amendment Rights which makes adversary process
10 itself presumptively unreliable." *U.S. v. Cronie* 466 U.S. at 660. Indeed,, it is this *Cronie*
11 standard that should be used, and under this standard, reversal may be mandated without even any
12 proof of prejudice. Id.

13
14 Petitioner's Counsel submitted a list of alibi witnesses to be called at trial, but never called
15 any of them. Had he called them, they could have testified to Petitioner's whereabouts during the
16 time the crime occurred, thereby changing the outcome of the trial. *Harris v. Reed* 894 F.2d 871
17 (7th Cir. 1990) (en banc) (Counsel's strategy not to call any witnesses at murder trial, despite
18 existence of credible defense, and reliance on perceived weaknesses of prosecution's case was
19 ineffective assistance because it fell outside wide range of professionally competent assistance at
20 P. 878); See also *Washington v. Smith* 219 F.3d 620, 634-35 (7th Cir 2000) (Failure to produce
21 possible alibi witnesses at trial resulted in prejudice to Petitioner).
22
23

24 **B. Petitioner's Counsel Failed to Call Key Witnesses to Rebut the State's Witnesses**

25 Furthermore, Brittny Adams testified at Petitioner's trial. She testified that Petitioner had
26 engaged in witness intimidation of a witness at trial (Tanesha Banks) T.T. Vol. V pgs. 148
27
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1 through 175. Miss Adam's testimony also constituted improper admission of prior bad acts of
2 Petitioner, in violation of *Petrocelli*. *Petrocelli v. State*, 101 Nev. 46, 52, 692 P.2d 503, 508
3 (1985). The Court allowed her to testify to prior bad acts because it ruled that it was more
4 probative than prejudicial and her version of events were unchallenged. *Lay v. State* 110 Nev.
5 1189, 1193, 886 P.2d 448 (1994). Defense counsel could have changed this ruling. Ms. Adam's
6 testimony severely prejudiced Petitioner at trial because it went directly to the question of guilt or
7 innocence. Indeed, however, there was another witness to the events that Miss Adams described
8 in her testimony. Her name is Porsche Nichols. She gave a statement contradicting *everything*
9 Brittny Adams said. Miss Nichols essentially said no witness intimidation occurred at the behest of
10 Petitioner. Petitioner's Counsel was aware of Miss Nichols' statement, but did not call her as a
11 witness at the *Petrocelli* hearing or as a rebuttal witness at Trial. If he had called her at the
12 *Petrocelli* Hearing, it is doubtful the Court would have let Miss Adams testify at Trial to witness
13 intimidation, because it would have been in doubt whether Petitioner was the source of the
14 intimidation. See *Lay v. State* supra. If he had called her to Trial to rebut Miss Adams' testimony,
15 it would have significantly changed the outcome of the proceedings. Miss Adams' unchallenged
16 testimony was devastatingly prejudicial to Petitioner's defense.

17
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19
20 Petitioner's Counsel also failed to investigate the possibility of other witnesses to support
21 the defense theory of the case. If he had, he would have located Madison Jones and Michelle
22 McKinrion. Petitioner's Counsel ultimately advanced a theory during cross-examination that
23 Charles Von Lewis actually committed the crime for which Petitioner is currently imprisoned. Mr.
24 Jones and Miss McKinnon would have testified that they saw Mr. Von Lewis put a nine millimeter
25 to Michael Beaseley's head and threatened to kill him with the gun because he wanted to leave the
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1 gang. Michael Beaseley is the murder victim in Petitioner's case. Madison Jones and Michelle
2 McKinnon could have provided the Jury with the reason, motive, and capacity in which Von
3 Lewis could have committed the murder. Petitioner located these witnesses by simple word of
4 mouth, and told Counsel to interview them. Defense counsel did not, nor did he call them as
5 witnesses. Instead, he chose to put on no defense at all. *Lord v. Wood* 184 F.3d 1083, 1093-96
6 (9th CIR 1996) (Counsel's failure to investigate and introduce three possible witnesses was
7 prejudicial because testimony was the only support for defendant's alibi); See also Cronie, supra.
8 Indeed, these witnesses were the only support for the defense theory that Mr. Von Lewis
9 committed the crime.
10
11

12 Likewise, Petitioner's counsel failed to call Crystal Sobrian and Colleen Warner who
13 would have provided an alibi for Nasby on the evening of the murder. Crystal was also available
14 to testify. See attached Affidavit.
15
16

17 **C. Counsel for Petitioner Exerted Improper and Extreme Pressure to Have Nasby Plea**

18 Petitioner asserts that his Counsel was bent on getting him to plea-bargain, and Counsel's
19 refusal to call any witnesses was a tactic to force Petitioner to plead guilty. Before Petitioner's
20 trial began, Counsel for Petitioner entered into negotiations with the Public Defender's Office for
21 employment. At some time before trial, Joseph S. Sciscento, Counsel for Petitioner, accepted
22 employment with the Public Defender's Office. He had actually relocated his practice to the
23 Public Defender's Office prior to trial, though it is not known to Petitioner if he performed any
24 duties for his new employer. This situation was constitutionally untenable, infra. U.S.C.A.
25 Const.Amend. 4, 5, 6, 14.
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1 **D. Petitioner's Counsel Had a Conflict of Interest Having Accepted Employment**
2 **With the Public Defender's Office**

3 The Public Defender's Office represented Petitioner's co-defendants who testified against
4 him. The Special Public Defender advised Petitioner's co-defendants to testify against Petitioner
5 and accept a plea—bargain in exchange for their testimony. Co-defendants Jotee and Tommie
6 Burnside accepted and acted upon the Public Defender's advice.

7
8 At Petitioner's sentencing, Mr. Sciscento advised the Court, albeit late, that there is a
9 conflict of interest, because he works for the Public Defender, who represented Petitioner's
10 co-defendants. On that basis he requested the Court allow him to withdraw from Petitioner's case,
11 to relieve him of any obligation to assist in the preparation of Petitioner's direct Appeal. The
12 Court granted his request and appointed Frederick Santacroce to represent Petitioner on direct
13 appeal.
14

15 Petitioner asserts that Mr. Sciscento operated under a conflict of interest during
16 Petitioner's trial and labored under divided loyalty. *Paradis v. Arave* 130 P.3d 385 (9th CIR
17 1997). Mr. Sciscento's conflicting interests were protecting Petitioner's co-defendants who were
18 represented by Mr. Sciscento's employer, and these co-defendants' interests were diametrically
19 opposed to Petitioner's. Mr. Sciscento's actions prejudiced Petitioner at Trial, as Mr. Sciscento
20 could not protect Petitioner's interests. In fact, Mr. Sciscento had an actual interest in seeing
21 Petitioner convicted, because if Petitioner was found not guilty, additional charges could have
22 been filed against his law firm's (the Public Defender's Office) other clients (Petitioner's co-
23 defendants). *Blankenship v. Johnson* 118 F.3d 312, 318 (5th CIR 1997); *U.S. v. Hall* 200 F.3d
24
25
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1 962, 966 (6th CIR 2000); *Stoia v. U.S.* 22 F.3d 766, 769 (7th CIR 1994; and *U.S. v. Martin* 965
2 F.2d 839, 842 (10 CIR 1992).

3 If one attorney in firm has actual conflict of interest, the Court imputes that conflict to all
4 attorneys in firm. *Freund v. Butterworth* 117 F.3d 1543 (11th CIR 1997); *U.S. v. Ross* 33 F.3d
5 1507 (11th CIR 1994).

7 **E. Petitioner's Counsel Failed to Sufficiently Investigate and**
8 **Failed to Present Any Evidence**

9 Mr. Sciscento began Petitioner's trial by joking about how long Petitioner's sentence
10 would be. T.T. Vol.1 Pg. 132. This comment set the tone for Mr. Sciscento's lackadaisical
11 representation of Petitioner through trial. Mr. Sciscento called no witnesses to testify on
12 Petitioner's behalf, presented no defense at all, and failed to sufficiently investigate the case to
13 locate witnesses listed above, as well as Charles a.k.a. Damion Von Lewis. Mr. Sciscento relied
14 on the State to do that. *Hess v. Mazurkiewicz* 135 F.3d 905, 909-911 (3rd CIR 1998). See also
15 *Stoia supra*. This was improper.

17 Furthermore, Mr. Sciscento failed to introduce any evidence on Petitioner's behalf. He had
18 in his possession a videotape that depicted Mr. Von Lewis threatening Beaseley with a gun. If
19 Counsel had introduced this tape, it would have established the possibility that Von Lewis
20 followed up on his threats and murdered Beaseley, not Petitioner. Counsel advocated this theory
21 during cross-examination of the States' witnesses, but refused to introduce evidence of it.
22 Moreover, Mr. Sciscento witnessed the Prosecutor show a potential defense witness a letter
23 written by Petitioner, in an attempt to prevent her from testifying. Sciscento did not report this to
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1 the Court. Indeed, he was an eyewitness to the States' intimidation of a defense witness, and did
2 not feel it was worthy to notify the Court.
3

4
5 **F. Counsel for Petitioner failed to Object Concerning the Accomplice Instruction and**
6 **Many Other Times Throughout the Trial**

7 Mr. Sciscento was further ineffective, possibly as a result of his attempt to protect his
8 other clients, Tommie and Jotee Burnside, Petitioner's co-defendants. He did not object to the
9 Court's failure to issue the mandatory cautionary accomplice instruction in order to insure that
10 their testimony was credible. This likely carried significant weight with the Jury. Sciscento did
11 not request the accomplice instruction either, even though he was aware that most of the
12 witnesses against Petitioner were accomplices.
13

14 Mr. Sciscento, through his own inaction, allowed the Prosecutor to lead the Jury to
15 believe that all testifying accomplices were only guilty of accessory to commit murder, and did not
16 expose the fact that if that were true, the Petitioner could not have been guilty of conspiracy to
17 commit murder, because he would have had no one to conspire with. He also allowed the
18 Prosecutor to continually vouch for co-defendants' credibility without objection. Both of these
19 assignments of error occurred during direct examination and closing arguments. See above errors
20 II and III.
21

22 Lastly, even when Mr. Sciscento won an issue, he refused to take advantage of the small
23 victory. Mr. Sciscento was successful in preventing the admission of testimony in regards to
24 witness intimidation, on the basis that it came in the form of a letter that the Prosecutor could not
25 prove Petitioner authored. As discussed extensively, supra, the letter came from a Jailhouse
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1 informant who obtained it illegally at Police direction. According to the State, the letter was
2 meant to intimidate potential witnesses for the State.

3 All the facts regarding how the informant received the letter and when he received it, the
4 nature of its contents, and his connection with the Police were known the first day of trial. Yet,
5 the Court did not make a ruling on its admissibility, allowing the Prosecutor to refer to it in his
6 opening statement. When the Court finally did rule on its admissibility, it ruled in favor of
7 Defense. However, the damage had been done. The Prosecutor advanced the idea that he only
8 mentioned it in his opening because he thought it would be admissible. On what basis was never
9 said, but the D.A. requested that Defense Counsel not be allowed to correct his error and
10 Sciscento agreed. T.T. Vol.V Pgs. 198 and 199.

11 Mr. Sciscento should have fought for the right to try to cure the error in closing argument
12 or for the Court to issue a curative instruction, instructing the Jury to disregard the portion of the
13 State's opening argument referring to the letter. Instead, the error went unchallenged and
14 Sciscento sought a mistrial outside the presence of the Jury.

15 Mr. Sciscento was not functioning as an advocate. See *Cronic*, supra. Petitioner submits
16 that he has presented an obvious claim of conflict of interest. Petitioner has satisfied the standard
17 of *Cuyler v. Sullivan* 446 U.S. 335, 350 (1980), for showing a violation of the Sixth Amendment
18 by factually demonstrating: (1) that defense Counsel was actively representing conflicting interest
19 and (2) that the conflict had an adverse effect on specific instances of Counsel's performance. *Id.*
20 at 348.

21 Petitioner respectfully requests that the Court consider each of the individual allegations of
22 ineffective assistance of Counsel listed above as part of the conflict of interest claim individually.
23

1 Each of the instances of ineffectiveness of Counsel stated above can, on its own, constitute
2 ineffective assistance of Counsel whether or not the Court agrees that there was a conflict of
3 interest.
4

5 "Type of breakdown in adversarial process that implicates the Sixth Amendment is not
6 limited to Counsel performance as a whole; specific errors and omissions may be the focus of a
7 claim of ineffective assistance as well. *U.S. v. Cronin* 466 U.S. 656, at 657 (1984).
8

9 **G. Counsel for Petitioner Failed to Allowed His Client To Testify**
10 **Against the Petitioner's Desire**

11 Petitioner wanted to testify in his own behalf in light of the fact that Defense Counsel did
12 not intend to call any witnesses on Petitioner's behalf, but Counsel refused to let Petitioner testify
13 without explaining why, except to say it's "general practice." Petitioner did not have anything to
14 hide, nor did he have any felony conviction or any convictions at all at the trial. The Prosecutor
15 trampled Petitioner's character during closing arguments and the presentation of the State's case.
16 Petitioner was restrained by Counsel from rebutting this or telling his side of the story regarding
17 his alibi, why and how he came to possess the murder weapon, etc. This is improper. *Gallego v.*
18 *U.S.* 174 F.3d 1196, 1197 (11th Cir. 1999) (Counsel's alleged refusal to allow defendant to
19 testify, if proved, would fall outside range of reasonably effective assistance).
20

21 Counsel on direct appeal was likewise ineffective for Failure to raise all the meritorious
22 issues contained in *this* memorandum of Law. *U.S. V. Mammino* 212 F.3d 835, 845 (3rd Cir.
23 2000); *Bell v. Jarvis* 198 F.3d 432, 444 (4th Cir. 1999); *U.S. v. Williamson* 183 F.3d 458, 463-64
24 (5th Cir. 1999); *Delgado v. Lewis* 181 F.3d 1087, 1092 (9th Cir. 1999) and *Masen v. Ranks* 97
25 F.3d 887 894 (7th Cir. 1996) (Counsel's failure to raise obvious and significant issues was
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1 ineffective assistance because counsel's deficient performance creates presumption of prejudice).

2 Thus, if any procedural default arguments are raised by the State, such alleged default must be
3 excused.

4
5 Petitioner has set forth numerous claims of error and numerous sub-claims of error that violate
6 his Constitutional Rights under the Fifth, Sixth, and Fourteenth Amendments. The case must be
7 reversed.

8 **CONCLUSION**

9 WHEREFORE, the above arguments require this Honorable Court to reverse Mr. Nasby's
10 convictions based upon the violations of Mr. Nasby's Constitutional Rights under the Fourth,
11 Fifth, Sixth, and Fourteenth Amendment to the United States Constitution.

12
13 DATED this 17 day of November 2004.

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ANTHONY P. SGRO, ESQ
PATTI & SGRO

1 **AFFD**

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7 (702)385-9595

8 Attorney for Defendant

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 * * *

12 THE STATE OF NEVADA,)

13 Plaintiff,)

14 -vs-)

Case No.: C154293

Dept No.: XVIII

15 BRENDAN NASBY,)

16 Defendant)

17 **AFFIDAVIT OF CRYSTAL SOBRIAN**

18 STATE OF CALIFORNIA)

19)s.s

20 COUNTY OF LOS ANGELES)

21 I, Crystal Sobrian, being first duly sworn deposes and states as follows:

- 22
- 23 1. Affiant is the friend of the Defendant Brendan Nasby and has personal knowledge
- 24 of the facts set forth herein and is competent to testify thereto and could and would
- 25 so testify under oath if called to do so.
- 26 2. On Thursday, July 16, 1998, I arrived at the home of Brendan Nasby with my friend
- 27 as I was visiting Las Vegas. Brendan was a long time friend and he had just had a
- 28 new baby daughter with his girl friend. I wanted to visit Brendan and his new

1 daughter. I arrived at approximately 9:00 p.m.

2 3. I staying in the living room with my friend and spoke to Brendan and his girl friend.

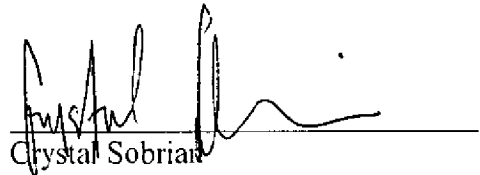
3 4. At approximately 11:00 p.m. a group of Brendan's friends came over.
4 Approximately 3 or 4 males. While they were present, I saw one of the friends pass
5 what appeared to be a gun to Brendan. They stayed approximately 15 to 20 minutes
6 and left.
7

8 5. Brendan stayed home and continued to talk with and socialize with me and my
9 friend, his new baby and his girl friend until approximately 2:00 a.m.

10 6. I informed Brendan's trial attorney about this information. I gave a sworn statement
11 and even came to Las Vegas during Brendan's trial and made myself available to
12 testify.
13

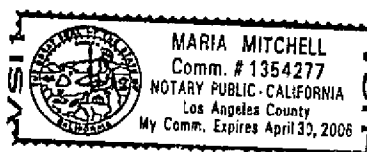
14 7. I was never called as a witness during the trial.

15 FURTHER YOUR AFFIANT SAYETH NOT.

16
17 
Crystal Sobrian

18
19 SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2004.

20
21 
22 NOTARY PUBLIC



1 **AFFD**

2 ANTHONY P. SGRO, ESQ.

3 Nevada Bar No. 003811

4 PATTI & SGRO, P.C.

5 300 East Charleston Blvd., Suite 105

6 Las Vegas, Nevada 89104

7 (702)385-9595

8 Attorney for Defendant

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 * * *

12 THE STATE OF NEVADA,)

13 Plaintiff,)

14 -vs-)

Case No.: C154293

Dept No.: XVIII

15 BRENDAN NASBY,)

16 Defendant)

17 **AFFIDAVIT OF COLLEEN WARNER**

18 STATE OF NEVADA)

19)ss.

20 COUNTY OF CLARK)

21 I, Colleen Warner, being first duly sworn deposes and states as follows:

- 22
- 23 1. I am the mother of Defendant, Brendan Nasby's daughter and the former fiancé of
- 24 Mr. Nasby and I have personal knowledge of the facts set forth herein and I am
- 25 competent to testify thereto and could and would so testify under oath if called to do
- 26 so.
- 27
- 28 2. On Thursday, July 16, 1998, I was at the home of Brendan Nasby with our new baby
- daughter. At approximately 9:00 p.m., Ms. Crystal Sobrian, Mr. Nasby's friend from

1 California, and a friend of Crystal's came over to visit. The visit was for the purpose
2 of seeing Brendan and our new baby. These two friends stayed at our house until
3 about 2:00 a.m. Brendan's friends came over that night, but he did not leave with
4 them. Following what I later learned to be the death of Mr. Beasley, I saw "Sugar
5 Bear" Charles Von Lewis hand Brendan the gun. I was planning on testifying about
6 this at Mr. Nasby's trial.
7

8 3. On October 13, 1999, I was present during Brendan's trial. Before the trial began,
9 the District Attorney showed me a hand-written letter, while in the Courtroom,
10 written by Mr. Nasby. At this time, myself and Mr. Nasby were engaged to be
11 married.
12

13 4. In this letter, Mr. Nasby spoke extremely harsh words about me. Also this letter was
14 written to another woman, whom I believed to be a threat to the relationship between
15 me and Mr. Nasby. The District Attorney who showed me the letter, knew that I was
16 Mr. Nasby's alibi witness and that by showing me this letter, I would be upset with
17 Mr. Nasby and turn against him.
18

19 5. Out of anger, I informed the Defense Council that I would not testify for Mr. Nasby.
20 For the following days of Mr. Nasby's trial, I made it a point not to be present.
21

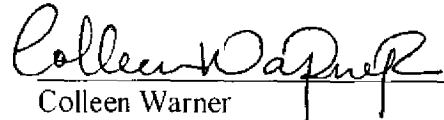
22 6. I was later informed that the Judge told the District Attorney that he was not to show
23 me the letter, which he did show me. I now feel strongly that the actions taken by the
24 District Attorney were wrong and I should have testified for Mr. Nasby. I believe that
25 my testimony would have shown reasonable doubt.
26

27 7. I believe that it was unfair and inappropriate for the District Attorney to manipulate
28 me and play on my emotions, in order to keep me from testifying, so that he could
convict Mr. Nasby.

1
2 8. Under the penalty of perjury, I declare that I am Colleen Warner and that the contents
3 of this affidavit are true.
4

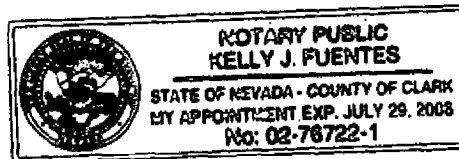
5 FURTHER YOUR AFFIANT SAYETH NOT.

6 DATED this 17 day of November, 2004.

7
8 
9 Colleen Warner

10 SUBSCRIBED AND SWORN TO before me
11 this 17 day of November, 2004.

12 
13 NOTARY PUBLIC



ORIGINAL

COM

ANTHONY P. SGRO, ESQ.

PATTI & SGRO

Nevada State Bar #003811

300 East Charleston Boulevard, Suite 105

Las Vegas, Nevada 89104

(702) 385-9595

Attorney for Defendant

FILED

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Shirley S. Humphreys
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff

vs.

BRENDAN NASBY,

Defendant.

Case Number: C154293

Dept. No. XVIII

CERTIFICATE OF MAILING

I hereby certify that on the 24 day of November, 2004, I deposited a true and correct copy of the foregoing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope, first class mail, postage prepaid, addressed to:

H. LEON SIMON, ESQ.
Deputy District Attorney
200 S. Third Street
Las Vegas, Nevada 89101

NOV 24 2004

RECEIVED

Jim Deliberto
an employee of PATTI & SGRO

ORIGINAL

14

FILED

FEB 1 7 57 AM '05

Shirley B. Ferguson
CLERK

1 STIP
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 H. LEON SIMON, ESQ
6 Chief Deputy District Attorney
7 Nevada Bar #000411
8 200 South Third Street
9 Las Vegas, Nevada 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15
16 Plaintiff,
17
18 -vs-
19
20 BRENDAN NASBY,
21
22 Defendant.

CASE NO: C154293
DEPT NO: XVIII

23 STIPULATION AND ORDER

24 IT IS HEREBY STIPULATED AND AGREED, by and between H. LEON
25 SIMON, ESQ., Deputy District Attorney, and ANTHONY P. SGRO, ESQ., counsel for
26 Defendant, BRENDAN NASBY, that the State's Reply brief in the above entitled matter,
27 may now be filed and served on or before February 4, 2005. Defendant's Reply may now be
28 filed and served on or before February 18, 2005.

29 IT IS FURTHER STIPULATED AND AGREED that the appearance in this case,
30 currently scheduled for February 9, 2005 at 9:00 a.m. is to be vacated. The new date shall be
31 re-set for March 2, 2005 at 9 am/pm.

32 IT IS FURTHER STIPULATED AND AGREED that this delay is for good cause
33 because counsel for the State needs the additional time to adequately address the issues
34 presented in Defendant's brief and to obtain an affidavit from Defendant's trial counsel.


MC

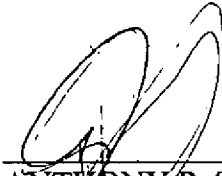
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DATED this ____ day of January, 2005.

DISTRICT ATTORNEY'S OFFICE

PATTI & SGRO


H. LEON SIMON, ESQ.
Nevada Bar No. 000411
Deputy District Attorney
200 S. Third Street
Las Vegas, NV 89155


ANTHONY P. SGRO, ESQ.
Nevada Bar No. 003811
300 E. Charleston Blvd., Suite 105
Las Vegas, NV 89104

IT IS SO ORDERED

DATED this 3rd day of January, 2005.


DISTRICT COURT JUDGE


CLERK

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
CHRIS J. OWENS
Chief Deputy District Attorney
Nevada Bar #001190
200 South Third Street
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(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO: C154293
)	
-vs-	)	DEPT NO: XVIII
)	
BRENDAN NASBY,)	
)	
Defendant.)	

STATE'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS POST-CONVICTION

DATE OF HEARING: March 2, 2005
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
CHRIS J. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points
and Authorities in Opposition to Defendant's Petition For Writ Of Habeas Corpus Post-
Conviction.

This opposition is made and based upon all the papers and pleadings on file herein,
the attached points and authorities in support hereof, and oral argument at the time of
hearing, if deemed necessary by this Honorable Court.

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

1 Brendan Nasby, hereinafter Defendant, was charged by an Amended Criminal
2 Complaint, filed on August 27, 1998, with Conspiracy To Commit Murder and Murder With
3 Use Of A Deadly Weapon. An Information, filed on November 9, 1998, charged Defendant
4 with Conspiracy To Commit Murder and Murder With The Use Of A Deadly Weapon.

5 On October 19, 1999, a jury found Defendant guilty of Conspiracy To Commit
6 Murder and First Degree Murder With Use Of A Deadly Weapon. On November 29, 1999,
7 Defendant was sentenced to a maximum of one hundred twenty (120) months, with a
8 minimum parole eligibility of forty-eight (48) months, in the Nevada Department of Prisons
9 on the Conspiracy To Commit Murder count. On the First Degree Murder count, Defendant
10 was sentenced to a consecutive term of Life with the possibility of parole, with a consecutive
11 term of Life with the possibility of parole for the deadly weapon enhancement. A Judgment
12 Of Conviction was filed on December 2, 1999.

13 Defendant appealed his conviction to the Nevada Supreme Court. Defendant's
14 conviction was affirmed on February 7, 2001. Remittitur issued on March 6, 2001.
15 Defendant filed a pro per petition for writ of habeas corpus post-conviction on February 1,
16 2002. The State filed a response on April 5, 2002. This matter was never litigated. On
17 March 1, 2004, the district court set a new briefing schedule. Defendant was granted an
18 extension to file his petition for writ of habeas corpus post-conviction on November 10,
19 2004. Defendant filed the instant petition for writ of habeas corpus post-conviction on
20 November 17, 2004. On February 1, 2005, the State was granted an extension to file its
21 response.

22 ARGUMENT

23 **I. DEFENDANT'S VARIOUS CLAIMS OF PROSECUTORIAL MISCONDUCT 24 AND TRIAL COURT ERROR ARE NOT COGNIZABLE**

25 Defendant asserts in his petition there was prosecutorial misconduct because the
26 prosecutor: prevented a defense witness from testifying; improperly vouched for the
27 credibility of a state witness; improperly referred to things not in evidence; misstated the law
28 in closing argument; presented false testimony; led the Defendant to believe Mr. Von Lewis
would be a witness; and placed a jail house informant in close proximity to Defendant.

1 Defendant also asserts that there was trial court error because: the court delayed ruling on a
2 letter; the court improperly allowed the evidence of prior bad acts; the court failed to give an
3 accomplice jury instruction; and the court improperly gave a malice and reasonable doubt
4 jury instructions. These claims are barred by NRS 34.810(1)(b)(2), which provides that the
5 court shall dismiss a petition if:

6 (b)The petitioner's conviction was the result of a trial and the grounds for the
7 petition could have been: . . .

8 (2) Raised in a direct appeal or a prior petition for a writ of habeas
corpus or post-conviction relief;

9 *see also* Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (disapproved on
10 other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

11 Additionally, NRS 34.810(3) imposes a burden on the Defendant to prove specific
12 facts that demonstrate good cause for Defendant's failure to present these claims in an earlier
13 proceeding and to show that Defendant was actually prejudiced in the manner in which his
14 trial and or direct appeal was conducted. Here, Defendant has not set forth any reason for
15 failing to raise these issues in his direct appeal. As such, he has failed to meet his burden of
16 proof to show good cause not to have raised these issues earlier. Therefore, Defendant's
17 claims stated above are waived and should be dismissed. *See* Kimmel v. Warden, 101 Nev.
18 6, 692 P.2d 1282 (1985); Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983).

19 **III. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF TRIAL AND** 20 **APPELLATE COUNSEL**

21 Defendant alleges that he received ineffective assistance of trial and appellate
22 counsel. The Nevada Supreme Court has held that "claims of ineffective assistance of
23 counsel must be reviewed under the 'reasonably effective assistance' standard articulated by
24 the U.S. Supreme Court in Strickland¹, requiring a defendant to show that counsel's
25 assistance was 'deficient' and that the deficiency prejudiced the defense." Bennett v. State,
26 111 Nev. 1099, 1108, 901 P.2d 676, 682 (1995); Kirksey v. State, 112 Nev. 980, 987, 923

27
28 ¹ Strickland v. Washington, 466 U.S. 668 (1984).

1 P.2d 1102, 1107 (1996). Strickland laid out a two-pronged test to determine the merits of a
2 defendant's claim of ineffective assistance of counsel:

3 First, the defendant must show that counsel's performance was deficient. This
4 requires showing that counsel made errors so serious that counsel was not
5 functioning as the 'counsel' guaranteed the defendant by the Sixth
6 Amendment. Second, the defendant must show that the deficient performance
7 prejudiced the defense. This requires showing that counsel's errors were so
8 serious as to deprive the defendant of a fair trial, a trial whose result is reliable.
9 Unless a defendant makes both showings, it cannot be said that the conviction
10 . . . resulted from a breakdown in the adversary process that renders the result
11 unreliable.

12 Id. at 687, 104 S.Ct. at 2064. In addition, Defendant must show that the representation of
13 Defense counsel was not within the range of competence demanded of attorneys in criminal
14 cases. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

15 There is a presumption that trial counsel was effective and fully discharged their
16 duties. Homick v. State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996), citing Davis v.
17 State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). "This presumption can only be
18 overcome by strong and convincing proof to the contrary." Homick, 112 Nev. at 310, 913
19 P.2d at 1285. The Nevada Supreme Court has held that all appeals must be "pursued in a
20 manner meeting high standards of diligence, professionalism and competence." Burke v.
21 State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). Finally, in order to prove that
22 appellate counsel's alleged error was prejudicial, the defendant must show that the omitted
23 issue would have had a reasonable probability of success on appeal. *See* Duhamel v. Collins,
24 955 F.2d 962, 967 (5th Cir. 1992); Heath v. Jones, 941 F.2d, 1126, 1132 (11th Cir. 1991).

25 The defendant has the ultimate authority to make fundamental decisions regarding his
26 case. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312 (1983). However, the
27 defendant does not have a constitutional right to "compel appointed counsel to press
28 frivolous points requested by the client, if counsel, as a matter of professional judgment,
decides not to present those points." Id. In reaching this conclusion, the Supreme Court has
recognized the "importance of winnowing out weaker arguments on appeal and focusing on
one central issue if possible, or at most on a few key issues." Id. at 751 -752, 103 S.Ct. at

1 3313. In particular, a “brief that raises every colorable issue runs the risk of burying good
2 arguments . . . in a verbal mound made up of strong and weak contentions.” Id. at 753, 103
3 S.Ct. at 3313. The Court noted that, “for judges to second-guess reasonable professional
4 judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested
5 by a client would disserve the very goal of vigorous and effective advocacy.” Id. at 754, 103
6 S.Ct. at 3314.

7 The role of a court in considering allegations of ineffective assistance of counsel is
8 “not to pass upon the merits of the action not taken but to determine whether, under the
9 particular facts and circumstances of the case, trial counsel failed to render reasonably
10 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978), citing
11 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

12 This analysis does not mean that the court should “second guess reasoned choices
13 between trial tactics nor does it mean that defense counsel, to protect himself against
14 allegations of inadequacy, must make every conceivable motion no matter how remote the
15 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711, citing Cooper, 551
16 F.2d at 1166. In essence, the court must “judge the reasonableness of counsel's challenged
17 conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.”
18 Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

19 Even if a defendant can demonstrate that his counsel’s representation fell below an
20 objective standard of reasonableness, he must still demonstrate prejudice and show a
21 reasonable probability that, but for counsel’s errors, the result of the trial would have been
22 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999), citing
23 Strickland, 466 U.S. at 687. “A reasonable probability is a probability sufficient to
24 undermine confidence in the outcome.” Id., citing Strickland, 466 U.S. at 687-89, 694.

25 **A. Defendant’s Claims**

26 Defendant argues, that trial counsel was ineffective for failing to call any witnesses
27 and failing to offer any evidence. The Nevada Supreme Court held in Thomas v. State, 120
28 Nev. 37, 83 P.3d 818 (2004), that allegations that counsel did not call any witnesses during

1 the guilty phase did not state a claim for ineffective assistance of counsel. *See also, State v.*
2 *Love*, 109 Nev. 1136, 865 P.2d 322 (1993)(holding that counsel's tactical decision not to call
3 alibi witnesses at trial was made after adequate investigation and was based upon counsel's
4 reasonable determination that damage to the defendant's case could be avoided). In
5 addition, the Nevada Supreme Court has stated that it will not second guess counsel's trial
6 tactics. *Donovan*, 94 Nev. at 675, 584 P.2d at 711. The decision of which witnesses to call
7 is left to the professional judgment of trial counsel.

8 Furthermore, the Nevada Supreme Court has stated that a criminal defendant is not
9 denied effective assistance of counsel when a defense attorney "refuses to cooperate with the
10 defendant in presenting perjured testimony. *Young v. Ninth Judicial District Court*, 107
11 Nev. 642, 649, 818 P.2d 844, 848 (1991) (adopting *Nix v. Whiteside*, 475 U.S. 157 (1986).

12 NRS 199.120 states that anybody who suborns perjury shall be guilty of a category D
13 felony. In the present case, the State was able to recover information which indicated that
14 Defendant was coaching witnesses with false testimony. (State's Exhibits 1-4). Two of
15 these exhibits were presented in Defendant's case. (State's Exhibits 3-4). Additionally,
16 defense counsel was notified of Defendant's attempts to stubborn perjury. As such, defense
17 counsel was prohibited from putting on witnesses that he knew would commit perjury. As
18 defense counsel had originally filed a list of witnesses, and as Defendant states that his case
19 was proceeding on an alibi defense, defense counsel cannot be deemed ineffective under the
20 *Strickland* standards for failing to present witnesses whom he knew would perjure
21 themselves. As it is the Defendant's own actions which required that his counsel proceeded
22 without calling his alibi witnesses, Defendant cannot now claim that counsel was ineffective.

23 Defendant also asserts that counsel was ineffective for exerting "extreme pressure" on
24 Defendant to plead guilty. Defendant merely asserts a bare and naked allegation. Defendant
25 fails to offer any proof that counsel was forcing him to plead guilty or show how counsel
26 accepting employment with the Special Public Defender's Office was an effort to force
27 Defendant to plead guilty. Naked and bare allegations are not grounds for relief. *Hargrove*
28 *v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

1 Defendant asserts that trial counsel (Joseph Sciscento) had a conflict of interest for
2 accepting employment at the Special Public Defender's Office. At Defendant's sentencing
3 on November 29, 1999, counsel informed the court that he thought there would be a conflict
4 of interest for the appeal and the court appointed new counsel. However, no conflict of
5 interest existed during trial. Mr. Sciscento had an agreement with the Special Public
6 Defender's Office that he would be allowed to finish up his pending cases. (State's Exhibit
7 5). Mr. Sciscento was effectively screened from the Special Public Defender's Office during
8 his representation of Defendant. Id. Mr. Sciscento did not discuss Defendant case with
9 anyone from the Special Public Defender's Office; no one in the Special Public Defender's
10 Office had access to Mr. Sciscento's notes or files concerning the Defendant; none of the
11 Special Public Defender's resources were used by Mr. Sciscento in the preparation of
12 Defendant's case; and all preparation for Defendant's case was done at Mr. Sciscento's prior
13 office. Id. Therefore, no conflict of interest existed in the representation of Defendant.

14 Furthermore, affiliation with the Special Public Defender's Office while the case was
15 pending does not automatically constitute a legal conflict. A court is granted broad
16 discretion in determining whether an attorney should be disqualified from a case. Brown v.
17 Eighth Judicial Dist. Ct., 116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000); Collier v.
18 Legakes, 98 Nev. 307, 646 P.2d 1219 (1982). Screening, also referred to as an ethical wall
19 or Chinese wall, is appropriate to prevent confidential information from the quarantined
20 attorney to the other members of the law firm or visa versa. Analytica, Inc. v. NPD
21 Research, Inc., 708 F.2d 1263 (7th Cir. 1983). In determining whether a conflict exists, a
22 court looks to whether counsel's functions "could be carried out impartially and without
23 breach of any privileged communication." Collier, 98 Nev. at 310, 646 P.2d at 1221.
24 Contrary to Defendant's contention, merely working for the Special Public Defender's
25 Office does not equate to a conflict of interest. Mr. Sciscento stated that he was effectively
26 screened from the Special Public Defender's Office. Defendant has failed to show that
27 counsel's representation was carried out impartially or that any breach of privileged
28 communication occurred from counsel's employment with the Special Public Defender's

1 Office.

2 Defendant contends that counsel failed to sufficiently investigate Defendant's case.
3 Again, Defendant merely makes an unsupported bare allegation that counsel failed to
4 sufficiently investigate and Defendant re-alleges that counsel failed to call any witnesses.
5 Defendant fails to show what additional facts could have been discovered upon additional
6 investigation. Furthermore, Defendant has not met the prejudice prong of Strickland,
7 because Defendant has not shown that but for the alleged error, the outcome of the trial
8 would have been different.

9 Defendant contends that counsel was ineffective for failing to make several objections
10 at trial. The Nevada Supreme Court has held it will not second guess counsel's trial tactics.
11 Donovan, 94 Nev. at 675, 584 P.2d at 711. If each non-objection was analyzed on appeal,
12 defense counsel would be forced, in order to protect himself, to make every conceivable
13 motion and objection no matter how remote the possibilities were of success. Id. Which
14 objections to raise or not to raise at trial are left to the professional judgment of counsel and
15 should not be second-guessed. Jones, 463 U.S. at 751. Therefore, trial counsel was not
16 ineffective for failing to raise every objection at trial.

17 Finally, Defendant asserts that counsel did not permit Defendant to testify at trial.
18 However, Defendant fails to cite to any inference in the record which indicates that counsel
19 refused to allow Defendant to testify. Defendant is merely alleging, with the benefit of
20 hindsight, that he wanted to testify. "Hindsight speculation regarding a tactical decision is
21 not tantamount to proof that the result of the trial was unreliable or that the trial was
22 fundamentally unfair." State v. Edward, 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993).

23 The evidence presented against the Defendant was overwhelming. The evidence
24 included testimony that Defendant had murdered the victim execution style, that Defendant
25 made admissions to two different people, and Defendant voluntarily led police to the
26 location of the murder weapon within Defendant's house. Furthermore, there was evidence
27 presented at trial which detailed the premeditated manner in which the murder took place.

28 Defendant has failed to show strong and convincing evidence to overcome the

1 presumption that counsel was effective and fully discharged his duties. In view of the
2 compelling evidence of Defendant's guilty, as noted above, even if trial counsel was in
3 anyway deficient, Defendant has not met the prejudice prong of Strickland that but for
4 counsel's alleged deficiencies a more favorable result was reasonably probable if trial
5 counsel had done as Defendant contends he should have. Defendant received effective
6 assistance of trial and appellate counsel and thus, relief should not be granted relief on these
7 grounds.

8 **CONCLUSION**

9 Defendant's various claims of prosecutorial misconduct and trial court error are not
10 cognizable and Defendant received effective assistance of trial and appellate counsel.
11 Therefore, Defendant's petition should be denied.

12 DATED this 4th day of February, 2005.

13 Respectfully submitted,

14 DAVID ROGER
15 Clark County District Attorney
Nevada Bar #002781

16
17
18 BY /s/ CHRIS J. OWENS
19 CHRIS J. OWENS
20 Chief Deputy District Attorney
Nevada Bar #001190

21 **CERTIFICATE OF FACSIMILE TRANSMISSION**

22 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
23 PETITION FOR WRIT OF HABEAS CORPUS, was made this 4TH day of
24 February, 2005, by facsimile transmission to:

25 ANTHONY SGRO, ESQ.
26 FAX#386-2737

27 BY /s/ M. Beaird
28 Employee of the District Attorney's Office

1 /da/mb

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[REDACTED] Brendan Nasby
[REDACTED] #B17690

330 Casino Ctr. Blvd.
Las Vegas, NV 89101

Be Gentle
Legs
Inside

Crystal Sobrian
2686 LaVere Dr.
Long Beach, CA 90801

Love

EXHIBIT " 1 "

Crystal,

9-29-99

Hello, Love! I've been meaning to write you all day, but it's 8:00 p.m., now. I didn't have anything in particular to tell you. I just felt the need to write you another letter.

I've been stressing over my case all day, but I swear that you keep popping into my head. I'm finding myself ~~staring~~ staring at your pictures and getting lost, in love again.

I love you, Crystal, and I hope that we can be together. I see that you are serious about God, and to have a woman that honors Him is truly a Blessing from Him. I need a woman like you to keep my head on straight. Most guys get locked up, praise God, and then forget about Him when they get out. If they had a woman that was serious about ~~honoring~~ honoring God, then they wouldn't stray away from Him.

Boo-Boo, you ~~are~~ meet all qualifications of the perfect woman. You're beautiful, sexy, smart, funny, hard working, "FREAKY" ~~is~~, responsible, loving, and most of all → God fearing. You're exactly what I need. You're all I need. Crystal, you're such a special woman to me. I just hope that God allows me to come home and be with you.

(9-30-99)

Sorry for the interruption, but once again, Colleen

shattered my spirits. She was supposed to come and see me last night so that I could give her those notes, but she never showed up. I guess that she was like, "I got more important things to do." Anyways? I called her this morning and I had a talk with her. I asked her if she wanted me to get out. Then I asked her if she wanted me to be a father to Lynae. She answered both questions with a "yes." But being that she's hating on me → I asked her if there was any part of her that wanted me to stay locked down. Do you know what she said? "My heart?" She said that she'd rather see me in jail, then with someone else. What kind of shit is that? Anyways? I just told her that me and her could still be together, but she has to take care of business. There was more to it, but that's basically what ~~she~~ I told her. Hopefully, she gets done what needs to be done. The reason I'm telling you this, is because I think you should know, and not be kept in the dark. What I tell her are only words. I'm only telling her what she wants to hear, so that I can get her to do what I need her to do. All of my love belongs to you now. To be honest with you → I hate Colleen. Looking at the situation that I'm in, I ~~will~~ have no doubt that you will understand. My ~~shit~~ feelings are not involved with anything I tell Colleen. The only ~~emotion~~ emotion that she brings out of me is "anger." If I get out and God grants me that miracle, I only want to be with you. I don't

to general population, I'll be able to watch T.V., have a cell mate, play cards and dominoes, see movies use the phone more, and come out of my cell for eight hours a day. But being around all of them fools like that → I'll be right back in the hole for fighting. Oooh! I'll be able to go outside, breath some fresh air, and work out on the rec-yard. I think I might go, but I'm not sure. I don't like being around too many people like that.


~~I hope we can get the bullet testing done by the 1st of December. The examiner hasn't finish~~
ed with the bullet testing, and if it comes back that it doesn't match, again, then we can exclude the weapon. So you know what that means → we're going to have to postpone trial, again. I hope we don't have to wait until December, because I don't want to miss Lynae's birthday, again. I already missed her first birthday; I would hate to miss another. I'm really tired of being in here, but I think that if I went back to general population, the time would go by a lot quicker, because I'm not used to having so many things to do. I know I'll get my size back if I go to general population, too. Who knows → It might ease the stress. Oooh! I'll have action at cigarettes and weed, too? You don't know how much I need to get high.

10-5-99

Well, I spoke with you again yesterday, and like always, it was a joy to hear your voice. We didn't talk much, you were washing your hair and taking a bath. I wish I could've been there to help you wash your naked buttocks. ~~I~~ I hope you did something about the redness on the inside of your thighs. I told your ass about humping the arm of the ~~couch~~ couch. ~~I~~

Well, Colleen came to see me last night. She took the notes that need to be shared with all of you. If she hasn't given them to you yet → call her and get them from her, please. Anyways! She didn't bring my daughter. She said that she was gonna ~~be~~ put a \$100.00 dollars on my books, but she got upset because I cussed her out about bring my "enemies" over my house and fucking them in my room and in my bed. Not only that, but in front of Lynae, too. This ~~bitch~~ bitch showed all of my enemies where I lived and then fucked in front of my daughter, and she had the nerve to get mad at me for yelling at her! Then she said that just because I cussed her out, that she was going to go fuck one of my enemies right now. I used to shoot at the nigga's that she's bring over my house. What kind of shit is that? She's so threw now. When I come out for free time today, my main concern will be to find a few ~~be~~ people to knock that hooker out. I'm going to try

my hardest, too. They say that it's a thin line between love and hate. → Well, I hate that bitch! She's threw ~~me~~ with money! I talked to her about the way that she be treating Lynae, too, and all she could say is → "So what if I beat her and cuss at her? She's my daughter?" Then, to add injury to insult → she say, "if you were out here then you could be raising your daughter." I swear that I be wanting to choke that bitch out! But Anyways? I don't think that she put the money on my books. Wait? Do you know that that bitch put a cigarette out on my ~~daughter~~ daughter? I have to take Lynae when I get out. I'll set the bitch up, if I have to. I'm taking Lynae! → By all means ~~also~~ necessary!

I can't wait until I get out of this place. That is → If I get out. But if I do, I got so many things to do, and I can't wait to get started. I don't even really know where to start, but the very ~~the~~ first thing that I'm doing is going straight to church and thanking God. After that → who knows. I guess I'll just go with the flow and take advantage of whatever comes first. At least I know that I do have a house and a job waiting for me. If something goes wrong with that I'll just come live with you and let you take care of me. 

Two of my homeboys just left from out of here today. One went to the joint and the other one.

just moved to another moduel. Peep? Todd didn't really get 30 years. He was just messing around with me.

Actually, his trial is going pretty good. The D.A. was mad and started to physically choke Todd, during trial. So now, that makes the D.A. look like the bad guy, instead of Todd. He said that he doesn't see the D. getting a conviction, but they might get another hung-jury. Either way, looks good for Todd. I just hope God Blesses me with the same luck and sets me free.

Boo-Boo? I'm sending you a tape and I want you to go get one of those mini-tape-recorders and play it for me over the phone. I found it in my legal files. I don't know what's on it, but it may be something I need to know. I'm trying to find a way to send it to you without it looking like I'm mailing something suspicious. I'll figure out something.

Anyways? I think that's it. I should've told you everything else over the phone. It's still early. So I'm going to get at you later on. I love you.

P.S. - The reason that I put "Wayne" as the return address is because I didn't want the police intercepting this letter or the tape. I love you!

Love,
Blenda
Nashx

Be Gentle!
Legal Documents
Inside.

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

RAY STEFAN, being first duly sworn deposes and states that he is the affiant herein and is an Investigator with the Clark County District Attorney's Office presently assigned to the Major Violators Unit, Criminal Division. That I have been employed with the Clark County District Attorney's Office for the past eight years and eight months.

There is probable cause to believe that certain property hereinafter described will be found at the following described premises, to-wit:

Clark County Detention Center
330 S. Casino Center
Las Vegas, Nevada 89101

The property referred to and sought to be seized consists of the following:

A standard white envelope addressed to a Crystal Sobrian with a California address with purple ink marked "Gentle-legal material inside" containing a letter and micro cassette tape which was believed written and recorded by Inmate Brendan James Nasby, ID#1517690.

The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offense of Conspiracy to Commit Murder and Murder With Use of a Deadly Weapon have been committed by Brendan Nasby.

In support of your affiant's assertion to constitute the existence of probable cause, the following facts are offered:

That on July 16, 1998, Michael Beasley was murdered in Clark County, Nevada, and Brendan Nasby was subsequently arrested for the aforementioned crimes.

EXHIBIT "2"

That on or about July 29, 1999, your affiant received a "Notice of Alibi Witness" from Deputy District Attorney Frank Coumou listing Brenda Nasby and Colleen Warner as witnesses. This notice was followed by (2) "Supplemental Notice of Alibi Witnesses" listing Nina Hogue, Crystal Sobrian, and Chris LaFrambroise as witnesses.

That on October 7, 1999, your affiant was contacted by Deputy District Attorney Frank Coumou regarding contraband confiscated at the Clark County Detention Center by a correction officer from Inmate Nasby.

On October 7, 1999 at 6:30 p.m., your affiant contacted night shift Lt. Charlene O'Rourke , P#3548, about the property.

Lt. O'Rourke stated inmate Nasby attempted to mail out a letter with a improper return address and with inadequate postage for the weight of the letter. The envelope also had a decided bulge to it. The officer taking the letter from Inmate Nasby, Shawn Judd, P#5064, took the unopened letter to Lt. O'Rourke.

Believing to contain contraband, Lt. O'Rourke opened the envelope pursuant to Clark County Detention Center policy and found it to contain a micro cassette tape and a five (5) page letter addressed to Crystal Sobrian, one of the alibi witnesses.

The possession of this micro cassette by an inmate would be not allowed for security reasons per the policy of the Clark County Detention Center.

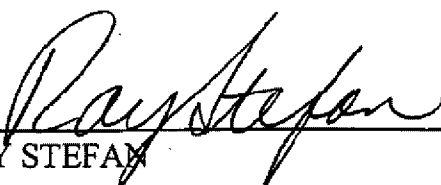
Lt. O'Rourke read the letter in part and it appeared that the letter contained instructions and coaching on the part of Inmate Nasby to his girlfriend, Colleen, as to how the alibi witnesses should testify.

Lt. O'Rourke played the micro cassette in part, although the recording is somewhat distorted, it appeared that Inmate Nasby was making threats regarding testimony.

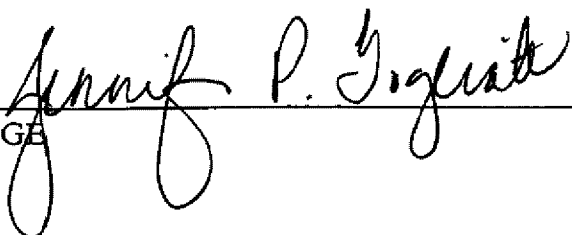
Lt. O'Rourke prepared a memo to her C.O. Captain Henry Hoogland and left the seized property in his office.

That the search warrant is necessary to ensure that the above correspondence is not destroyed and to seize the same, to be used as evidence in the prosecution of Brendan Nasby.

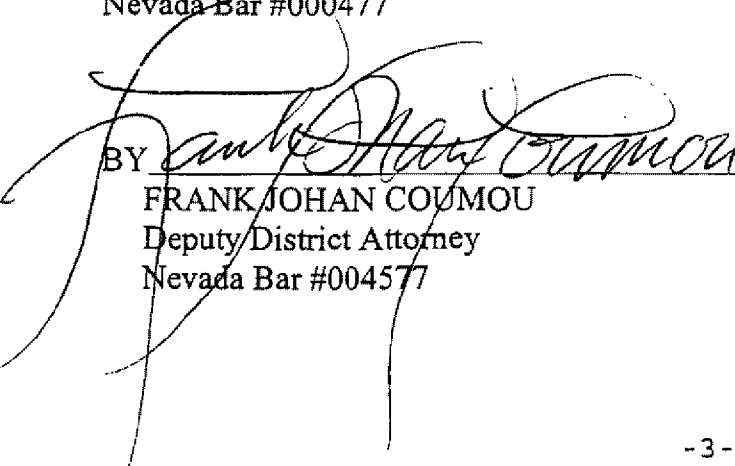
WHEREFORE, affiant requests that a Search Warrant issue directing a search for and seizure of the aforementioned items at the location set forth herein between the hours of 7:00 a.m. and 7:00 p.m.


RAY STEFAN

SUBSCRIBED and SWORN to before me this 20th day of October, 1999.


JUDGE

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY 
FRANK JOHAN COUMOU
Deputy District Attorney
Nevada Bar #004577

SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark. Proof by Affidavit having been made before by RAY STEFAN, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely:

A standard white envelope addressed to a Crystal Sobrian with a California address with purple ink marked "Gentle-legal material inside" containing a letter and micro cassette tape which was believed written and recorded by Inmate Brendan James Nasby, ID#1517690.

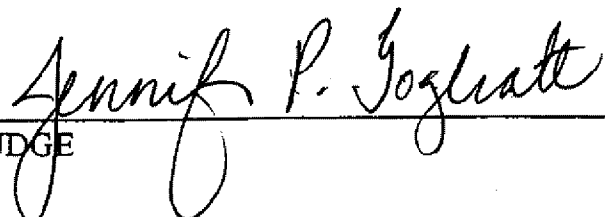
is presently located at:

Clark County Detention Center
330 S. Casino Center
Las Vegas, Nevada 89101

and as I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the Affidavit attached hereto there are sufficient grounds for issuance of the Search Warrant.

Your are hereby commanded to search forthwith said premises for said property, serving this warrant between the hours of 7:00 a.m. and 7:00 p.m. and if the property be there to seize it, prepare a written inventory of the property seized and make a return for me within ten days.

DATED this 8th day of October, 1999.



JUDGE

I:\MVU\SW\Nasby.wpd\kjh

EXHIBIT "3"

70 (C154293)

8/31/98

OK,

West Tupper Girl? How you been these last couple days? I'm hanging in here. I'm just dealing with the lie say, lie say bullshit.

I read your state ment that you told the police. Even though it's not the same exact story you told me, it was very good. Now if you get called into court, you have to tell the exact same story you told the police or else they will lock you up for perjury. The only thing you said wrong was that happened on the 27th, when Droop died on the 17th of July. But all you have to say in court is that you got the dates mixed up. And If you didn't already, don't tell the police nothing else, and don't change your story.

I hope you haven't had second thoughts about me killing the homing Droop (L.P.), because you know I didn't. And whatever the police and other people are saying, it's a big oh pile of bullshit. The police are lying to everyone, just to get more information from other people. Like when they told you that said That you moped up that bitch Tweety,

at shit was all a lie. But peep this, our little cousin told the police the whole org. If you don't believe me then I'll put it on my daughter, Lynae M. Nasby. Now you know I wouldn't blow her up. You know that would never say no shit like that. And the people on the streets are just talking off their asses. None of them know what happened. Nobody knows what's being said about my case. I'll tell a couple of people this and tell a couple of people that, just to throw the snitches off. Mostly, the only people that know anything about the case would be me and my attorneys, and that's how it's going to stay. My mother, my sister, Colleen, the homies; none of them know the deal. So whatever's being said on the streets about me is bullshit, including what Colleen says.

B.K., I care about you, Droop (RIP), and all the rest of the homies. I even care about J. Cent, Shugg, and Mazzy. Even though Mazzy said he was going to kill me if I do get out. But for one thing, nobody can tag me without me getting them first. I'm simply untouchable. And another thing is that I know Mazzy doesn't know the real deal. That's why he wants to kill me, he just don't know what's going on. I hope you could understand.

3
I this. I wouldn't want to lose another
and behind me being falsely accused. Goldie
is suppose to be hating on me too. I
couldn't believe that. People are happen all
the say the say bullshit?

Anyways? How's your little cousins
going. I hope they're alright.

Oh? Don't be worried. The police
only check incoming mail. So they don't
check the letters I'm sending out. But when
you write me, If you write me, don't talk
to specific about the case. But at least
let me know if you're still on my team.

How's your case going with that
battery charge? They said that bitch was
sent into an unconscious state. B.K., that
bitch was sleep.

Anyways? Hit me up and let me
know how shit's going. If you can stop by
my house and check up on my mom, Colleen,
and the baby. Make sure they're alright.

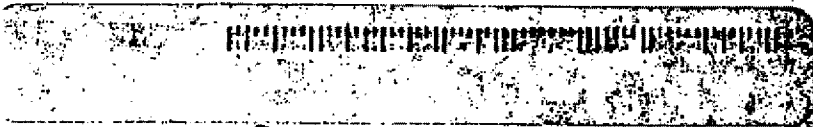
[S]- Pray for
me, as I pray
for you each
day. I Love
you Cuzz?
be safe.

Much Love

Loc,

BLUE
Loc #1

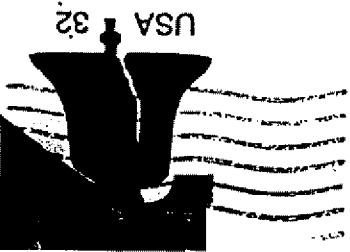
STANDARD MAIL
C.C.D.C. # 1517690-7F.23.L
330 Casino Ctr. Blvd.
Las Vegas, NV 89101



89110/1368

1390 Honey Lake St

Betty Adams



The girl's statement

I Met Shugg at the 7-11 on 15th and Fremont. I knew him for about a week before the murder happened. He was always a ~~heavy~~ heavy drinker every time I saw him he was drinking. On the night of the murder he had on a black T-shirt, black pants (dickies), and black converse with black laces. On that night (July 16, 1998) me and Shugg met at the ~~bus~~ bus station on Stewart & Las Vegas Blvd. I had my homegirl drop me off there on her way to ~~the~~ Fremont. After me and Shugg met that night ~~at~~ at the bus stop around 9:00 P.M.. We hopped on the Martin L. King BUS and took it to ~~the~~ Craig and M.L.K.. When we got off we went to an AM/PM gas station and Shugg paged someone. I think he paged Woods. Me and Shugg waited for about up there for about 20 ~~minutes~~ minutes then Woods came and picked us up in a dark red car (burgundy) with Droop in the back seat, T-Bone in the ~~front~~ front seat, his other Joe-T in the back behind ~~the~~ T-Bone. I hopped in the back & Shugg hopped in the front with ~~the~~ T-Bone. Now Woods was driving to him and then Shugg next to T-Bone. In #59 seat it was Droop behind Woods, Droop, then Joe-T on my right. Shugg EXHIBIT "4" id that they wanted to go about

nine that Shugg had. Nobody minded because we were smoking and drinking the whole way to the desert. I don't ~~from~~ remember ~~the~~ desert it was but I remember that was off of Alexander somewhere. When we got these Shugg, Woods, and Droop got out. Me, T-Bone, ~~and~~ and Joe-T stayed in the car smoking and drinking. 10 minutes later I started get out of the car and saw Woods sitting on the hood of the car. Droop standing in front of the edge of the cliff and Shugg put a gun up to Droop's head area and shot him. After that one shot I hopped back in the car. I heard another shot but I didn't want to look anymore so I didn't see where he shot him a second time. But as ~~everything~~ all this was happening T-Bone and Joe-T both were wondering what was going on. Then Woods and Shugg got in the car, but Shugg hopped back out and shot ~~at~~ Droop again. Then he got back in the car and we headed back to the AM/PM now. It was Woods driving & Shugg next to me. In the back seat it was Me behind Wood, Joe-T next to me in the middle, and T-Bone on the right behind Shugg. When we got to the AM/PM Me and Shugg got out. Shugg told me to ~~stay~~ shut up and stay quiet about what happened. Woods, T-Bone, and Joe-

~~Shugg~~ left us there. Me and Shugg didn't talk any more that night. I called my ~~ide~~ that took me to the bus ~~stop~~ station and told her to come and get me. I left ~~shugg~~ at the gas station and haven't talked to him since. On July 16th, That was my first time meeting Droop, T-Bone ~~at~~ Joe-T, and Woods but I couldn't take it any more. The fact that I knew something was eating me up inside. I would have told sooner but I was scared of Shugg. ~~T-Bone~~ T-Bone had a blue 22 ~~jersey~~ Jersey and black ~~pant~~ pants. Joe-T had on a striped blue shirt on and blue pants. I don't know what kind of shoes ~~at~~ they had on because they never got out of the car. Wood had on white shorts with a with tang top and white nike shoes. I don't remember what kind of nike shoes but I know they were low top all white nike ~~shoes~~ shoes.

AFFD
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
EL LEON SIMON, ESQ
Chief Deputy District Attorney
Nevada Bar #000411
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

CASE NO: C154293

DEPT NO: XVIII

BRENDAN NASBY,

Defendant:

AFFIDAVIT OF JOSEPH SCISCENTO

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, Joseph Sciscento, Esq., being first duly sworn deposes and states as follows:

1. I am an attorney at the law firm Sciscento & Associates. I have personal knowledge of the facts set forth herein and I am competent to testify thereto and could and would so testify under oath if called to do so.

2. I represented Brendan Nasby from his initial arraignment on November 24, 1998 to his sentencing on November 29, 1999 in case number C154293 in defense of events occurring on or about July 16, 1998.

3. On September 7, 1999, I accepted full time employment with the Special Public Defender's Office. Through an agreement with the Special Public Defender's Office, I was able to finish those cases that I had been working on prior to September 7, 1999. In my

LA-Appel für WFD des LAWCLERK-Cross, NextMischelbogen (A) für die Schöpfung dnc

1 representation of Brendan Nasby I was effectively screened from the Special Public

2 Defendant's Office.

3 3. I did not discuss Brendan Nasby's case with any employee of the Special Public

4 Defendant's Office. No one in the Special Public Defender's Office had access to my case

5 file and notes concerning Brendan Nasby. I did not use the Special Public Defender's

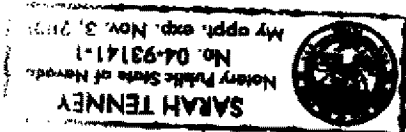
6 resources in the preparation of Brendan Nasby's defense. All preparation on Brendan

7 Nasby's case was done out of my old office at 330 South Third Street #800.

9 FURTHER YOUR AFFIANT SAYETH NOT.

10 ~~JOSEPH SCISCENTO, ESQ.~~

14 SUBSCRIBED AND SWORN TO before me
15 this 2 day of Feb., 2005.



16 *Sarah Tenney*
17 NOTARY PUBLIC

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FILED

FEB 22 4 57 PM '05

Shirley E. Pennington
CLERK

1 ANTHONY P. SGRO, ESQ.
Nevada Bar No. 003811
2 PATTI & SGRO, P.C.
300 East Charleston Blvd., Suite 105
3 Las Vegas, Nevada 89104
(702)385-9595
4 Attorney for Defendant

5
6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 * * *

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 BRENDAN NASBY,)

14)
15 Defendant)
16)

Case No.: C154293

Dept No.: XVIII

17 **DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S PETITION**

18 **FOR WRIT OF HABEAS CORPUS POST-CONVICTION**

19 **DATE OF HEARING: March 2, 2005**

20 **TIME OF HEARING: 9:00 a.m.**

21
22 COMES NOW, the Defendant, Brendan Nasby, by and through counsel Anthony P. Sgro,
23 Esq., of PATTI & SGRO, hereby submits the attached Points and Authorities in Reply to the State's
24 Opposition to Defendant's Petition for Writ of Habeas Corpus Post-Conviction.

25 This Reply is made and based upon all the papers and pleadings on file herein, the attached
26 points and authorities in support hereof, and oral argument at the time of hearing.
27
28

DEFENDANT'S NUMEROUS APPEALS CLAIMS OF PROSECUTORIAL MISCONDUCT AND TRIAL COURT ERROR WERE LEGITIMATELY RAISED PURSUANT TO LOZADA

DEFENDANT’S COUNSEL WAS INEFFECTIVE AS DEFINED BY THE UNITED STATES SUPREME COURT IN STRICKLAND

Nasby asserts that his trial defense counsel failed to call any witnesses, failed to call rebuttal witnesses, failed to sufficiently investigate, failed to present any evidence, failed to object repeatedly, and failed to specifically object to the accomplice instruction that was provided at trial. Also, Nasby asserts that his defense counsel failed to allow him to testify and exerted extreme pressure for him to plea bargain the case. These failures, which were discussed thoroughly in Nasby's Writ, establish that

1 defense counsel was deficient. These deficiencies clearly prejudiced the defense. The jury had no
2 case whatsoever presented to them by Mr. Nasby. In addition, Nasby's defense counsel failed to
3 object to the accomplice instruction, which then allowed the jury to improperly assess the testimony
4 of the accomplices.
5

6 Because of these deficiencies which caused prejudice, Mr. Nasby should succeed on his Sixth
7 Amendment claim of ineffective assistance of counsel. In the case at hand, Defendant's Counsel did
8 not call Defendant in his own defense. Defendant had no prior criminal history as evidenced by his
9 Sentencing Report. Further, Defendant requested that his counsel present an affirmative defense for
10 him. Defendant had an alibi defense that needed to be presented. Presenting an alibi defense, by its
11 nature, requires that counsel call witnesses. In addition, Mr. Nasby could have provided important
12 background testimony about his life and education. Nasby was educated in private schools. Because
13 Nasby was not allowed to testify in his own behalf, the jury never knew that he was not a typical gang
14 member with a long criminal history and a poor education.
15
16

17 This Court must judge whether Defendant's Counsel was "reasonably effective given the
18 totality of the circumstances." See Strickland v. Washington, 466 U.S. 668 (1984). In reviewing the
19 totality of the circumstances that Defense counsel failed to call any witnesses, failed to call rebuttal
20 witnesses, failed to sufficiently investigate, failed to present any evidence, failed to object repeatedly,
21 and failed to specifically object to the accomplice instruction that was provided at trial, show that
22 counsel failed to provide reasonably effective assistance.
23

24 In Jones v. Barnes, 463 U.S. 745 (1983), the United States Supreme Court, stated that the
25 Defendant has the ultimate authority to make fundamental decisions regarding his case. The Court
26 also stated that the Defendant does not have the right to "compel appointed counsel to press frivolous
27

1 points, requested by the client.” In this case, counsel was not appointed but rather privately retained.

2 The Defendant’s mother, who is a highly educated professional, paid for her son’s defense. The
3 Defendant expected a vigorous and complete defense. It was not frivolous to request his counsel to
4 present witnesses, especially when he asserted an alibi.
5

6 The Nevada Supreme Court in Donovan v. State 94 Nev. 671 (1978), stated that the role of
7 the court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits
8 of the action not taken but to determine whether, under the particular facts and circumstances of the
9 case, trial counsel failed to render reasonably effective assistance.” In this case, a very young
10 Defendant was accused of first degree murder. Though he was recently involved in a gang, he had
11 no prior convictions, and was educated at private schools. He did not have a violent history and
12 claimed that he was innocent and that witnesses could testify on his behalf. The State did not have
13 any physical evidence linking the Defendant to the scene. The key evidence was the testimony of co-
14 defendants. Some of the Co-Defendants did not even testify directly that Mr. Nasby was the shooter.
15 The State argued the fact that the Defendant led the police to the murder weapon established his guilt.
16 The Defendant was prepared to testify that he led the police to the gun because he was innocent. The
17 arresting officer James Buczek, testified that “he [Nasby] wasn’t disruptive in any means. He was
18 cooperative with us. I – he wasn’t – he wasn’t violent in any way.” (T.T.Vol. IV, page 154, lines 3-
19 5). It was completely reasonable for counsel to have the Defendant testify and tell the jury that he
20 was calm and cooperative, because he didn’t kill anyone and because he didn’t know whether that
21 the gun was used in a murder.
22

23 To fail to present any evidence of alibi witnesses or allow the Defendant to testify, fell below
24 an objective standard In Gallego v. U.S. 174 F.3d 1196, 1197 (11th Cir. 1999) it was alleged that
25
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1 counsel refused to allow the defendant to testify. The Court stated that if this is proved, it would fall
2 outside range of reasonably effective assistance. Nasby desired to testify at trial. His defense counsel
3 refused.
4

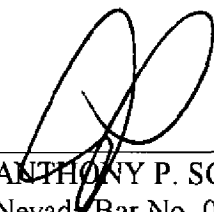
5 **THE LETTERS ATTACHED BY THE STATE DO NOT**
6 **PROVE PERJURED TESTIMONY**

7 The State attached to their Opposition letters written by the Defendant, while he was in
8 custody. The letters do not prove that the Defendant was attempting to have individuals perjure
9 themselves. The first letter written to Ms. Sobrian is sort of a love letter, which also states that Mr.
10 Nasby has given notes to Colleen the mother of his child. There is no evidence that the notes to
11 Colleen contained false testimony. The next letter attached to Ms. Adams, wherein the Defendant
12 encourages her to stick with her story even though it was different than the Defendant remembered.
13 He even warns Ms. Adams against changing her story because she might get charged with perjury.
14 The final attachment is not addressed to anyone and is entitled "the girl's statement." There is no
15 context for this document and is presented as though Mr. Nasby was trying to elicit perjured
16 testimony from an unnamed source. The State's opposition states that this document was admitted
17 as the State's Exhibits 3 & 4. However, according to the Trial Transcript State's Exhibit 3 was an
18 autopsy photograph and State's Exhibit 4 was three Winston cigarette butts. The letter just
19 prejudices the Defendant and his legitimate appeal grounds.
20
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1 CONCLUSION

2 WHEREFORE, the above arguments require this Honorable Court to reverse Mr. Nasby's
3 convictions based upon the violations of Mr. Nasby's Constitutional Rights under the Fourth, Fifth,
4 Sixth, and Fourteenth Amendment to the United States Constitution.
5

6 DATED this 22 day of February 2005.

7
8
9
10 
11 ANTHONY P. SGRO, ESQ
12 Nevada Bar No. 003811
13 PATTI & SGRO, P.C.
14 300 East Charleston Blvd., Suite 105
15 Las Vegas, Nevada 89104
16 (702)385-9595
17 Attorney for Defendant
18
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8

1 **ROC**
2 ANTHONY P. SGRO, ESQ.
3 PATTI & SGRO
4 Nevada State Bar #003811
300 East Charleston Boulevard, Suite 105
Las Vegas, Nevada 89104
(702) 385-9595

5 Attorney for Defendant

FILED

FEB 28 2 33 PM '05

Shirley B. Rosenberg
CLERK

6
7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 ***

11 THE STATE OF NEVADA,

12 Plaintiff

13 vs.

14 BRENDAN NASBY,

15 Defendant.

Case Number: C154293

Dept. No. XVIII

16
17 **RECEIPT OF COPY**

18 RECEIPT OF COPY of the foregoing **DEFENDANT'S REPLY TO STATES'S**
19 **OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**
20 **POST-CONVICTION** is hereby acknowledged this 28th day of February, 2005.

21
22 *Diana H. Simon*

23 H. LEON SIMON, ESQ.
24 Deputy District Attorney
200 S. Third Street
Las Vegas, NV 89155

25 Attorney for Plaintiff,
26 STATE OF NEVADA

27
28 **RECEIVED**

FEB 28 2005

CLARK COUNTY

ORIGINAL

2

1 **STIP**
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 003811
4 PATTI & SGRO, P.C.
5 300 East Charleston Blvd., Suite 105
6 Las Vegas, Nevada 89104
7 (702)385-9595
8 Attorney for Defendant

FILED

MAR 25 2 25 PM '05

Lillian L. Langman
CLERK

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 * * *

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BRENDAN NASBY,

14 Defendant

Case No.: C154293

Dept No.: XVIII

17 **STIPULATION AND ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED, by and between Anthony P. Sgro, Esq., of
20 PATTI & SGRO, counsel for defendant Brendan Nasby and Frank Coumou, Deputy District
21 Attorney, Counsel for the State that the Post Conviction argument in State v. Nasby, Case No.
22 C154293, before the Honorable Judge Nancy M. Saitta shall be continued.

23
24 IT IS HEREBY STIPULATED AND AGREED, that the appearance in this case, currently
25 scheduled for March 28, 2005, at 9:00 a.m. is to be vacated. The new date shall be reset for

26 May 2, 2005, at 9:00 am/pm.

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MAR 25 2005

COUNTY CLERK

MCJ

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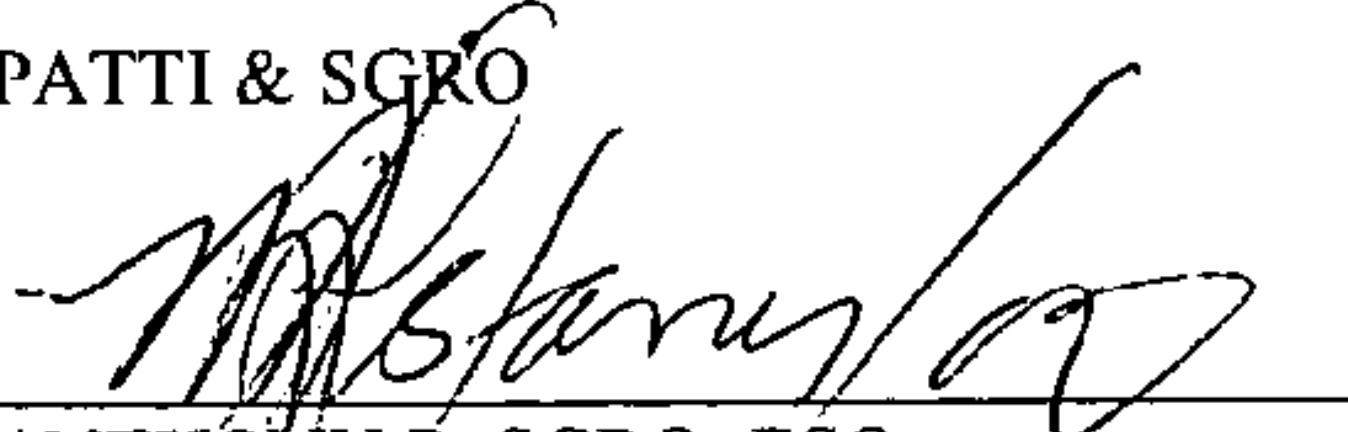
MAR 25 2005

COUNTY CLERK

1 IT IS FURTHER STIPULATED AND AGREED that this delay is for good cause because
2 counsel for the Defendant Brendan Nasby has a death penalty trial scheduled before Judge Glass in
3 Department V on March 28, 2005.
4

5 DATED this 23 day of March, 2005

6 PATTI & SGRO

7 
8
9 ANTHONY P. SGRO, ESQ.

10 Nevada Bar No. 003811

11 300 East Charleston Blvd., Suite 105

12 Las Vegas, Nevada 89104

13 DISTRICT ATTORNEY'S OFFICE

14 
15 FRANK COUMOU

16 Nevada Bar No. 004577

17 200 South Third

18 Las Vegas, Nevada 89101

19
20 IT IS SO ORDERED.

21 DATED this 23rd day of March, 2005.
22
23

24 
25 District Court Judge Dept. XVIII
26
27
28

FILED

MAY 4 1 39 PM '05

Shirley S. Thompson
CLERK

OPI
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
FRANK JOHAN COUMOU
Chief Deputy District Attorney
Nevada Bar #004577
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690
Defendant.

CASE NO: C154293
DEPT NO: XVIII

ORDER FOR PRODUCTION OF INMATE
BRENDAN J. NASBY, BAC #63618

DATE OF HEARING: 6/10/05
TIME OF HEARING: 9:00 A.M.

TO: JAMES SCHOMIG, Warden of the High Desert State Prison;

TO: Bill Young, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID ROGER, District Attorney, through FRANK JOHAN COUMOU, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that JAMES SCHOMIG, Warden of the High Desert State Prison shall be, and is, hereby directed to produce BRENDAN J. NASBY, in Case No. C154293, on a charge of CONSPIRACY TO COMMIT MURDER (Felony); ATTEMPT THEFT (Felony); and FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony) wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said

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COUNTY CLERK

Document3

1 BRENDAN J. NASBY is currently incarcerated in the High Desert State Prison located in
2 Indian Springs, Nevada and his presence will be required in Las Vegas, Nevada commencing
3 on 6/10/05, at the hour of 9:00 o'clock A.M. and continuing until completion of the
4 prosecution's case against the said Defendant.

5 IT IS FURTHER ORDERED that Bill Young, Sheriff of Clark County, Nevada, shall
6 accept and retain custody of the said BRENDAN J. NASBY in the Clark County Detention
7 Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the
8 further Order of this Court; or in the alternative shall make all arrangements for the
9 transportation of the said BRENDAN J. NASBY to and from the Nevada State Prison
10 facility which are necessary to insure the BRENDAN J. NASBY's appearance in Clark
11 County pending completion of said matter, or until further Order of this Court.

12 DATED this 4th day of May, 2005.

13
14 
15 DISTRICT JUDGE

16
17 DAVID ROGER
18 DISTRICT ATTORNEY
19 Nevada Bar #002781

20 BY

21 
22 FRANK JOHAN COUMOU
23 Chief Deputy District Attorney
24 Nevada Bar #004577

25
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28 mb

ORIGINAL

23

1 STIP

2 ANTHONY P. SGRO, ESQ.

3 Nevada Bar No. 003811

4 PATTI & SGRO, P.C.

5 300 East Charleston Blvd., Suite 105

6 Las Vegas, Nevada 89104

7 (702)385-9595

8 Attorney for Defendant

FILED

2005 JUN 16 P 2:59

[Signature]
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN NASBY,

Defendant

Case No.: C154293

Dept No.: XVIII

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Anthony P. Sgro, Esq., of

PATTI & SGRO, counsel for Defendant Brendan Nasby and Frank Coumou, Deputy District

Attorney, Counsel for the State, that the Evidentiary Hearing in State v. Nasby, Case No. C154293,

before the Honorable Judge Nancy M. Saitta shall be continued for good cause.

IT IS HEREBY STIPULATED AND AGREED, that the appearance in this case, currently
scheduled for June 10, 2005, at 9:00 a.m. is to be vacated. The new date shall be reset for

August 11, 2005, at 9:00 am/pm.

COUNTY CLERK

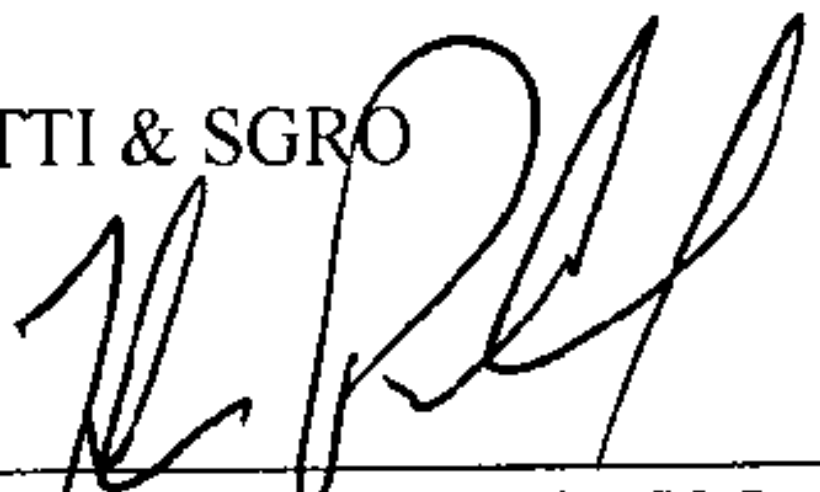
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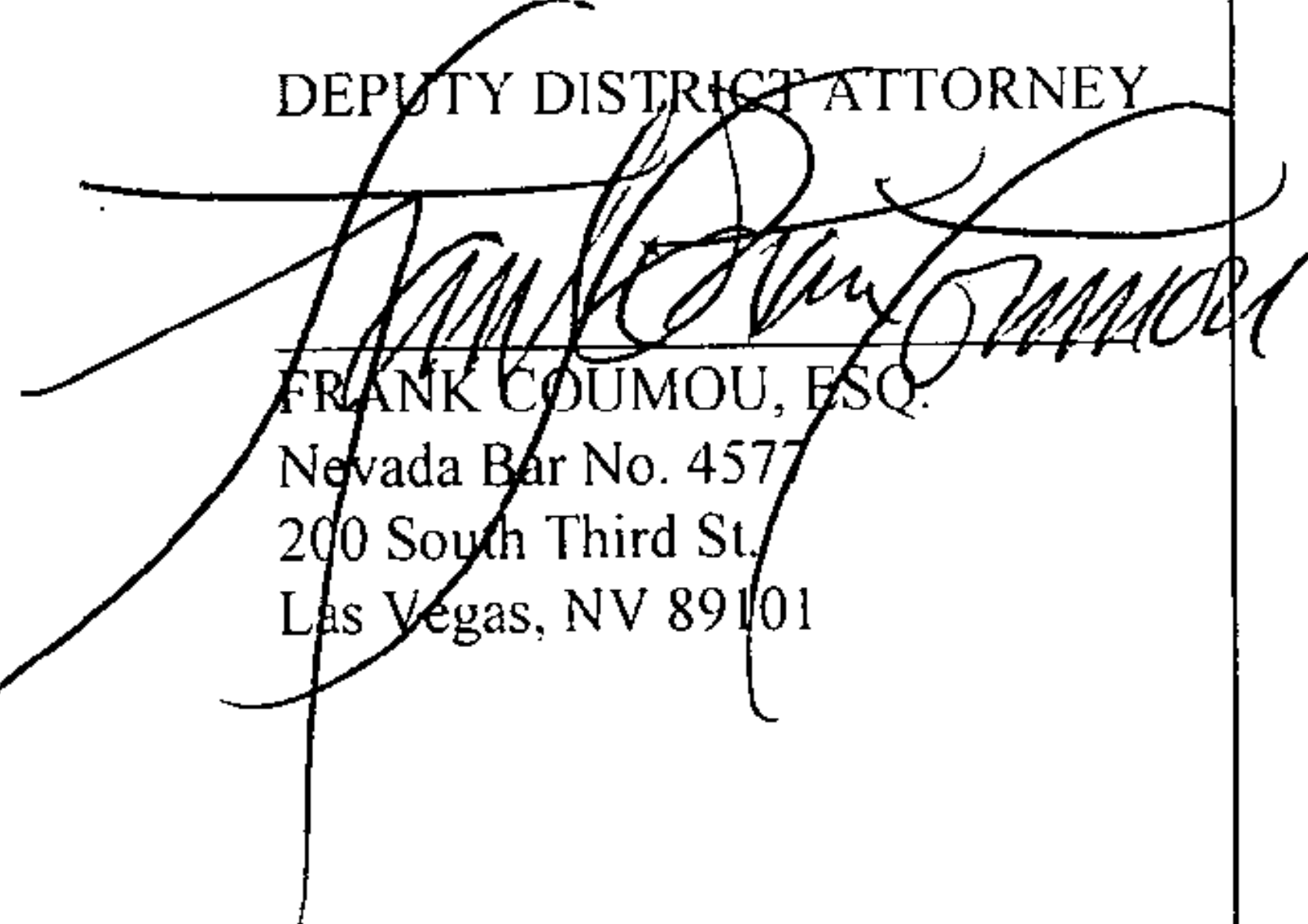
1 IT IS FURTHER STIPULATED AND AGREED that this delay is for good cause as the prior
2 date needed to be vacated as, Joseph Sciscento, who was the trial lawyer on Defendant, Brendan
3 Nasby's trial is out of the country in Spain.
4

5 DATED this 9 day of June, 2005

6 PATTI & SGRO

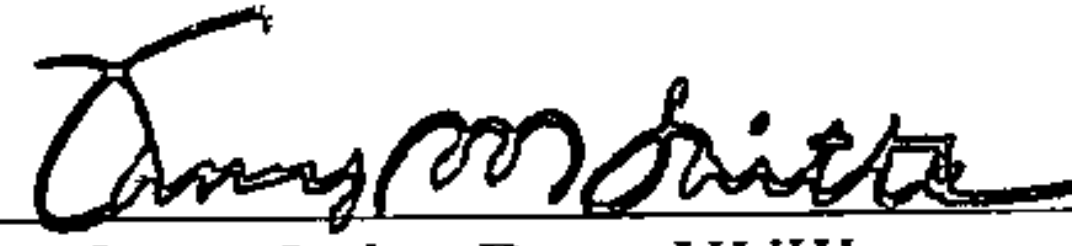
7 
8
9 ANTHONY P. SGRO, ESQ.
10 Nevada Bar No. 3811
11 300 E. Charleston Blvd., Ste.105
12 Las Vegas, NV 89101
13

DEPUTY DISTRICT ATTORNEY

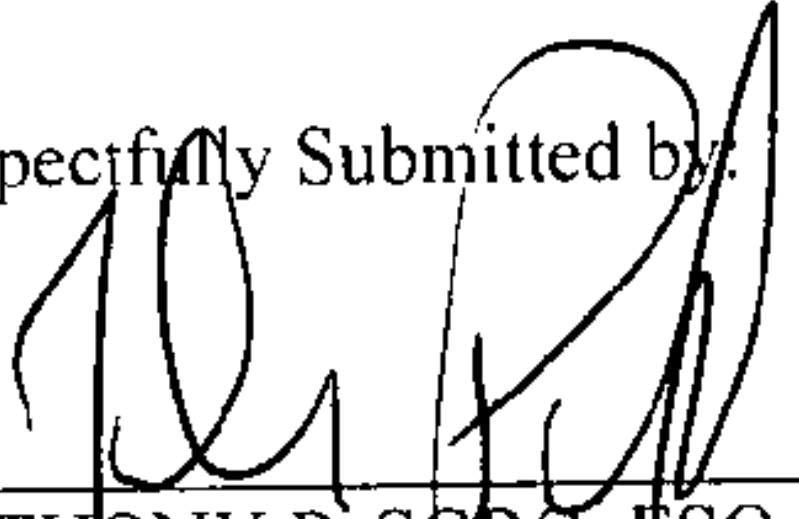

FRANK COUMOU, ESQ.
Nevada Bar No. 4577
200 South Third St.
Las Vegas, NV 89101

14 IT IS SO ORDERED.

15 DATED this 9th day of June, 2005.
16
17

18 
19
20 District Court Judge Dept. XVIII
21

22 Respectfully Submitted by:

23 
24
25 ANTHONY P. SGRO, ESQ.
26 Nevada Bar No. 003811
27 300 East Charleston Blvd., Suite 105
28 Las Vegas, Nevada 89104

ORIGINAL

19

1 **STIP**

2 ANTHONY P. SGRO, ESQ.

3 Nevada Bar No. 003811

4 PATTI & SGRO, P.C.

5 300 East Charleston Blvd., Suite 105

6 Las Vegas, Nevada 89104

7 (702)385-9595

8 Attorney for Defendant

Anthony P. Sgro

AUG 10 4 38 PM '05

FILED

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN NASBY,

Defendant

Case No.: C154293

Dept No.: XVIII

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Anthony P. Sgro, Esq., of PATTI & SGRO, counsel for Defendant Brendan Nasby and Frank Coumou, Deputy District Attorney, Counsel for the State, that the Evidentiary Hearing in State v. Nasby, Case No. C154293, before the Honorable Judge Nancy M. Saitta shall be continued for good cause.

IT IS HEREBY STIPULATED AND AGREED, that the appearance in this case, currently scheduled for August 11, 2005, at 9:00 a.m. is to be vacated. The new date shall be reset for ^{September} ~~August~~ 29, 2005, at 9:00 a.m.

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AUG 1 " 2005

~~CLERK~~

1 IT IS FURTHER STIPULATED AND AGREED that this delay is for good cause as the prior
2 date needed to be vacated as, Anthony P. Sgro, who is the trial lawyer for Defendant, Brian Nasby,
3 will be out of the country.
4

5 DATED this 29th day of July, 2005

6 PATTI & SGRO

7
8
9 ANTHONY P. SGRO, ESQ.
10 Nevada Bar No. 3811
11 300 E. Charleston Blvd., Ste. 105
12 Las Vegas, NV 89101
13

DEPUTY DISTRICT ATTORNEY

14
15
16
17
18
19
20 FRANK COUMOU, ESQ.
21 Nevada Bar No. 4577
22 200 South Third St.
23 Las Vegas, NV 89101
24

25 IT IS SO ORDERED.

26 DATED this 4TH day of ^{August} ~~July~~, 2005.
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Shirley B. Rungius
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1 **STIP**
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6 Las Vegas, Nevada 89104
7 (702)385-9595
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9
10
11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 * * *

14 THE STATE OF NEVADA,)

15 Plaintiff,)

16 -vs-)

17 BRENDAN NASBY,)

18 Defendant)

Case No.: C154293

Dept No.: XVIII

19 **CERTIFICATE OF FACSIMILE AND MAILING**

20 I hereby certify that on the 12th day of August, 2005, that I served a copy of the
21 foregoing **STIPULATION AND ORDER** upon each of the parties below by facsimile and
22 by depositing a copy of the same in a sealed envelope in the United States mail, Las
23 Vegas, Nevada, First-Class Postage fully pre-paid, and addressed as follows:

24 **FAX NUMBER (702) 477-2919**

25 Frank J. Coumou, Esq.
26 Deputy District Attorney
27 200 South Third St.
28 Las Vegas, NV 89191

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Cindy Hunt
An employee of PATTI & SGRO, LTD.

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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Shirley E. Ruggins
CLERK

STATE OF NEVADA

Plaintiff

vs.

BRENDAN JAMES NASBY, #1517690

Defendant

CASE NO. C-154293

DEPT. NO. XVIII

Transcript of
Proceedings

BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE:
INEFFECTIVE ASSISTANCE OF COUNSEL

WEDNESDAY, NOVEMBER 9, 2005

APPEARANCES:

FOR THE PLAINTIFF:

FRANK J. COUMOU
Chief Deputy District Attorney

FOR THE DEFENDANT:

THOMAS C. MICHAELIDES, ESQ.

COURT RECORDER:

JO ANNE PIERPONT
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146
(702) 221-0246

Proceedings recorded by electronic sound recording, transcript
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CLERK'S OFFICE

1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 9, 2005, 12:00 NOON

2 (Court was called to order)

3 THE COURT: Okay. What do we have next, Nasby?

4 This is -- and I thank you all for your patience. I know this
5 was set at 10:30. We were I guess overly optimistic about
6 what relief we would get from the arraignment -- in terms of
7 the time of our calendar.

8 MR. COUMOU: It's working well.

9 THE COURT: Is it working well?

10 MR. COUMOU: Yeah, it is. It's --

11 THE COURT: Excepting from 18.

12 MR. COUMOU: No, no, no. I think it's -- it's just
13 moving along the District Court calendar.

14 THE COURT: Good. Good. That's what we're hoping
15 for.

16 This is 154293. This is the date and time set as an
17 evidentiary hearing. It has to do with trial strategy. I
18 know -- now, Mr. Sciscento, are you here as a witness on this?
19 Okay. Just wanted to be sure.

20 The Court is ready to proceed.

21 State, are you ready to proceed?

22 MR. COUMOU: Yes, I am, Judge.

23 THE COURT: Very well. You can call your first
24 witness, or if you want to make a statement. I know what this
25 is about, so --

1 MR. COUMOU: Yes.

2 MR. MICHAELIDES: We waive an opening statement,
3 Judge.

4 MR. COUMOU: All -- I want to make sure that we're
5 clear on the focus, the guidelines when we were here last that
6 you wanted to discuss or hear as to the two issues, whether
7 Mr. Sciscento had a conflict of interest because he was
8 joining the Special Public Defender's Office --

9 THE COURT: At the time.

10 MR. COUMOU: -- at the time, and second was the
11 tactical decision not to call this alibi witness. I call her
12 an alibi witness, but Crystal Sobrian. And there were other
13 issues raised in the PCR, but I think the Court wants to only
14 hear on --

15 THE COURT: On [unintelligible], yes.

16 MR. COUMOU: Yes. And so I think right now that
17 probably the first witness would be Mr. Santacroce.

18 THE COURT: Very well. Mr. Santacroce, would you
19 come forward and remain standing to be sworn.

20 MR. MICHAELIDES: Judge, can we invoke the
21 exclusionary rule with respect to Mr. --

22 THE COURT: Very well. Mr. Sciscento, we'll miss
23 you, but we'd ask that you stand outside.

24 Will you remain standing, please.

25 //

1 FREDERICK SANTACROCE, PLAINTIFF'S WITNESS, SWORN

2 THE CLERK: Please be seated. Will you please state
3 your name and spell it for the record.

4 THE WITNESS: Frederick, F-R-E-D-E-R-I-C-K,
5 Santacroce, S-A-N-T-A-C-R-O-C-E.

6 DIRECT EXAMINATION

7 BY MR. COUMOU:

8 Q Mr. Santacroce, you're a licensed attorney here in
9 the state of Nevada; correct?

10 A Correct.

11 Q And were you a licensed attorney back in 1998?

12 A Yes.

13 Q And did you have occasion to be co-counsel in a jury
14 trial that commenced on October the 11th, 1999, regarding the
15 State versus Brendan J. Nasby?

16 A Yes.

17 Q And you see that individual here today?

18 A Yes.

19 Q Now, when was it, approximately, the timing that you
20 came on as co-counsel on the State v. Brendan Nasby?

21 A I don't know the exact time period. I know it was
22 shortly before the trial was starting. I'm thinking maybe two
23 to three weeks.

24 Q And was there a particular reason why you were
25 coming in to assist Mr. Sciscento on this particular case?

1 A I don't recall.

2 Q During the time -- the two to three weeks prior to
3 trial were you aware that Mr. Sciscento was joining the
4 Special Public Defender's Office?

5 A I knew he was joining the Special Public Defender's
6 Office. I don't know if it coincided with this case or not.

7 Q To your knowledge, was Mr. Sciscento using any
8 facility in preparation for this trial that would have been
9 provided by the Special Public Defender's Office?

10 A No. Mr. Sciscento and I shared offices at the
11 Phoenix Building, and all of the files from his practice were
12 at the Phoenix Building in our office. He used his office at
13 that time, as well, so I don't even know if he used -- he went
14 to the Public Defender's Office then or not, but I know
15 everything to do with the Nasby case was conducted out of the
16 Phoenix Building.

17 Q And did you personally have any contact with
18 individuals who worked for the Special Public Defender's
19 Office in preparation for this trial?

20 A No. I had no contact with anyone from there.

21 Q During the trial was there any contact between you
22 and the Special Public Defender's Office?

23 A None.

24 Q And, to your knowledge, was there any contact with
25 Mr. Sciscento and the Special Public Defender's Office during

1 the jury trial?

2 A Regarding the Nasby case?

3 Q Yes.

4 A Not to my knowledge.

5 Q Okay. Now, subsequent to this, to your knowledge,
6 did you then take over most of the files from Mr. Sciscento's
7 law practice at the time?

8 A Yes.

9 Q Now, Mr. Santacroce, the second issue that was --
10 that's being brought up is whether or not a witness that was
11 noticed by the defense named Crystal Sobrian should have been
12 called as a witness. Are you aware or do you remember a
13 female by the name of Crystal Sobrian?

14 A No.

15 Q Okay. Do you recall that you filed an alibi notice?

16 A Mr. Sciscento filed the alibi notice. As I said, I
17 was brought in after all of this had been done, all of this
18 meaning the investigation of the case, the filing of the
19 notice of the alibi witness. So that was done prior to me
20 coming into the case. Certainly I was aware that there was an
21 alibi defense.

22 Q And at this point you were prepared to proceed to
23 trial and to assist Mr. Sciscento with this homicide trial;
24 correct?

25 A Absolutely.

1 Q And you were aware what this alibi witness would
2 come in and testify?

3 A Yes.

4 Q Now, on the eve of trial, maybe the weekend before
5 the trial started, did you learn of something that was
6 intercepted from the jail?

7 A Yes.

8 Q And what was that?

9 A It was a letter, I believe, that was intercepted
10 from Mr. Nasby to I think it was this Crystal Sobrian.

11 Q Did that cause you concern?

12 A Absolutely.

13 Q And why was that?

14 A Because it indicated or hinted that it was a
15 concocted alibi story and there may have been some perjury
16 involved.

17 Q Did that cause you concern as a licensed attorney
18 here in the state?

19 A Well, there was no way we were going to put on
20 perjured testimony.

21 Q Did you also learn that this letter was in fact
22 written by the defendant himself?

23 MR. MICHAELIDES: Objection. Leading.

24 THE COURT: Sustained. Rephrase.

25 //

1 BY MR. COUMOU:

2 Q Do you know who wrote that letter?

3 A It was purported to be written by Brendan Nasby, and
4 I think during the trial State brought in a expert writing
5 witness, and it was that expert's opinion that it was written
6 by Brendan Nasby.

7 Q And were you also aware of a witness that testified
8 by the name of Britney Adams?

9 A I recall the name.

10 Q And do you recall that this was a witness who also
11 reiterated or --

12 MR. MICHAELIDES: Objection. Leading.

13 BY MR. COUMOU:

14 Q The testimony of Britney Adams, did that cause you
15 concern regarding the potential perjured testimony that you as
16 a defense attorney could have possibly put on the witness
17 stand?

18 A She seemed to substantiate our suspicions.

19 Q And how so? How did she substantiate your
20 suspicions?

21 A Well, it's -- you know, I don't recall exactly, but
22 I think there was some communications whereby there was a
23 plan, instructions to one person, maybe this Crystal, who was
24 then to convey that to this other individual, Britney.

25 Q Right. Now, there's been some time that has passed,

1 correct, since --

2 A From when?

3 Q From today since the jury trial.

4 A It has been many -- several years, yeah.

5 Q And you would agree, even you and I, we've been
6 trying to clear up our memory as to this trial; correct?

7 A Yes. I don't have a real clear independent
8 recollection, except to say regarding the alibi witnesses we
9 knew or we had a strong belief that there was no credible
10 alibi defense and we were not going to put on perjured
11 testimony. Now, if you're asking me what were the specifics,
12 right now for me to recollect, that'd be difficult.

13 Q Would you say it was a correct decision, looking
14 back at the time that you decided not to proceed with that
15 alibi defense?

16 A Absolutely. We would have got torn up.

17 Q And by being torn up, do you think the defendant,
18 Nasby, would have had a chance?

19 A It's our opinion -- my opinion, I can't speak for
20 Mr. Sciscento, but I know Mr. Sciscento and I had discussions
21 about it, and if it was a viable defense, we certainly would
22 have presented it. Had we put those witnesses on and then the
23 State would have come back and impeached the whole credibility
24 of Mr. Nasby through the intercepted communications, we
25 wouldn't have had a chance to offer any other defense. It

1 would be game over.

2 Q And as it turns out, your defense that you put on by
3 suggesting to the jury that another individual did it was the
4 most plausible defense on this particular case?

5 A Based on the facts of the case, yes.

6 Q Did you discuss this issue with Mr. Nasby himself
7 regarding the letter that was intercepted?

8 A Yes, of course.

9 Q And what did he say?

10 A I don't know if we can -- I can divulge that. It
11 still occurred under attorney-client privilege, I believe.

12 MR. COUMOU: Well, Judge, I would say since the
13 defense is suggesting that it was a wrong decision by --

14 THE COURT: The challenge in this case is for
15 ineffective assistance of counsel. I've faced this situation
16 at least a couple of times before, and what I typically have
17 done is to give the testifying witness permission to violate
18 the oath for purposes of this proceeding only. However, I
19 always make it very, very clear to the attorney that if they
20 are not all comfortable doing that I will not require that you
21 break that confidence.

22 THE WITNESS: I'm not going to -- I'm going to
23 respect the attorney-client privilege and not -- and not
24 testify to that.

25 THE COURT: I'll respect that, as well.

1 BY MR. COUMOU:

2 Q And I respect your position on that, Mr. Santacroce.

3 But going back to that one question, you still -- in
4 your opinion it was the right thing to do not to proceed with
5 this alibi --

6 MR. MICHAELIDES: Objection. Leading.

7 THE COURT: I'll give him a little leeway.

8 THE WITNESS: It was our belief after discussions
9 with all the parties involved that it was not a viable defense
10 and that Mr. Sciscento and I were not going to put on perjured
11 testimony.

12 MR. COUMOU: Thank you. Pass the witness.

13 THE COURT: Cross-examination.

14 MR. MICHAELIDES: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MICHAELIDES:

17 Q Good afternoon, Mr. Santacroce.

18 You indicated you had not a clear recollection as
19 you sit here today what occurred at trial; correct?

20 A Not an independently clear recollection, yes.

21 Q What, if anything, did you review prior to today's
22 hearing?

23 A The only thing I reviewed was the State's opposition
24 to I guess Mr. Nasby's petition.

25 Q Understanding you came over to the defense team

1 three weeks prior to trial and weren't privy to the initial
2 conversations, did there come a time when you learned that Mr.
3 Nasby provided to the -- to his lawyer a list of alibi
4 witnesses?

5 A Yes. We were prepared to call them.

6 Q And do you recall how many people were on that list?

7 A No, but I would -- there was -- I don't recall.

8 Q Okay. I'm going to give you some -- I'm sorry. I'm
9 going to give you some names, and let me know if this name
10 sounds familiar to a name that may have been on that list.
11 Britney Adams.

12 A I believe so, yes.

13 Q Do you recall if you ever had any conversations with
14 Ms. Adams prior to trial?

15 A I personally did not.

16 Q Do you know if anybody from the defense team -- let
17 me ask you this. Did you have a private investigator?

18 A I believe -- like I said, I don't know. I know that
19 Mr. Sciscento did have an investigator or did talk to these
20 potential alibi witnesses, because we discussed it, Mr.
21 Sciscento and I discussed their being interviewed and their
22 potential testimony.

23 Q Okay. Then rather than go through each individual
24 one, do you recall if you had any independent conversations
25 with any of the witnesses on that alibi list prior to trial?

1 A I personally did not.
2 Q Okay. But you believe Mr. Sciscento and/or the
3 investigator did?
4 A Yes.
5 Q Do you recall someone by the name of Portia Nichols?
6 A No.
7 Q Do you recall being provided a videotape during this
8 case?
9 A Of what?
10 Q Any videotape at all.
11 A Yes.
12 Q Okay. Did you view the videotape?
13 A We viewed a videotape, yes.
14 Q Did you have more than one videotape?
15 A I don't know.
16 Q But you at least recall having one videotape;
17 correct?
18 A Yes.
19 Q And you looked -- took a look at that. Do you
20 recall what was on that video?
21 A Yes.
22 Q Okay. And what was on the video, to your
23 recollection?
24 A My recollection, it was Mr. Nasby, several other
25 individuals in a garage, a bunch of people together in a

1 garage. There were some guns, I believe, and there was guns
2 being waved around, and there was some music, and basically it
3 went on like that.

4 Q Do you recall if -- do you remember who Von Lewis
5 was?

6 A Yes.

7 Q What's your recollection as to Mr. Lewis? Who is
8 he?

9 A I'm not sure if that was who he referred to as
10 Sugie, Sugie Bear or Sugie.

11 Q That's my understanding, that was who he referred to
12 as Sugie. Would this have been the person that Mr. Nasby
13 claimed was the shooter?

14 A That's the person that we put forth in the defense
15 as being the perpetrator, yes.

16 Q And did you put that theory out during in the
17 opening statement?

18 A I don't recall. The record will reflect.

19 Q Did Mr. Sciscento give the opening statement, do you
20 recall?

21 A I don't recall who gave the opening statement.

22 Q Do you recall if the videotape that we just
23 discussed -- do you remember Mr. Lewis putting a gun to Mr.
24 Beasley's head and threatening to kill him?

25 A I -- I don't have an independent recollection of

1 that visually, no. It may have been, but I just can't say.

2 Q If that visual had been on that videotape, would
3 that have supported your theory that Mr. Lewis was the
4 shooter, in your opinion?

5 A Well, the problem with the -- if you're asking me
6 would that have supported the theory of him being the shooter,
7 yes. But there was damaging things on the videotape, as well.

8 Q Okay. And what were the damaging things on the
9 videotape?

10 A That Mr. Nasby was parading around with a firearm, I
11 believe, and waving it around and making comments on the
12 videotape.

13 Q Do you recall if Mr. Nasby pointed the gun at Mr.
14 Beasley in the videotape?

15 A I don't -- don't recall.

16 Q Mr. Nasby provided the name of Crystal Sobrian as an
17 alibi witness. Do you recall that?

18 A No.

19 THE COURT: What was the last name, Crystal?

20 MR. MICHAELIDES: Sobrian, S-O-B-R-I-A-N.

21 THE COURT: Oh. Okay.

22 BY MR. MICHAELIDES:

23 Q Mr. Nasby provided the name of Colleen Warner as an
24 alibi witness. Do you recall her name?

25 A Who was that?

1 Q Colleen Warner.
2 A No.
3 Q Do you recall during the trial a witness being
4 provided a note prior to her testifying that was purportedly
5 written by Mr. Nasby, a female witness, and then, after being
6 provided that note, changing her mind about testifying on
7 behalf of Mr. Nasby? Does that sound familiar?
8 A No.
9 Q Did you and Mr. Sciscento discuss the court offering
10 an accomplice testimony instruction?
11 A I don't recall specifically discussing it.
12 Q As you sit here now is that something you would have
13 requested?
14 A Possibly, but not necessarily. And I'm not sure
15 that we didn't. You'd have to look at the court record.
16 Q At some point in the trial the court made a ruling
17 on a letter which was purportedly written by a jailhouse
18 informant. Do you recall that?
19 A Yes.
20 Q What's your recollection of that -- the discussion
21 that went into that ruling?
22 A I believe we had a hearing outside the presence of
23 the jury regarding the admissibility of that letter.
24 Q Do you recall what the defense position was?
25 A No.

1 Q Do you recall what the prosecutor's position was?

2 A No.

3 Q Do you recall the relevance of that letter?

4 A No. Not without seeing it.

5 Q Do you recall what the Court -- which way the Court
6 ruled?

7 A I believe they ruled to keep it out.

8 MR. COUMOU: Judge, I'm going to object. I think
9 they're actually straying from the area that the Court wanted
10 to hear testimony on.

11 THE COURT: We were to deal with those areas
12 claiming ineffective assistance of counsel that dealt with the
13 use or non-use of alibi witnesses. And while I could give a
14 little bit of leeway with respect to the jailhouse informant
15 not particularly being a, quote, unquote, "alibi witness," I
16 would ask that you maintain what I set up as the criteria or
17 the framework within which this hearing should go forward.

18 MR. MICHAELIDES: Yes, Your Honor.

19 BY MR. MICHAELIDES:

20 Q Do you recall whether the letter that was provided
21 by the jailhouse informant -- was that raised in the opening
22 statement by the prosecutor? Do you recall that?

23 A I believe it was.

24 Q Do you remember what your strategy was with respect
25 to keeping that out? In other words, why did the defense not

1 move sooner or prior to the opening statement to keep that
2 out?

3 A I believe we did, and I believe the Judge let it
4 come in pending the outcome of the Petrocelli hearing.

5 Q Do you believe whether you did that in the form of a
6 motion in limine or an objection prior to opening statements?
7 Or what vehicle did you use to make that objection, do you
8 recall?

9 A Recollection is we did it orally. I don't think
10 there was any written motion. I think we did it orally.

11 Q Okay. After the Judge made the ruling to keep that
12 out did you ask for a curative instruction regarding the
13 information coming in in opening statement?

14 A I don't recall. But the record will reflect what we
15 did.

16 Q Do you recall if the defendant had any prior
17 felonies?

18 A I don't recall.

19 Q If I indicated to you that he didn't, you wouldn't
20 have any reason to argue with that point; correct?

21 A I wouldn't have any reason to argue with anything
22 you said, Mr. Michaelides.

23 Q Thank you very much, Mr. Santacroce.

24 Given the fact that the defendant did not have any
25 priors, do you recall what your reasonings were for

1 instructing him that he shouldn't testify? I mean at his
2 trial.

3 A The reason why he shouldn't testify?

4 Q Well, I should have probably asked --

5 A Yes, I can tell you why.

6 Q Let me ask you this. Did you talk with the
7 defendant about his testimony at trial?

8 A Absolutely.

9 Q Did you give him a recommendation?

10 A Yes.

11 Q And what was that recommendation?

12 A Not to testify.

13 Q And what were the reasons that led you to give that
14 recommendation?

15 A Because I believe we would have opened the door for
16 the State to be able to bring all this intercepted material in
17 and impeach him on that and destroy his credibility.

18 Q Do you recall what that intercepted material was?
19 Was it more than one document?

20 A I thought it was communications, as well as written
21 documents. I thought it was phone calls being intercepted, as
22 well as written documents.

23 MR. MICHAELIDES: Court's indulgence.

24 Thank you for your testimony, Mr. Santacroce.

25 THE COURT: Redirect?

1 MR. COUMOU: Nothing, Judge.
2 THE COURT: You may step down. Thank you, Mr.
3 Santacroce.
4 THE WITNESS: You're welcome.
5 MR. COUMOU: Joe Sciscento.
6 MR. SANTACROCE: Do I need to be excluded? Can I
7 stay for --
8 THE COURT: Can Mr. Santacroce be allowed to stay?
9 Mr. Coumou, any objection?
10 MR. COUMOU: I have no objection.
11 THE COURT: Can Mr. Santacroce stay?
12 MR. MICHAELIDES: Sure. No objection.
13 THE COURT: Very well. Mr. Sciscento, would you
14 come forward towards the witness stand, remaining standing as
15 you approach the seat, and allow my law clerk -- my court
16 clerk to swear you, please.
17 JOSEPH SCISCENTO, PLAINTIFF'S WITNESS, SWORN
18 THE CLERK: Please be seated. Will you please state
19 your name and spell it for the record.
20 THE WITNESS: Joseph Sciscento, S-C-I-S-C-E-N-T-O.
21 DIRECT EXAMINATION
22 BY MR. COUMOU:
23 Q Mr. Sciscento, you're a licensed attorney here in
24 the state of Nevada; correct?
25 A That is correct.

1 Q And you've been practicing for quite some time,
2 including all the way back in 1998; correct?

3 A Yes.

4 Q In 1998 at approximately -- approximately August of
5 1998, did a Justice Court judge appoint you to represent State
6 of Nevada versus Brendan James Nasby?

7 A No. It was a retained case.

8 Q Oh. Was it a retained case?

9 A Yes.

10 Q Okay. I apologize. Back when you were retained
11 were you the sole attorney at that time when you got retained?

12 A No. I brought on John Duffy to help me out on the
13 case.

14 Q And --

15 A I don't remember what month it was. I don't know
16 when in '98 we were retained.

17 Q Okay. Did John Duffy stay with you on this case?

18 A No, he didn't. He -- after the preliminary hearing
19 he conflicted off.

20 Q Okay. And at some point prior to trial, which
21 started on October 11th, I believe, 1999, did you prior to
22 trial seek the assistance of a fellow attorney?

23 A Yes, I did.

24 Q And who was that attorney?

25 A Frederick Santacroce.

1 Q And why was the reason why you asked Mr. Santacroce
2 to assist you with this homicide case?

3 A A couple reasons. One is just it was a murder case.
4 I felt we needed two people on there. I was leaving the
5 office, my private office, went into Special Public Defender's
6 Office. I needed to keep the file in my office, in my old
7 office.

8 Q And could you explain to the Court exactly how --
9 how was that setup done?

10 A The file remained in the office at 330 South Third
11 Street, where Mr. Santacroce was at. We both were attorney of
12 records. And it was just kept there.

13 Q Did you use any resources or talk to anybody in the
14 Special Public Defender's Office in preparation of this case?

15 A No, I don't believe so.

16 Q And why did you keep that separate even though you
17 were to start working or have future employment with the
18 Special Defender's Office?

19 A My agreement with the Special Public Defender's
20 Office was I can finish up the cases that I had. I still had
21 a secretary over there at the office, and so it was easier for
22 them to track everything and keep it there. So in the
23 mornings I would go into the 330 office, check my calendar and
24 files and then handle all that matter, then go over to the
25 Special Public Defender's Office and handle any of those cases

1 I had.

2 Q Okay. So prior to trial would it be fair to say you
3 had a Chinese wall between any work that you were doing or
4 about to start with the Special Public Defender's Office and
5 with your own private practice?

6 A Yes.

7 Q And did Mr. Santacroce eventually take over your
8 files from your law practice?

9 A On that one -- on that one, yes. Well, we both
10 finished this one up.

11 Q I see. In your opinion -- the allegation is that
12 there was too much of a conflict of interest. Was there any
13 conflict of interest as --

14 A No. I understand that -- I think it was Tommy
15 Burnside [phonetic] was represented by the Special Public
16 Defenders or was represented by David Figler. He was the
17 attorney that handled that. David and I -- I never saw his
18 file, he never saw my file. David was representing Tommy. If
19 I talked to him it was about what is your client going to
20 testify to or any information like that. It was nothing --
21 Tommy was not my client in any way, so --

22 Q Okay. Now, drawing your attention to the date of
23 trial, how many murder trials had you represented prior to
24 this murder case?

25 A At that time probably only -- I don't know, maybe

1 seven or eight.

2 Q And did you feel like you were prepared to go to
3 trial?

4 A Yes.

5 Q And had you discussed possible defenses with the
6 defendant?

7 A Yes.

8 Q And what was the defense that you and Mr. Santacroce
9 decided to proceed with to trial?

10 A Between Mr. Santacroce and myself?

11 Q Yes.

12 A Some of -- well, there was some discussion that we
13 had. I think our strongest argument was that a person named
14 Sug Bear or Sugar Bear was the one that committed the murder.
15 There were some allegations prior -- some testimony prior by
16 Burnside and everybody else saying it was Sugar Bear who did
17 the killing.

18 Q Okay.

19 A So we focused on him as the person who did the
20 killing.

21 Q And to put it in perspective, Sugar Bear, his name
22 is Damien Von Lewis; correct?

23 A I believe so, yes.

24 Q And he was a member of the same gang that the
25 defendant belonged to?

1 A The L.A. Riders, yes.

2 Q Now, that was your initial focus. Did you also file
3 a subsequent defense?

4 A There was -- I believe we filed a notice of alibi
5 witness, and we named -- I'm not sure; I mean, I haven't seen
6 the file -- but two or three people as alibi witnesses.

7 Q And how did this alibi witness defense come up?

8 A Mr. Nasby, through our conversation, had indicated
9 that he had some alibi witnesses he wanted me to speak to. I
10 spoke to them with the presence of -- at first it was John
11 Duffy was there with my investigator.

12 Q Do you remember who your investigator was?

13 A I can't think of his name right now.

14 Q Okay.

15 A Dillard -- Dibble. Don Dibble.

16 Q Dibble?

17 A Sorry. I just drew a blank. Yeah, Dibble was
18 there, and he spoke to them. Dibble and I went out and
19 investigated some of the facts. We spoke to both girls.
20 There were two girls. One was his girlfriend or believed to
21 be his girlfriend. Another one was a friend of hers. We
22 spoke to those two, interviewed them, and we named them as an
23 alibi witness. I think we might have named the mother as an
24 alibi witness. She was a possibility.

25 Q Possibility. And these alibi witnesses did not

1 conflict with your main focus of defense, and that is to put
2 the murder on this Sugar Bear?

3 A No. Because Burnside testified or would agree that
4 he was there at the time, and if he said that it is Sugar Bear
5 that did the killing and Brendan wasn't there, then we had a
6 great defense.

7 Q Did you proceed with the alibi defense?

8 A No, we didn't.

9 Q And why not?

10 A There was -- the alibi started to fall apart, in my
11 belief. There was a letter that Mr. Nasby sent out from the
12 jail which the District Attorney had intercepted and presented
13 to me which showed that he was attempting to set up the story
14 for the alibi. Further, one of the girls -- we were having a
15 lot of trouble with her. I don't recall her name. We had
16 filed a motion to take the deposition of her in lieu of live
17 testimony under the pretense that she was to be going to Sri
18 Lanka or something like that for a prearranged marriage. I
19 had actually filed the motion, I know you opposed it, where
20 the motion was requesting to take a deposition so that --
21 because she may not be around. And that kind of raised a red
22 flag.

23 Q And were you ever able to get her in -- the Court
24 granted that motion.

25 A I believe so, she did, and we never really were able

1 to get her in or lock her down. She -- it really didn't seem
2 that she wanted to testify.

3 Q And when this letter was brought to your attention
4 did you also learn through expert testimony who the author was
5 of that letter that seemed to coach a statement?

6 A That it was Mr. Nasby.

7 MR. MICHAELIDES: Objection as to the
8 characterization of coaching, Judge. Leading.

9 THE COURT: Rephrase.

10 BY MR. COUMOU:

11 Q Okay. This letter that indicated a story for some
12 girl to testify, in fact it was -- it was entitled, "The
13 Girl's Statement"; correct? If you recall.

14 A I don't recall, but I do remember there was -- there
15 was -- the letter was written to talk about what to say and
16 how to say it.

17 Q Okay. And did you also -- before I get too far
18 ahead of myself. And you recognized that this letter was
19 authored by the defendant through the opinion of a handwriting
20 expert?

21 A Well, that, and I think the fact that when you had
22 intercepted it an audiotape that I had was also in there which
23 I had inadvertently given to the defendant. And I kind of --
24 we knew it came out of the jail, and the audiotape could only
25 come from Mr. Nasby.

1 Q And what was that audiotape about?

2 A The mother had given it to me. There was a
3 telephone call on it. I don't recall -- I didn't think it was
4 that big of a evidentiary value. I wasn't sure if we were
5 going to use it or not. Mr. Nasby requested copies of
6 discovery. I put the discovery in a bin and inadvertently put
7 in the audiotape. He never contacted me about it. He then
8 mailed that audiotape I think along with the letter requesting
9 the girl to get a copy of -- to get a tape recorder and to
10 review what the tape says.

11 Q All right. And in this letter that was attached
12 with the other letter with the story on how to testify was
13 there a statement written in there for her to contact Colleen,
14 who at the time was his girlfriend, who took the notes and
15 that it needed to be shared with her?

16 MR. MICHAELIDES: Objection. This is leading,
17 Judge.

18 THE COURT: Sustained.

19 THE WITNESS: I'm sorry?

20 THE COURT: It was sustained.

21 BY MR. COUMOU:

22 Q Yes. Do you recall having concern with what was
23 written in that letter to this young lady by the name of
24 Crystal Sobrian?

25 A Yeah. We had -- I did have some concerns about

1 that.

2 Q And this girl, Crystal Sobrian, she didn't live here
3 in Las Vegas; correct?

4 A No. If I recall correctly, she was from L.A.

5 Q And so she had to come in from L.A. to come in and
6 testify on this particular case?

7 A I believe so, yes.

8 Q Now, were you also aware of a witness by the name of
9 Britney Adams?

10 A I recall the name, yes.

11 Q And do you recall if that Britney Adams could put
12 the story that's written or entitled "The Girl's Statement"
13 into perspective?

14 A Could she have done that?

15 Q Yes.

16 A Gee, I really don't remember what she was going to
17 testify to. But I know that, you know, there was another
18 person that had to put it all together. I haven't reviewed
19 any documents prior to this or ordered the transcripts or --
20 to refresh my recollection.

21 Q Okay. Mr. Sciscento, looking back at the time on
22 the eve of trial, the fact that you had filed an alibi notice
23 but decided not to proceed, why did you decide not to proceed
24 with that alibi notice?

25 A Everything was falling apart. The witnesses were

1 not coming forward early enough. The letter that was sent out
2 by the jail pretty much coaching them how to testify,
3 everything coming there, I felt if we had presented the alibi
4 evidence and it had fallen apart, which it looked like it was
5 going to, then there would have been no believability
6 whatsoever of the defendant, and the case would have just
7 fallen apart at that point. We wouldn't have had a chance.

8 Q Do you think it was the right decision as a licensed
9 attorney not to proceed with an alibi defense?

10 A In my opinion if we'd have gone forward then we
11 would have had troubles.

12 Q Do you feel that the defense that you still
13 proceeded on, which was the original defense all along, was
14 the right defense in this particular case?

15 A It was probably our strongest and most likely our
16 only defense.

17 MR. COUMOU: Think I'll pass the witness. Thank
18 you.

19 THE COURT: Cross.

20 MR. MICHAELIDES: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. MICHAELIDES:

23 Q Good afternoon, Mr. Sciscento.

24 How many weeks prior to the trial did you bring on
25 Mr. Santacroce?

1 A I'm not sure. May have been two months earlier.

2 Q I believe Mr. Santacroce indicated three weeks,
3 maybe four weeks. Does that sound about right?

4 A That's possible.

5 Q And you indicated that the reason you did that is
6 because it was a murder case and you thought that you needed
7 two attorneys; correct?

8 A Well, that, and to keep the files over there, so I
9 needed somebody handling the files over at the 330 office.

10 Q So the fact that you had accepted employment with
11 the Special Public Defender was another factor that led you to
12 bring on Mr. Santacroce?

13 A One of the factors, yes.

14 Q You indicated that you had set up, in your opinion,
15 Chinese walls to separate the case from the Public Defender's
16 Office?

17 A Pretty much. I mean, we -- Mr. Figler and I never
18 discussed the case, I never looked at his files, never talked
19 to -- never did get involved in his files at all.

20 Q Okay. But your testimony -- you said that you had
21 set up, quote, unquote, "Chinese walls"; is that correct?

22 A Yes.

23 Q Okay. Do you believe that Nevada recognizes Chinese
24 walls as a valid way to avoid conflicts? When I say Nevada, I
25 mean case law.

1 A I understand, Nevada case law. I'm not sure. I
2 know that under the professional responsibility there is --
3 part of it says you do set up a wall where you don't have any
4 conflicts or [inaudible].

5 Q Now, you indicated that your strategy was really two
6 pronged, one, to argue that Von Lewis, a/k/a Sugar Bear, did
7 it, and also an alibi defense; correct?

8 A Correct.

9 Q I believe you stated that at some point in time you
10 didn't proceed with the alibi defense; correct?

11 A That's correct.

12 Q And is it safe to say that the reason is because, as
13 you said, everything was falling apart?

14 A Yes.

15 Q I want to try and get an idea of what "everything"
16 encompassed, okay. Now, we know that there was a letter
17 purportedly written by the defendant; correct?

18 A Yes.

19 Q And do you recall when you received that letter in
20 terms of prior to trial, how many weeks, days?

21 A Very shortly before trial. Maybe two -- two or
22 three weeks.

23 Q Okay. And it was -- there was an expert called to
24 give testimony that that letter was authored by Mr. Nasby;
25 correct?

1 A I believe so, yes.

2 Q So we'll call that the Nasby letter. What else went
3 into the decision that everything was falling apart?

4 A Well, the one girl -- it was hard to track her down
5 and [inaudible] to keep her together.

6 Q And I want to interrupt. When you say the one girl,
7 do you remember her name?

8 THE COURT: Was this the Sri Lanka girl?

9 THE WITNESS: Yeah, Sri Lanka. Crystal Sobrian, I
10 think.

11 BY MR. MICHAELIDES:

12 Q Okay. Crystal Sobrian was hard to track down?

13 A Yeah. Because she -- when I interviewed her in my
14 office, I believe at that time with Mr. Duffy, she was very
15 fidgety, did not want to testify, was very adamant that she'd
16 be out of town that -- at the time of the trial, to the extent
17 that we had to even file a motion to get a deposition of her.

18 Q Now, you filed a motion with the court, and that was
19 granted; correct?

20 A Yes.

21 Q Okay. That allowed you to call her deposition and
22 have it recorded in video, or just typically --

23 A Well, it would have been either -- I think we could
24 have videotaped it.

25 Q Okay. Did you notice her deposition?

1 A I don't think we could track her down after that.

2 Q Did you prepare a notice for deposition for Mr.
3 Sobrian -- for Ms. Sobrian?

4 A Probably not. I think she was -- we considered her
5 a friend of the witness, so if she was going to testify in our
6 behalf, we could have just contacted her.

7 Q Okay. You indicated you went to court to get it
8 ordered to have her deposition taken; correct?

9 A Yes.

10 Q Okay. What efforts, if any, did you make to
11 actually execute that order and have the deposition taken
12 prior to trial?

13 A I don't think we did much on it, because as we were
14 getting closer and preparing for that, I think she just backed
15 out and couldn't --

16 Q In addition to the Nasby letter and Ms. Sobrian,
17 having difficulty tracking her down, what else constituted in
18 your mind everything falling apart?

19 A Well, if I was the prosecutor I would focus on the
20 fact that these people never came forward earlier, that the
21 mother's testimony kind of conflicted or she didn't tell that
22 they were together during this night. The mother would have
23 been the first person to tell the police that he couldn't have
24 committed the murder because he was with me the entire time
25 and these people were with him, and that it took so long for

1 this to come out, for them to say anything.

2 Q Okay. What witness -- so there was -- in your mind
3 there was a delay in the time of the witness stating their
4 alibi story; correct?

5 A (No audible response)

6 Q Okay. What witness in your mind -- strike that.

7 The delay that we're talking about, what witnesses
8 did that apply to? You indicated the mother.

9 A Well, the mother did initially have some talk about
10 it, and then I think she -- she said first she [sic] was with
11 her the entire time, and then she kind of backed off that he
12 wasn't with her the entire time.

13 Q Do you remember the mom's name?

14 A Brendan?

15 Q Brenda Nasby?

16 A Brenda.

17 Q Okay. Did Ms. Nasby give a witness statement at the
18 time of the investigation, the initial investigation?

19 A I believe so. I haven't reviewed any documents, so
20 I think she did.

21 Q Do you know if she indicated whether Brendan was
22 with her that night or not at that initial statement?

23 A I think she did to a point, to a time.

24 Q And then is it your testimony that at some point
25 later she changed that statement in any way, shape or form?

1 A I don't think it was as strong as we initially
2 thought or hoped it would be. So I don't know if she changed
3 it or there was just some gaps in there that we couldn't
4 cover.

5 Q Okay. As you sit here today do you recall what
6 those gaps might have been?

7 A Just the time frames.

8 Q Can you be more specific? What do you mean the time
9 frames?

10 A I believe he left the house at 10:00 o'clock, she
11 couldn't account for where he was after that.

12 Q Is it your testimony that if you had called Brenda
13 Nasby to establish an alibi that she could have been impeached
14 with her initial statement?

15 A It wouldn't have been enough to cover the entire
16 alibi -- the entire time frame. She would have been someone
17 to lead us up to it and show us where he was at certain times.
18 Used in conjunction with the other witnesses that we had hoped
19 to use, we could have then covered the entire incident where
20 he was.

21 Q Okay. So it's fair to say that Ms. Nasby's
22 statement could have covered a portion of Brendan's alibi, not
23 all of it, though?

24 A I believe so, yes.

25 Q And did you call her to stand to cover a portion of

1 that alibi?

2 A No.

3 Q Your reasons for not calling her?

4 A The critical time would have not been covered by
5 her, and so it would have been really not relevant, because it
6 wouldn't have proved or disproved anything.

7 Q Do you recall a witness by the name of Nina, an
8 alibi witness? I don't recall the last name.

9 MR. MICHAELIDES: Court's indulgence.

10 (Off-record colloquy - Defendant and Mr. Michaelides)

11 BY MR. MICHAELIDES:

12 Q Do you recall the testimony of Britney Adams?

13 A I think I do, yes. I think she was the one that
14 said that some people were beat up at the behest of one of the
15 girlfriends of Mr. Nasby.

16 Q In substance. And also she attacked the credibility
17 and the alibi -- or the whereabouts of Mr. Nasby prior to the
18 incident. Now, do you recall Mr. Nasby telling you of a
19 witness by the name of Portia Nichols?

20 A I don't recall that. But -- I don't remember the
21 names. We may have, we may not have. I don't know.

22 Q Mr. Nasby indicates that Ms. Nichols could have
23 contradicted in the entirety Ms. Adams's entire testimony. Do
24 you recall him telling you that?

25 A I don't recall that, no.

1 Q If he had told you that Ms. Nichols could have
2 contradicted or impeached Ms. Adams's testimony, would there
3 be any reason why you would not have called Ms. Nichols?

4 A No. We would have called her. If -- yeah, if she
5 could have impeached Adams, yes.

6 Q And as you sit here today you can't recall any
7 reason why you didn't call Ms. Nichols to testify?

8 A No, I don't.

9 THE COURT: In fact, is it correct you have no
10 recollection of this witness at all?

11 THE WITNESS: Of Ms. Adams or Ms. Portia?

12 THE COURT: Nichols.

13 THE WITNESS: Well, today I don't have a --

14 THE COURT: Okay.

15 THE WITNESS: -- knowledge of that. I'm not saying
16 at the time that we did.

17 THE COURT: Understood.

18 BY MR. MICHAELIDES:

19 Q As you sit here today do you have a recollection of
20 a witness by the name of Madison Jones?

21 A No.

22 Q If I told you that my client indicates that Ms.
23 Madison Jones could have told the jury that Von Lewis pointed
24 a gun at the deceased Beasley's head and threatened to kill
25 him, do you recall that?

1 A I know there was some discussion of Sugar Bear being
2 violent. I know we tried to track down some information on
3 that. Obviously, that would have been very helpful. If I had
4 that witness, I would have brought him in.

5 Q So can you think of any reason why you would not
6 have called a witness who would have testified that Von Lewis
7 put a gun to Beasley's head?

8 A I don't know why I wouldn't have called them.

9 Q Another witness, Michelle McKimmen or McKimmeron
10 [phonetic], does that sound familiar?

11 A No.

12 Q Do you recall being provided a videotape in this
13 case?

14 A Yes.

15 Q Do you recall what was depicted on the videotape?

16 A It was the -- a group -- Mr. Nasby was involved in
17 it. I think the Burnside boys were in it, believe Sugar Bear
18 was in it, and some other people. They were sitting around
19 rapping, smoking, and I think there was a fight involved, but
20 I think it was more of a fictional fight that got out of
21 control.

22 Q Okay. So you do recall some type of fight taking
23 place?

24 A Yes.

25 Q Okay. And if I told you that the fight was between

1 Sugar Bear and Beasley, does that help your recollection?

2 A That would seem about right, yes.

3 Q And Sugar Bear was the one that you were saying --
4 or at least arguing to the jury had killed Beasley; correct?

5 A Correct.

6 Q Would that tape have helped support your story that
7 Sugar Bear would have --

8 A That portion -- I'm sorry. That portion may have.
9 But to introduce the tape we would have had to introduce all
10 of the tape.

11 Q Was there portions of the tape that you preferred
12 not to introduce?

13 A There was some rapping, I recall, Brendan, about
14 guns and stuff like that. You know it was a rap thing that
15 may not have looked good to the jury. It would have shown he
16 was a gang member.

17 Q Okay. So is it fair to say that there was some bad
18 and some good on the tape in terms of your defense?

19 A I believe so, yes.

20 Q Did you take -- undertake a balancing act to
21 determine whether the good outweighed the bad from a defense
22 standpoint?

23 A I think that -- yes, I think we could have got the
24 information about the fight out, and I think we did through
25 Burnside already. He was present there, so we didn't have to

1 produce the tape. So what we needed we could have got from
2 another witness.

3 Q Okay. But back to my question, did you do a
4 balancing test in your mind to determine one way or the other
5 whether the tape --

6 A Yes.

7 Q -- should be introduced?

8 A I believe so, yes.

9 Q And your final decision was to not introduce that
10 tape; correct?

11 A I believe so, yes.

12 Q And one of the reasons was because you believed that
13 a witness by the name of Burnside would have provided
14 identical information? Is that your testimony?

15 A Well, if -- if I could have got that information out
16 about the fight from another witness, then it'd be better to
17 use that information than the videotape, because the videotape
18 had some bad things on it that wouldn't have [unintelligible].

19 Q One of those bad things you indicated would have
20 been that Mr. Nasby was a member of a gang; correct?

21 A Well, yeah. They were talking L.A. Riders, L.A.
22 Crazy Riders. There was rapping. In this jurisdiction our
23 jury pool is made up of retired white women and men from
24 Southern California who don't want to know -- you know, they
25 left that to avoid the gangs. That was my concern. So if

1 they see that, he's a young black man, they're going to find
2 him guilty.

3 Q Did you eventually get that information out of Mr.
4 Burnside at trial?

5 A I don't recall if we did or not.

6 Q Did you suggest to Mr. Nasby prior to trial that he
7 should accept the prosecutor's office to settle the matter?

8 A In all cases, you know, it's required that I give
9 the offer to the client. Did I force him or ask him to take
10 it? You know, he didn't take it, so obviously I wasn't going
11 to force him to take it. I don't recall what the offer was.
12 I don't know if it was a second or not.

13 Q Do you remember whether you gave him your opinion
14 that he should take it or not?

15 A Well, I would always give an opinion.

16 Q Okay. Do you remember what your opinion was in this
17 case?

18 A I don't recall what my opinion was. It depends on
19 what the offer was. But, you know, I always tell the people
20 my opinion of what I think of the offer; if they should take
21 it or not, that was something they had the absolute right to
22 reject or accept it.

23 Q Do you recall discussing with Mr. Nasby whether or
24 not he should take the stand and testify in his own behalf in
25 this trial?

1 A As -- you know, I can't recall directly, but I know
2 that with all my clients there is talk about taking the stand
3 and testifying.

4 Q And what are some of the factors that you would
5 consider in instructing a witness [sic] not to testify? What
6 were some of the things that would typically go into that?

7 A His prior background, criminal history, his demeanor
8 on the stand, if there was information that wasn't brought out
9 in trial that he would have that would hurt him, we wouldn't
10 want him on the stand. If we felt that we proved our case
11 without him having to get up and testify, if there were gaps
12 in the case that could have been brought up. If there were
13 prior bad acts or acts that only through him could be brought
14 out, I wouldn't want him on the stand.

15 Q Is there anything else?

16 A I'm sure there's a -- it's just a case-by-case
17 basis. Is his testimony going to help us enough to win the
18 case, or is it going to hurt us enough to lose the case.

19 Q In this case, Brendan had no criminal history. Are
20 you aware of that?

21 A That's correct.

22 Q So that would have been a factor which would not
23 have prevented you from --

24 A That's correct.

25 Q Did you give an opinion one way or the other whether

1 you thought he should take the stand or not?

2 A I probably gave an opinion. I think I always give
3 an opinion on what I think the client should do.

4 Q And what was that in this case?

5 A I can't recall directly, but probably not to take
6 the stand.

7 Q Do you know what led you to arrive at that opinion?

8 A Probably that if he took the stand then they could
9 bring in some evidence that we'd kept out about intimidating
10 witnesses and things of that nature. I think there was a call
11 from the Judge Gibson -- Gibbons, who basically said, if he
12 takes the stand this information's allowed to come in, they
13 could get into the attempt to dissuade the witnesses or, you
14 know, the letter that he sent out because it goes to his
15 credibility. A lot of that stuff would have come in.

16 Q And do you believe by not calling the defendant to
17 testify that you kept that information out?

18 A Yes.

19 Q Are you aware of what a cautionary accomplice
20 instruction is? I'm not going to ask you to recite it
21 verbatim. Tell us basically what it is.

22 A I think basically if they received any benefits or
23 -- for their testimony that we can look at it with a jaundiced
24 eye.

25 Q Okay. Do you believe that that instruction was

1 applicable in your opinion in this case?

2 A Yes.

3 Q Did you offer that instruction to the Court to give
4 to the jury?

5 A I don't recall if I did or not.

6 Q Would there -- considering that you just testified
7 it would have been applicable, can you think of any reason why
8 you would not have requested that instruction?

9 A I can't.

10 Q If you failed to request that instruction, do you
11 feel that you made an error?

12 A It depends -- well, I mean, you know, always nice to
13 have that instruction there, because I'm only left to argue.
14 So if the instruction was included in there, I can't say, this
15 is the law, and by the way, the Burnsides received a benefit.
16 And so the jury instruction tells you to look at that
17 differently. So I don't know why I would not have included
18 that.

19 MR. MICHAELIDES: Nothing further. Thank you, Mr.
20 Sciscento.

21 MR. COUMOU: Real brief, Judge.

22 REDIRECT EXAMINATION

23 BY MR. COUMOU:

24 Q On that last note, Mr. Sciscento, you brought out
25 during the cross-examination of both Burnside brothers that

1 they received a benefit in that they got a reduced charge that
2 they pled guilty to; correct?

3 A I believe so, yes.

4 Q And you exposed that to the jury for them to know --

5 MR. MICHAELIDES: Objection. Counsel's testifying,
6 Your Honor.

7 THE COURT: Rephrase, please.

8 BY MR. COUMOU:

9 Q Did the jury hear that?

10 A I believe so. I mean, that would have been one of
11 the things I would have focused on.

12 Q And the same goes for a Jeremiah Deskin [phonetic]?

13 A I think he received some benefits, too.

14 Q Yeah. And did you cross-examine him about that?

15 A I believe so, yes.

16 Q And did you highlight that also during your closing
17 statement to the jury?

18 A I don't recall. I mean, that would be a normal
19 procedure that I would do, is obviously would say, you know,
20 you've got to question these witnesses' motives to tell the
21 truth or not to tell the truth, 'cause they're getting a
22 benefit. I don't recall if I -- I might have even pulled out
23 my billfold in this case, 'cause I know I've done this before,
24 and I know you were attorney of record when I did it. I just
25 put a billfold up there and said, it's bought and paid for. I

1 don't know if I did it in this case or not.

2 Q Okay. But the point that you were trying to make to
3 the jury in closing argument is the fact that this is suspect
4 testimony?

5 A Yes. And that it's really bought testimony, whether
6 it's money or freedom, it's the same thing.

7 MR. COUMOU: Nothing further, Judge.

8 THE COURT: Mr. Michaelides?

9 MR. MICHAELIDES: Nothing, Judge.

10 THE COURT: You may step down, sir.

11 Who's next?

12 MR. COUMOU: I believe that's it, Judge.

13 THE COURT: Wish to make a summation?

14 MR. COUMOU: Well, Judge, I'm only focusing again on
15 the two issues that I believe the Court wanted to hear. I
16 think first of all the issue of Mr. Sciscento joining the
17 Special Public Defender's Office and still retaining some
18 files over at the -- at his previous law practice, I think the
19 testimony is clear one of the main reasons why he brought Mr.
20 Santacroce in is to assist him in making sure that there was
21 no commingling of files. The testimony, including with the
22 affidavits that he has filed, point out that Mr. Sciscento
23 went above and beyond what is required for him to make sure
24 that there is no conflict of interest that would arise. And
25 in addition to that he pointed out that Mr. Figler, who was

1 working at the Special Public Defender's Office at the time,
2 that he did not have any communication with the attorney of
3 record for one of the Burnside brothers. So I think that
4 issue really is dispositive with that testimony.

5 Second and foremost is whether or not Mr. Sciscento
6 and Mr. Santacroce should have called these alibi witnesses.
7 Personally, Judge, I -- I think both attorneys should be
8 respected and commended for following their ethical obligation
9 with the evidence that came up. It's also highlighted the
10 fact that Mr. Sciscento already started having some doubt,
11 from his testimony today, whether or not this alibi defense
12 would really garner anything, because he had questions as to
13 one of these witnesses that never came forward even though she
14 claimed initially.

15 They did the right decision. The fact that they
16 made the right decision on this particular case still did not
17 prevent defendant Nasby from having the best defense, and the
18 best defense was to try to blame the murder on another
19 individual who was not in the courtroom, who was not there but
20 by all intents and purposes was the right person to pin it on
21 from the facts that they had to work with. And it's easier to
22 make a claim or accuse somebody who's not sitting in the chair
23 in the courtroom almost as if in a civil case where you have
24 the empty chair sitting there it's the best defense.

25 And in this particular case -- and I only can speak

1 right now as the prosecutor involved in the case -- they did
2 an admirable job in defending this case; however, we can't
3 lose sight of the fact that there was overwhelming evidence
4 pointing to the guilt of the defendant, and that was a huge
5 mountain that Mr. Sciscento and Mr. Santacroce had to
6 overcome. The fact that the murder weapon was found in the
7 defendant's bedroom, the fact that the defendant had confessed
8 to some witnesses that he did it, the motive was there, all
9 this evidence was presented at the time of trial, and that was
10 a -- certainly a big mountain of evidence that Mr. Sciscento
11 had to overcome. And the fact is they still went with the
12 proper defense, and that is to try to accuse somebody else who
13 is not in the courtroom at the time.

14 THE COURT: Thank you, Mr. Coumou.

15 MR. MICHAELIDES: Your Honor, would the Court allow
16 me some time to file a written response? I want to take the
17 testimony today and compare it to the trial transcript,
18 specifically things that Mr. Sciscento and --

19 THE COURT: With respect to the trial strategy, in
20 other words?

21 MR. MICHAELIDES: Yes, Your Honor. I think that'd
22 be more helpful.

23 THE COURT: I'll give you some time. I don't -- I'm
24 not going to give you a lot of time. I think 30 days is more
25 than adequate. I do want to be fair with you, and I think on

1 behalf of your client it's fair for you to know that, you
2 know, what I've heard today is not persuasive as far as I'm
3 concerned. And I don't want you to go away thinking that
4 because I've given you some time that I'm feeling generous
5 because of what I heard here today.

6 What I did hear today, and I have no reason not to
7 state this on the record, is two attorneys who took care to do
8 a couple of things, one who was leaving one practice and going
9 into the public sector engaged the services of another
10 attorney to make sure that the sanctity of those separate
11 files could be maintained outside of his Special Public
12 Defender's work.

13 And then I heard the trial attorney talk about his
14 trial strategy that pretty much was echoed even by the new
15 attorney who was brought in late in the game, and the trial
16 strategy seemed to be one that I think any good criminal
17 defense attorney would have maintained throughout the course
18 of the representation.

19 It does not mean, however, that there aren't things
20 that you still shouldn't point out to me. And while I'm
21 giving you this warning, if you will, about what I heard today
22 does not mean that I've fully made up my mind. I wouldn't
23 give you an opportunity to provide additional briefs if that
24 were the case. But I want to be fair so that you and your
25 client aren't thinking that because I've given you that

1 opportunity that -- of anything other than what I've just
2 said.

3 MR. MICHAELIDES: Your point is well taken, Judge.

4 THE COURT: Mr. Coumou, of course you'd have an
5 opportunity to respond to that if you feel it is necessary.

6 MR. COUMOU: Yes, Judge.

7 THE COURT: Therefore, I'm going to give 30 days for
8 that to be filed. I'm going to set this then for 30 days
9 thereafter for hearing, and, Mr. Coumou, you can reply within
10 that time.

11 MR. COUMOU: Thank you.

12 MR. MICHAELIDES: Thank you, Your Honor.

13 THE COURT: And it'll just be an argument. You can
14 set it for like an 11:00 o'clock argument on that 60 days.

15 THE CLERK: That'll be January 11th at 11:00
16 o'clock.

17 THE COURT: Thank you.

18 Thank you all for your time and for your patience.
19 I know that we've gone through certainly all of your lunch
20 hours, and I appreciate the time that you spent --

21 MR. MICHAELIDES: You're welcome.

22 THE COURT: -- to prepare to get this properly into
23 the record.

24 THE PROCEEDINGS CONCLUDED AT 12:59 P.M.

25 * * * * *

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S WITNESSES

Frederick Santacroce	4	11		
Joseph Sciscento	20	30	45	

* * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-
ENTITLED MATTER.

FLORENCE HOYT
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Florence Hoyt
FLORENCE HOYT, TRANSCRIBER

11/26/05
DATE

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Anthony P. Sgro

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6
 7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
 10 Plaintiff,

Case No.: C154293
 Dept. No.: XVIII

11 vs.

12 BRENDAN NASBY,
 13 Defendant.

14
 15 **DEFENDANT'S SUPPLEMENTAL REPLY BRIEF TO STATE'S OPPOSITION TO**
 16 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION**

17 I.

18 FACTS

19 A. **Evidentiary Hearing testimony of Frederick Santacroce, Esq.**

20 Attorney Frederick Santacroce was co-counsel along with attorney Joseph
 21 Sciscento at the trial level in this case. Mr. Santacroce did not join the defense until
 22 some time "shortly before the trial was starting". Evidentiary hearing Transcripts
 23 (hereinafter "EHT"), p. 4, lines 20-23. Mr. Santacroce testified at the Evidentiary
 24 Hearing that since several years had passed from the date of the trial, he did not "have
 25 a real clear independent recollection. EHT p. 9, ll 7-10. Although counsel Santacroce
 26 had sufficient prior notice of the Evidentiary Hearing and was specifically aware of the
 27
 28

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1 two issues that were to be the focus of that hearing, the only preparation he undertook
2 prior to the hearing was to review the State's Opposition to the defendant's petition.
3 EHT p.11, II 21-25.

4 During the time the pair prepared the case for trial, they shared offices at the
5 Phoenix Building, storing all of the Nasby files there as well. EHT p. 5, II 10-16. Mr.
6 Santacroce took over most of Mr. Sciscento's files after his move to the Special Public
7 Defender's Office.
8 EHT p. 6, II 5-8.

9 At some point after becoming co-counsel, Mr. Santacroce learned that a notice
10 of alibi witness had been filed in this case by the defense. EHT p. 6, II 16-21.
11 Approximately one week prior to the start of trial, defense counsel learned that a letter
12 had been intercepted by the jail where the defendant was housed. EHT p. 7, II 4-10.
13 Mr. Santacroce testified that the intercepted letter "indicated that it (the alibi) was a
14 concocted alibi story and there may have been some perjury involved". EHT p.7, II 14-
15 16. Based upon this letter, counsel chose not to pursue the alibi witness defense
16 because he felt that doing so would be suborning perjury. EHT p.7, II 17-20. As
17 this testimony supports, trial counsel was ineffective for failing to call any witness
18 based upon his belief that the above reference letter was written by Defendant. At this
19 stage of preparing the case trial counsel had no concrete evidence that Nasby
20 authored the letter. In addition, even had Defendant authored the letter, he was never
21 questioned by trial counsels to any non damaging reasons why defendant would write
22 such a letter. Had this been done, trial counsel could have received the benefit of
23 calling these witnesses, and reduced any negative exposure the letter would have had.
24 Trial counsel simply chose to accept the State's versions that the letter was written by
25 Defendant, and then prematurely concluded not to call the witness.

26 Additional testimony at the evidentiary hearings showed that counsel Santacroce
27 recalled that at trial an expert handwriting analyst was called and in the experts opinion
28 the letter was written by the defendant. EHT p.8, II 3-6. Counsel stated that he held

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1 the opinion that the alibi was concocted, and that this opinion was further supported by
2 the testimony of Brittany Adams. EHT p.8, ll 18-19. Counsel Santacroce was unable to
3 recall with specificity exactly why the Adams testimony further created suspicion in his
4 mind that the alibi was fabricated, but did recall that "there was some communication
5 whereby there was a plan, instructions to one person, maybe this Crystal, who was
6 then to convey that to this other individual, Brittany. EHT p.8, ll 21-25. Trial counsel
7 had months to review the file in this case prior to the evidentiary hearing, and despite
8 this time frame, could still not provide any concrete reason why he failed to pursue this
9 avenue of defense or why he made his conclusion the alibi was fabricated.

10 Mr. Santacroce explained his decision not to call the alibi witness because if "we
11 put those witnesses on and then the State would have come back and impeached the
12 whole credibility of Mr. Nasby through the intercepted communications, we wouldn't
13 have had a chance to offer any other defense". EHT p.9, ll 19-25. In choosing not to
14 pursue the alibi defense, counsel thought that the defense they followed, that being to
15 attempt to place the blame for the murder on another individual was "the most
16 plausible". EHT p. 10, ll 2-5. Trial counsel erred in this conclusion because the two
17 defenses were not mutually exclusive, and could have helped each other. The "other
18 shooter" defense would have been supported by calling the witnesses in question.
19 Counsel testified that he and co-counsel discussed this strategy with the defendant
20 prior to trial. EHT p.10 6-8. The individual that the defense team sought to portray as
21 the real shooter was a person named Von Lewis, a.k.a. Sugie Bear. EHT p.14, 9-15.

22 With respect to pre-trial witness preparation, counsel Santacroce testified that
23 he did not personally speak with potential alibi witness Brittany Adams, or any other
24 potential witness. EHT p.12, ll13-15, p.13, ll1. Counsel Santacroce believed that Mr.
25 Sciscento and/or his private investigator had spoken with these witnesses prior to trial.
26 EHT p.13, ll 2-3. As such, it is clear from the record that trial counsel Santacroce did
27 not conduct any investigation into these witnesses, but nonetheless anticipated in
28 reaching a conclusion that this line of defense should not be taken. This is not a

1 reasonable way to conduct a murder defense. If trial counsel failed to talk with these
2 witnesses, he can not then offer a credible opinion on the subject.

3 Counsel recalls that he personally viewed a videotape which showed the
4 defendant and several other individuals in a garage along with several guns being
5 waved around. EHT p.14, 11-5. Counsel acknowledged that the videotape supported
6 the defense theory of the case since it showed Lewis pointing a gun at the head of the
7 deceased victim, Beasley, but that it also showed the defendant "parading around with a
8 firearm". EHT p.15, 115-13. Since this video supported the defense theory, it was error
9 to introduce the tape on its face. Counsel recalled also that the defense objected to a
10 letter purportedly written by another jail inmate/informant that the judge ruled was not
11 admissible. EHT p.16, 1116-25, p.17, 11 1-7. Counsel testified that the letter which
12 ultimately the judge ruled inadmissible, was discussed by the prosecutor in his opening
13 statement to the jury. Id. At p.17, 1120-23.

14 Counsel Santacroce testified that he recommended to the defendant that he not
15 testify at trial, and that he could not dispute the fact that the defendant had no prior
16 felony conviction. Id. At p.19, 114-13. The Defendant had no priors and therefore could
17 not be impeached with prior convictions, ususally the only reason a defendant does not
18 take the stand to proclaim his innocence. As juror comments have proven over the
19 past fifty years, most jurors expect an innocent person to take the stand to scream that
20 he is innocent. Nasby did not, based upon trial counsels advice. A jury instruction to
21 the jurors to not use this against the Defendant is not enough to overcome this "dead
22 air".

23 Counsel made his recommendation at least in part because he felt that if the
24 defendant testified, it would then open the door for the State to admit evidence of all of
25 the "intercepted material" of Defendant while he was housed a the jail. Id. 15-18. The
26 door to introduce damaging evidence was already opened when the State filed its

27

28

1 charges. Defense counsel cannot close that door, but can mitigate that damage.

2 There is no better mitigation than having an innocent defendant proclaim his

3 innocence. This was not done.

4 **B. Evidentiary Hearing testimony of Joseph Sciscento, Esq.**

5 Counsel Sciscento was retained by the defendant to represent him at trial. EHT

6 p.21, II 4-9. Counsel originally sought the assistance of attorney John Duffy, Esq., but

7 Mr. Duffy had a conflict of interest at the preliminary hearing stages of the case. Id. At

8 II17-20. Counsel eventually brought in Counsel Santacroce to join the defense for

9 several reasons, the first being that this was a murder case and also because counsel

10 knew that he was leaving private practice to join the Special Public Defender's Office.

11 Id. P.22, II 3-8. When asked if he used any resource of the Special Public Defenders

12 Office or talked with anybody from that office, counsel stated "no, I don't believe so".

13 Id. At p.23, II13-15. Counsel believed that he had set up what is commonly referred to

14 as a "Chinese wall" between his private practice office and his new office. At p. 23, II

15 2-6.

16 To fail to present any evidence of alibi witnesses or allow the Defendant to

17 testify, fell below an objective standard. Trial counsel Sciscento called no witnesses to

18 defend these charges. He instructed his client not to testify. It is reasonable to expect

19 that trial counsel offer up some type of defense, not just his arguments and opinions, to

20 defend a case. As the original writ filed by the defendant in this case argues, there was

21 no justifiable reason not to do these things. The evidentiary hearing did nothing to

22 dispel that argument.

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I, the undersigned, HEREBY CERTIFY that on the 14th day of February, 2006, I received a copy of the foregoing **DEFENDANT'S SUPPLEMENTAL REPLY BRIEF TO STATE'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION** by personal delivery.

OFFICE OF CLARK COUNTY DISTRICT
ATTORNEY

2/14/06 *Diana Rasmussen*

Frank J. Coumou, Esq.
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Criminal Division
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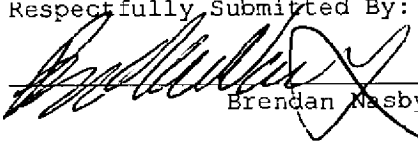
Brendan Nasby
I.D. No. 63618
P.O. Box 650 (High Desert State Prison)
Indian Springs, NV 89070-0650

DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,	)	Case No.: C154293
	)	Department No. XVIII
Plaintiff,)	
	)	<u>CASE APPEAL STATEMENT</u>
vs.)	
)	
Brendan Nasby,)	
)	
Defendant)	

This is an appeal of a denial of a Writ of Habeas Corpus proceeding, filed in the Eighth Judicial District Court, before the Honorable Nancy M. Saitta, in Department XVIII. The State of Nevada was represented by Chris J. Owen, Chief Deputy District Attorney, of Clark County, Nevada. The Honorable said Court appointed Anthony P. Sgro, to represent the Defendant in that proceeding. At this time no motion for Counsel to withdraw as Counsel of Record has been filed. Thus, it is not known whether Counsel of Record will execute this pertinent Appeal.

Dated this 7th day of April 2006

Respectfully Submitted By:

Brendan Nasby, Pro-Per

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CERTIFICATE OF MAILING

I do hereby certify that on this 7th day of April 2006, I deposited a copy of the foregoing: Notice of Appeal and Case Appeal Statement, into the United States mail addressed to the following:

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Anthony P. Sgro, Esq.
Attorney at Law
720 S. Seventh St. Ste. 300
Las Vegas, Nevada 89101
(Attorney for Defendant)

Dated this 7th day of April 2006

Respectfully Submitted By:



Brendan Nasby, Pro-Per

42

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Shirley S. Rungione
CLERK

Brendan Nasby
I.D. No. 63618
P.O. Box 650 (High Desert State Prison)
Indian Springs, NV 89070-0650

DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,	) Case No.: C154293
	) Department No. XVIII
Plaintiff,)
	) <u>NOTICE OF APPEAL</u>
vs.)
)
Brendan Nasby,)
)
Defendant)

TO: STATE OF NEVADA;

Chris J. Owens, Chief Deputy District Attorney, Clark County, Nevada,
and Department XVIII, Honorable Nancy M. Saitta, of the Eighth Judicial
District Court of the State of Nevada, in and for the County of Clark.

Pursuant to the order of the Honorable Nancy M. Saitta, entered on
March 27, 2006, denying Defendant's Writ of Habeas Corpus (Post-Conviction);
NOTICE is hereby given that Defendant, hereby appeals to the Supreme Court of
the State of Nevada from the judgment entered against said Defendant.

Dated this 7th day of April 2006

Respectfully Submitted By:

Brendan Nasby

Brendan Nasby, Pro-Per

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COUNTY CLERK

Brendan Nasby #63618
P.O. Box 650
Indian Springs, NV 89018
H.D.S.P.

LAS VEGAS NV 890

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HDSP

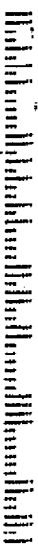
APR 09 REC'D

UNIT 3A1B

Shirley B. Pastaguire
County Clerk
200 Lewis Ave.
P.O. Box 551601
Las Vegas, NV 89155-1601

LEGAL MAIL

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Shirley B. Pennington
CLERK

STATE OF NEVADA,

Plaintiff(s),

vs.

BRENDAN NASBY,

Defendant(s),

) Case No: C154293

) Dept No: XVIII

CASE APPEAL STATEMENT

1. Appellant(s): BRENDAN NASBY

2. Judge: NANCY M. SAITTA

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), JERIMIAH DESKIN; BRENDAN NASBY; TOMMIE BURNSIDE, JR.; JOTEE
BURNSIDE

4. All Parties, Appeal:

Appellant(s), BRENDAN NASBY

Respondent, THE STATE OF NEVADA

5. Appellate Counsel:

Appellant/Proper Person
Brendan Nasby #63618
P.O. Box 650
Indian Springs, NV 89018

Respondent
David Roger, District Attorney
200 Lewis Ave.
Las Vegas NV 89101
(702) 671-2700

1 6. District Court Attorney, Retained

2 7. On Appeal, N/A

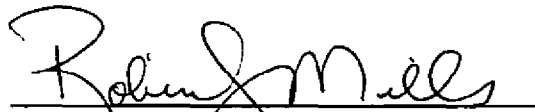
3 8. Forma Pauperis, N/A

4 9. Date Commenced in District Court: 10/21/98

5 Dated This 13 day of April 2006.

6 Shirley B. Parraguirre, Clark County Clerk

7
8 By:



9 Robin J. Mills, Deputy Clerk

10 200 Lewis Ave

11 PO Box 551601

12 Las Vegas, Nevada 89155-1601

13 (702) 671-0512

● ORIGINAL ●

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 FRANK JOHAN COUMOU
6 Chief Deputy District Attorney
7 Nevada Bar #004577
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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Anthony P. Sgro
CLERK

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 BRENDAN J. NASBY,
18 #1517690

19 Defendant.

CASE NO: C154293

DEPT NO: XVIII

20 FINDINGS OF FACT, CONCLUSIONS OF
21 LAW AND ORDER

22 DATE OF HEARING: March 27, 2006

23 TIME OF HEARING: 10:30 A.M.

24 THIS CAUSE having come on for an evidentiary hearing on November 9, 2005
25 before the Honorable Nancy M. Saitta, District Judge, and Argument on the 27th day of
26 March, 2006, the Petitioner being present and represented by Anthony P. Sgro, Esquire, the
27 Respondent being represented by DAVID ROGER, District Attorney, by and through Frank
28 J. Coumou, Chief Deputy District Attorney, and the Court having considered the matter,
including briefs, transcripts, arguments of counsel, testimony of witnesses Frederick
Santacroce, Esquire, and Joseph Sciscento, Esquire, and documents on file herein, now
therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Defendant was charged by an Amended Criminal Complaint, filed on August
27, 1998, with Conspiracy to Commit Murder and Murder with Use of a Deadly Weapon.

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COUNTY CLERK

1 An Information, filed on November 9, 1998, charged Defendant with Conspiracy to Commit
2 Murder and Murder with the Use of a Deadly Weapon.

3 2. On October 19, 1999, a jury found Defendant guilty of Conspiracy to Commit
4 Murder and First Degree Murder with Use of a Deadly Weapon.

5 3. On November 29, 1999, Defendant was sentenced to a maximum of one
6 hundred twenty (120) months, with a minimum parole eligibility of forty-eight (48) months,
7 in the Nevada Department of Prisons on the Conspiracy to Commit Murder count. On the
8 First Degree Murder count, Defendant was sentenced to a consecutive term of Life with the
9 possibility of parole, with a consecutive term of Life with the possibility of parole for the
10 deadly weapon enhancement. The Judgment of Conviction was filed on December 2, 1999.

11 4. Defendant appealed his conviction to the Nevada Supreme Court. Defendant's
12 conviction was affirmed on February 7, 2001. Remittitur issued on March 6, 2001.

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14 February 1, 2002. The State filed a response on April 5, 2002. This matter was never
15 litigated. On March 1, 2004, the district court set a new briefing schedule. Defendant was
16 granted an extension to file his petition for writ of habeas corpus post-conviction on
17 November 10, 2004. Defendant filed the instant petition for writ of habeas corpus post-
18 conviction on November 17, 2004. On February 1, 2005, the State was granted an extension
19 to file its response. The State filed its opposition to Defendant's post-conviction petition on
20 February 4, 2004.

21 6. Defendant asserts in his petition there was prosecutorial misconduct because
22 the prosecutor: prevented a defense witness from testifying; improperly vouched for the
23 credibility of a state witness; improperly referred to things not in evidence; misstated the law
24 in closing argument; presented false testimony; led the Defendant to believe Mr. Von Lewis
25 would be a witness; and placed a jail house informant in close proximity to Defendant.

26 7. Defendant also asserts that there was trial court error because: the court
27 delayed ruling on a letter; the court improperly allowed the evidence of prior bad acts; the
28 court failed to give an accomplice jury instruction; and the court improperly gave a malice

1 and reasonable doubt jury instructions.

2 8. This court finds that Defendant's claims of prosecutorial misconduct and trial
3 court error are barred by NRS 34.810(1)(b)(2).

4 9. Defendant's counsel, Frederick Santacroce, Esquire, and Joseph Sciscento,
5 Esquire, testified at an evidentiary hearing on November 9, 2005.

6 10. This court finds that the decisions of counsel were reasonable and within the
7 discretion of decision making and that the evidence does not support the ineffective
8 assistance of counsel claims.

9 11. This court finds that the State was able to recover information which indicated
10 that Defendant was coaching witnesses for false testimony, and that the State notified
11 Defendant's counsel of Defendant's attempts to suborn perjury.

12 12. This court finds that trial counsel for Defendant was not ineffective.

13 13. This court finds that appellate counsel for Defendant was not ineffective.

14 14. This court finds that trial counsel (Joseph Sciscento) did not have a conflict of
15 interest by accepting employment at the Special Public Defender's Office.

16 CONCLUSIONS OF LAW

17 1. The Nevada Supreme Court held in Thomas v. State, 120 Nev. 37, 83 P.3d 818
18 (2004), that allegations that counsel did not call any witnesses during the guilty phase did not
19 state a claim for ineffective assistance of counsel. *See also*, State v. Love, 109 Nev. 1136,
20 865 P.2d 322 (1993)(holding that counsel's tactical decision not to call alibi witnesses at trial
21 was made after adequate investigation and was based upon counsel's reasonable
22 determination that damage to the defendant's case could be avoided). In addition, the
23 Nevada Supreme Court has stated that it will not second guess counsel's trial tactics.
24 Donovan, 94 Nev. at 675, 584 P.2d at 711.

25 2. The Nevada Supreme Court has stated that a criminal defendant is not denied
26 effective assistance of counsel when a defense attorney "refuses to cooperate with the
27 defendant in presenting perjured testimony." Young v. Ninth Judicial District Court, 107
28 Nev. 642, 649, 818 P.2d 844, 848 (1991) (adopting Nix v. Whiteside, 475 U.S. 157 (1986).

1 NRS 199.120 states that anybody who suborns perjury shall be guilty of a category D felony.

2 3. In order to assert a claim for ineffective assistance of counsel a defendant must
3 prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-
4 prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
5 (1984). See also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
6 test, the Defendant must show first that his counsel's representation fell below an objective
7 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
8 probability that the result of the proceedings would have been different. Strickland, 466 U.S.
9 at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.
10 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada).
11 "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is
12 '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v.
13 Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), quoting
14 McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970).

15 4. Based on the above law, the court begins with the presumption of effectiveness
16 and then must determine whether or not the defendant has demonstrated by "strong and
17 convincing proof" that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913
18 P.2d 1280, 1285 (1996), citing Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981); Davis
19 v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). The role of a court in considering
20 an allegation of ineffective assistance of counsel is "not to pass upon the merits of the action
21 not taken but to determine whether, under the particular facts and circumstances of the case,
22 trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev.
23 671, 675, 584 P.2d 708, 711 (1978), citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th
24 Cir. 1977).

25 5. There is a presumption that trial counsel was effective and fully discharged
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28 overcome by strong and convincing proof to the contrary." Homick, 112 Nev. at 310, 913

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2 6. The Nevada Supreme Court has held that all appeals must be "pursued in a
3 manner meeting high standards of diligence, professionalism and competence." Burke v.
4 State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). Finally, in order to prove that
5 appellate counsel's alleged error was prejudicial, the defendant must show that the omitted
6 issue would have had a reasonable probability of success on appeal. See Duhamel v. Collins,
7 955 F.2d 962, 967 (5th Cir. 1992); Heath v. Jones, 941 F.2d, 1126, 1132 (11th Cir. 1991).

8 7. The defendant has the ultimate authority to make fundamental decisions
9 regarding his case. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312 (1983).
10 However, the defendant does not have a constitutional right to "compel appointed counsel to
11 press frivolous points requested by the client, if counsel, as a matter of professional
12 judgment, decides not to present those points." Id. In reaching this conclusion, the Supreme
13 Court has recognized the "importance of winnowing out weaker arguments on appeal and
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16 burying good arguments . . . in a verbal mound made up of strong and weak contentions." Id.
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18 professional judgments and impose on appointed counsel a duty to raise every 'colorable'
19 claim suggested by a client would disserve the very goal of vigorous and effective
20 advocacy." Id. at 754, 103 S.Ct. at 3314.

21 8. Naked and bare allegations are not grounds for relief. Hargrove v. State, 100
22 Nev. 498, 502, 686 P.2d 222, 225 (1984).

23 9. A court is granted broad discretion in determining whether an attorney should
24 be disqualified from a case. Brown v. Eighth Judicial Dist. Ct., 116 Nev. 1200, 1205, 14
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26 also referred to as an ethical wall or Chinese wall, is appropriate to prevent confidential
27 information from the quarantined attorney to the other members of the law firm or visa
28 versa. Analytica, Inc. v. NPD Research, Inc., 708 F.2d 1263 (7th Cir. 1983). In determining

1 whether a conflict exists, a court looks to whether counsel's functions "could be carried out
2 impartially and without breach of any privileged communication." Collier, 98 Nev. at 310,
3 646 P.2d at 1221.

4 10. "Hindsight speculation regarding a tactical decision is not tantamount to proof
5 that the result of the trial was unreliable or that the trial was fundamentally unfair." State v.
6 Edward, 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993).

7 11. NRS 34.810(1)(b)(2) provides that the court shall dismiss a petition if:

8 (b) The petitioner's conviction was the result of a trial and the grounds for the
9 petition could have been: . . .

10 (2) Raised in a direct appeal or a prior petition for a writ of habeas
11 corpus or post-conviction relief;

12 see also Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (disapproved on
13 other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

14 12. NRS 34.810(3) imposes a burden on the Defendant to prove specific facts that
15 demonstrate good cause for Defendant's failure to present these claims in an earlier
16 proceeding and to show that Defendant was actually prejudiced in the manner in which his
17 trial and or direct appeal was conducted.

18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that Defendant's petition for post-
20 conviction writ of habeas corpus is denied.

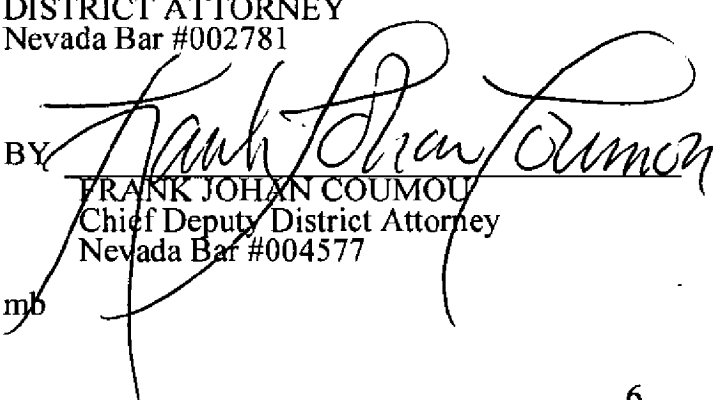
21 DATED this 25 day of April, 2006.

22 
DISTRICT JUDGE

C154293

23 DAVID ROGER
24 DISTRICT ATTORNEY
25 Nevada Bar #002781

26 BY


FRANK JOHN COUMOU
Chief Deputy District Attorney
Nevada Bar #004577

28 mb

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DISTRICT COURT
CLARK COUNTY, NEVADA

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CLERK

BRENDAN J. NASBY,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C154293

Dept No: XVIII

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on April 26, 2006, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 27, 2006.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By:

Brandi J. Wendel, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 27 day of April 2006, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office
Attorney General's Office - Appellate Division

☒ The United States mail addressed as follows:

Brendan J. Nasby # 63618
P.O. Box 650
Indian Springs, NV 89070

Anthony Sgro, Esq.
720 S. Seventh St., #300
Las Vegas, NV 89101

Brandi J. Wendel, Deputy Clerk

● ORIGINAL ●

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **FRANK JOHAN COUMOU**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004577**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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Shirley S. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN J. NASBY,
#1517690

Defendant.

CASE NO: C154293

DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: March 27, 2006
TIME OF HEARING: 10:30 A.M.

THIS CAUSE having come on for an evidentiary hearing on November 9, 2005 before the Honorable Nancy M. Saitta, District Judge, and Argument on the 27th day of March, 2006, the Petitioner being present and represented by Anthony P. Sgro, Esquire, the Respondent being represented by DAVID ROGER, District Attorney, by and through Frank J. Coumou, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, testimony of witnesses Frederick Santacroce, Esquire, and Joseph Sciscento, Esquire, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Defendant was charged by an Amended Criminal Complaint, filed on August 27, 1998, with Conspiracy to Commit Murder and Murder with Use of a Deadly Weapon.

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COUNTY CLERK

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5 that the result of the trial was unreliable or that the trial was fundamentally unfair." State v.
6 Edward, 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993).

7 11. NRS 34.810(1)(b)(2) provides that the court shall dismiss a petition if:

8 (b)The petitioner's conviction was the result of a trial and the grounds for the
9 petition could have been: . . .

10 (2) Raised in a direct appeal or a prior petition for a writ of habeas
11 corpus or post-conviction relief;

12 see also Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (disapproved on
13 other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

14 12. NRS 34.810(3) imposes a burden on the Defendant to prove specific facts that
15 demonstrate good cause for Defendant's failure to present these claims in an earlier
16 proceeding and to show that Defendant was actually prejudiced in the manner in which his
17 trial and or direct appeal was conducted.

18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that Defendant's petition for post-
20 conviction writ of habeas corpus is denied.

21 DATED this 25 day of April, 2006.

22 
DISTRICT JUDGE

C154293

23 DAVID ROGER
24 DISTRICT ATTORNEY
Nevada Bar #002781

25 BY 
26 FRANK JOHAN COUMOU
27 Chief Deputy District Attorney
Nevada Bar #004577

28 mb

ORIGINAL

FILED

MAY 5 3 38 PM '06

Shirley S. Pangione
CLERK

1 EXPT
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 003811
4 PATTI & SGRO
5 720 S. 7th Street, Ste. 300
6 Las Vegas, Nevada 89101
7 (702)385-9595

8 Attorneys for Defendant

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 *****

13 THE STATE OF NEVADA

14 Plaintiff,

15 -vs-

16 BRENDAN NASBY,

17 Defendant.

CASE NO.: C154293
DEPT. NO.: XVIII

18 EX PARTE MOTION FOR AUTHORIZATION OF PAYMENT OF FEES

19 COMES NOW the Defendant BRENDAN NASBY, by and through his counsel, ANTHONY
20 P. SGRO, ESQ. of PATTI & SGRO, requests this Honorable Court issue an Order pursuant to
21 Nevada Revised Statute 7.125, granting payment of fees in the above-captioned matter.

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COUNTY CLERK
MAY 05 2006

RECEIVED

1 This Ex-Parte Motion is based upon the attached Points and Authorities and the Affidavit of
2 Anthony P. Sgro, Esq.

3 DATED this 5 day of May, 2006.

4
5 Respectfully Submitted,

6
7
8 ANTHONY P. SGRO, ESQ.
9 PATTI & SGRO
10 Nevada Bar No. 003811
11 720 S. 7th Street, Ste. 300
12 Las Vegas, NV 89101

13
14 Attorney for Defendant
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1 POINTS AND AUTHORITIES

2 Nevada Revised Statute states:

3 **Fee if appointed other than public defender.**

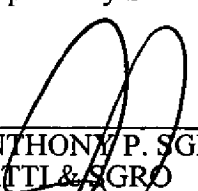
- 4 4. If the appointed court because of:
5 (a) the complexity of a case or the number of its factual or legal issues;
6 (b) the severity of the offense;
7 (c) the time necessary to provide an adequate defense; or
8 (d) other special circumstances, deems it appropriate to grant a fee in excess
9 of the applicable maximum, the payment must be made, but only if the excess
10 in which the representation was rendered certifies that the amount of the
11 excess payment is both reasonable and necessary and the payment is approved
12 by the presiding judge of the judicial district in which the attorney was
13 appointed. ...

10 Counsel for Defendant, BRENDAN NASBY, has attached hereto an Affidavit in support of
11 the instant Motion for Fees.

12 WHEREFORE, for the foregoing reasons counsel for Defendant, BRENDAN NASBY,
13 requests that his Ex-Parte Motion for an Order Authorizing Payment of Fees.

14 DATED this 5 day of May, 2006.

15
16 Respectfully Submitted,

17
18 
19 ANTHONY P. SGRO, ESQ.
20 PATTI & SGRO
21 Nevada Bar No. 003811
22 720 S. 7th Street, Ste. 300
23 Las Vegas, Nevada 89101
24 (702) 385-9595

25 Attorney for Defendant
26
27
28

AFFIDAVIT OF ANTHONY P. SGRO, ESQ., IN SUPPORT OF
EX-PARTE MOTION FOR AUTHORIZATION OF PAYMENT OF FEES

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

ANTHONY P. SGRO, having first been duly sworn, deposes and states:

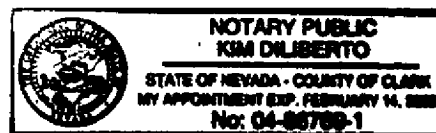
1. That your affiant is an attorney duly licensed to practice before this Court.
2. That your affiant is the attorney for the Defendant, BRENDAN NASBY, in the above-entitled action and has personal knowledge of the facts and circumstances set forth herein and is competent to testify to the same;
3. That your affiant makes this affidavit in support of this Ex-Parte Motion for Authorization of Payment of Fees;
4. That the Defendant was charged with First Degree Murder and convicted;
5. That in order to provide effective assistance, defense counsel spent a considerable time and expense on this case.
6. That because the this case is now concluded, defense counsel respectfully requests that payment be made for fees and costs, which represents 10.50 hours in Court (\$1,050.00), 239.75 hours out of Court (\$23,975.00) and (\$14.97) in expenses, for a total amount of \$ 25,039.97.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

ANTHONY P. SGRO, ESQ.
PATI & SGRO
Nevada State Bar No. 003811
720 S. 7th Street, Ste. 300
Las Vegas, Nevada 89101
(702) 385-9595

SUBSCRIBED and SWORN to before me
this 5 day of May, 2006.

Kim Diliberto
NOTARY PUBLIC in and for said
COUNTY and STATE



ORIGINAL

FILED

May 8 3 26 PM '06

Shirley S. Pungina
CLERK

1 **ORDR**

2 ANTHONY P. SGRO, ESQ.

3 Nevada Bar No. 003811

4 PATTI & SGRO

5 720 S. 7th Street, Ste. 300

6 Las Vegas, Nevada 89101

7 (702)385-9595

8 Attorneys for Defendant

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 * * * * *

12 THE STATE OF NEVADA

13 Plaintiff,

14 -vs-

15 BRENDAN NASBY,

16 Defendant.

CASE NO.:

C154293

DEPT. NO.:

XVIII

17 **ORDER AUTHORIZING PAYMENT OF FEES**

18 Based on the Ex-Parte Motion, and good cause appearing,

19 **IT IS HEREBY ORDERED**, pursuant to the Nevada Revised Statute 200.010, THAT
20 PAYMENT OF FEES IN THE AMOUNT OF Twenty Five Thousand Thirty Nine Dollars and Ninety
21 Seven Cents (\$25,039.97), for services rendered in the above-captioned case, shall be made to
22 ANTHONY P. SGRO, ESQ.

23 DATED this 8 day of May, 2006.

24 Submitted By:
25 PATTI & SGRO,
26 ATTORNEYS AT LAW

27 ANTHONY P. SGRO, ESQ.

28 Attorney for Defendant

Anthony P. Sgro
DISTRICT COURT JUDGE

C15 4293

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MAY 08 2006

COUNTY CLERK

ORIGINAL

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
PATTI & SGRO
720 South 7th Street, Suite 300
Las Vegas, Nevada 89101
(702) 385-9595

Attorney for Appellant

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRENDAN NASBY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. C154293
DEPT NO. XVIII

CASE APPEAL STATEMENT

COMES NOW the Appellant, BRENDAN NASBY, by and through his attorney, ANTHONY P. SGRO, ESQ., and hereby presents his Case Appeal Statement. This statement is made and based upon pleadings and papers on file and the points and authorities attached hereto, as well as the arguments of counsel at the time of hearing, should a hearing be required.

DATED this 23 day of MAY, 2006.

ANTHONY P. SGRO, ESQ.
PATTI & SGRO
Nevada Bar No. 003811
720 South 7th Street, Suite 300
Las Vegas, Nevada 89101
(702) 385-9595

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Shirley B. Paez
CLERK

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Any Notice of Appeal presented to the district court clerk for filing shall be accompanied by
3 a case appeal statement completed and signed by appellant's counsel. N.R.A.P. 3(a). Appellant
4 BRENDAN NASBY'S case appeal statement arises from proceedings which occurred before the
5 Honorable District Court Judge Nancy Saitta.

6 The parties in the district court were the State of Nevada, Plaintiff, and BRENDAN NASBY,
7 Defendant, and they remain the parties in this appeal.

8 The Respondent, THE STATE OF NEVADA, is represented by:

9 DAVID ROGER
10 DISTRICT ATTORNEY
11 200 Lewis Avenue
12 Las Vegas, Nevada 89101
13 (702) 455-4711

14 The Appellant, BRENDAN NASBY, is represented by:

15 ANTHONY P. SGRO, ESQ.
16 Nevada Bar No. 03811
17 720 South 7th Street, Suite 300
18 Las Vegas, Nevada 89101
19 (702) 385-9595

20 Appellant is currently represented by appointed counsel on appeal, and was represented by
21 the same appointed counsel in the District Court.

22 The date of the District Court proceedings that have generated this appeal was March 27,
23 2006. The District Court entered its Order denying Defendant's petition for post-conviction relief
24 on April 27, 2006.

25 DATED this 23 day of May, 2006.


26 PATTI & SGRO

27 _____
28 ANTHONY P. SGRO, ESQ.
 Nevada Bar No. 003811
 720 South 7th Street, Suite 300
 Las Vegas, Nevada 89101
 Attorney for Appellant

///

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DAVID ROGER
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101


an employee of Patti & Sgro

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CLERK

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
PATTI & SGRO
720 South 7th Street, Suite 300
Las Vegas, Nevada 89101
(702) 385-9595

Attorney for Appellant

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRENDAN NASBY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. C154293
DEPT NO. XVIII

NOTICE OF APPEAL TO SUPREME COURT

TO: STATE OF NEVADA, Plaintiff;

TO: DAVID ROGER, District Attorney;

COMES NOW, Appellant, BRENDAN NASBY, by and through his undersigned attorneys, PATTI & SGRO, and does hereby appeal from the Order denying Defendant's petition for post-conviction relief, entered in the District Court on the 27th day of April, 2006.

DATED this 23 day of May, 2006.

PATTI & SGRO

[Signature]
ANTHONY P. SGRO, ESQ.
Nevada Bar #003811
720 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Defendant/Appellant
(702) 385-9595

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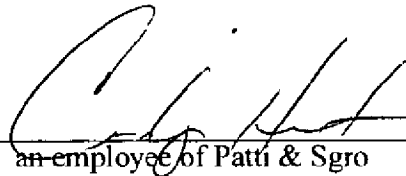
COUNTY CLERK

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 23rd day of May, 2006, I served a copy of the foregoing
3 **NOTICE OF APPEAL** upon each of the parties by depositing a copy of the same in a sealed
4 envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and
5 addressed to:

6
7 DAVID ROGER
8 District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

9
10 and that there is a regular communication by mail between the place of mailing and the place(s) so
11 addressed.

12
13 
an employee of Patti & Sgro

Electronically Filed

Tracie K. Lindeman

VS.

Case No: C154293-2
SC No: 58579

Docket 58579 Document 2011-24410

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1 has cooperated with the State, but keep in mind, take that
 2 step back and look at all the facts in this case and then
 3 look at and see if it all corroborates each other and the
 4 same thing goes for Crystal Bradley. Did Jeremiah Deskin
 5 talk to Crystal Bradley? No. And all these witnesses
 6 corroborate each other one after another showing that the
 7 fact that the defendant is, in fact, the murderer.

8 The Burnside brothers, counsel pointed out
 9 you saw them. Do you think that they wanted to come in
 10 here from prison, come down in chains, sit there in the
 11 witness stand and tell you about, oh, yeah, we were out on
 12 a Sunday evening drive on a hot July evening and this is
 13 what happened. Feel really bad about it, it happened, I'm
 14 in prison right now. Oh, by the way, since I'm talking
 15 about this case, I'm going to feel very safe about going
 16 back to prison here pretty soon because I'm afraid I'm
 17 going to get labeled a snitch. That's the motivating thing
 18 about these guys, the Burnside brothers. Here are two guys
 19 who are in prison. They pled guilty to accessory to murder
 20 just like Deskin and they were sentenced before him and
 21 they were brought down here for the sole purpose of trying
 22 to dispel this notion that the defendant kept on throwing
 23 at you that Sugar Bear may have been there. Sugar Bear was
 24 not there, you know, but that's why they were brought
 25 down.

1 And just as that Instruction No. 29 talks
 2 about common sense, use your common sense. These guys
 3 didn't want to flat out in court say, hey, it was the
 4 defendant who did this. I saw him shoot. No, they said I
 5 was there, the Burnside brothers were there, Jeremiah
 6 Deskin was there, Michael Beasley was there, and the
 7 defendant and, as to both of those witnesses, did you shoot
 8 Michael? No. Did your brother shoot Michael? No. Did
 9 Jeremiah shoot Michael? No. The coroner ruled out
 10 suicide. So obviously Michael didn't shoot himself. Who
 11 is the last person that's left over there but the
 12 defendant. Use your common sense, deduce from that. Do
 13 you think that those guys, who are in prison, want to come
 14 and take the witness stand and just sing like a bird? No.

15 So keep in mind, as to their motivating
 16 factor as to why they testified the way they can so that
 17 they can now, in their minds, feel like they weren't
 18 snitches and they are snitches and they are back home in a
 19 locked down cell. So that's what you have there.

20 Brittany Adams, you know, she got herself in
 21 a big pile of mess, legal mess herself. Thanks to who?
 22 The defendant here. She is told by the defendant some fake
 23 story about how Tanesha. Crystal and Sugar Bear got them
 24 on a four way call. I mean, come on. He knows what
 25 happened, but he's trying to make up storics, trying to

1 dispel himself. So Tanesha -- excuse me -- Brittany Adams,
 2 yes, she's got baggage. She beats up Tanesha. We know
 3 that happened because Tanesha said that. We didn't hide
 4 that. Even the homicide detectives pointed out that they
 5 arrested her on that August 4th date, after the defendant
 6 encouraged her to come down and talk -- give that second
 7 version.

8 Again, you've got a whole slew of
 9 witnesses. Yeah, they have some dirtiness, but like
 10 Brittany Adams, you know, she's in trouble because the
 11 defendant put her up to all this and, yeah, she may have
 12 made a negotiation, but if you don't want to believe
 13 Brittany Adams, then you are going to have to think Tanesha
 14 did not get beat up, which she did. You are going to have
 15 to believe that she never got arrested for that, which she
 16 had done or which she was for. So, yeah, think about it.
 17 Just look at it, use your common sense and look at
 18 everything that's working here and then, again, John
 19 Holmes, he had no motivation to come forward other than
 20 he's upset about this. He's upset because Michael Beasley
 21 was his friend. They were one of the original formers of
 22 this CYN click that they had formed.

23 The bulk of these witnesses are gang
 24 members. If you are looking for a swan, you are not going
 25 to find a swan swimming in a sese pool. We're not hiding

1 the fact that some of these witnesses have some baggage,
 2 but look at all the facts and look at every witness; how
 3 Deskin is corroborated by Jomeka, by the detectives, by the
 4 crime scene analyst, by the coroner's office. Did these
 5 guys ever get together and talk about this? No, no, they
 6 didn't, but they told you the truth and the truth came out
 7 and the truth coincides with each other.

8 We have facts in this case that have shown
 9 now that the defendant is the murderer of Michael Beasley
 10 and then after the murder we also have facts of the
 11 defendant as the deceptor. He likes to deceive and
 12 intimidate and this is not an issue of Let's Make a Deal or
 13 anything like that. This is reality. We're not dealing
 14 with school kids who are going to school wearing uniforms
 15 and coming home dutifully doing their homework and acting
 16 as angels. That's not what we're dealing with here.

17 But as the facts have shown, the defendant
 18 is the murderer and that he is the deceptor. What really
 19 comes to mind is then a childhood story of a wolf and a
 20 wolf is just hungry and he is having a hard time getting to
 21 these lambs that the shepherd is keeping a close eye on and
 22 one day, as he's walking around on the outskirts of where
 23 the lambs are being flocked, he finds a sheep's coat laying
 24 around just discarded there and so he thought to himself,
 25 well, I'm going to put this on and I'm going to sneak into

*1 that flock.

2 So the wolf puts on the sheep clothing and
3 off he goes into the flock and, sure enough, just a matter
4 of time, the wolf is kind of hanging around in the flock,
5 hears this little lamb, and the little lamb starts
6 following the wolf in the sheep's clothing and the moment
7 that wolf had the opportunity, he killed the lamb, ate it.

8 Now, the wolf is thinking that this is a
9 pretty nifty idea, puts the sheep's clothing back onto
10 himself, and he goes back into the herd, into the flock.
11 Well, that night, the shepherd suddenly decided that it's
12 cold and I'm angry and I could use a little mutton myself.
13 I'm going to barbecue some lamb meat and so he goes in
14 there and the very first lamb that comes across is the wolf
15 and he kills it with a knife.

16 Now, the story is not being told to you to
17 entertain you because attorneys can be long winded and the
18 story is not being told to you to try to draw similarities
19 that all these gang members from the L.A. Crazy Riders are
20 sweet little lambs and there is a wolf in there. Yeah,
21 there's a wolf in there, but the moral of the story is that
22 the evil doer often comes to harm through his own deceit.

23 Ladies and gentlemen, the evil doer in this
24 case is the defendant. There's a murderer in this
25 courtroom and through his deception, his intimidation, he

1 has asked for the harm that should come to him and I ask
2 you to find the defendant guilty as charged.

3 Thank you.

4 THE COURT: The clerk will swear the officer
5 to take charge of the jury.

6
7 (At this time the officer was duly sworn.)

8
9 THE COURT: Okay, ladies and gentlemen, let
10 me just kind of explain the procedure and what's going to
11 happen right now.

12 First of all, what we're going to do on
13 these deliberations, it's about 3:25. So I'm going to ask
14 Lisa to give everybody a break first because you have been
15 here a couple hours, then we are going to ask you to start
16 your deliberations.

17 What I'm going to do is ask you to
18 deliberate to maybe 5:00 tonight. I know some of you may
19 have things to do at 5:00. I'm going to ask you to take
20 whatever time you feel is necessary in order to deliberate
21 until you feel satisfied with the result and then you can
22 vote on it, see if you reach a verdict.

23 If, for some reason, the jury doesn't reach
24 a verdict this evening, I'm going to ask you to come back
25 tomorrow morning at 9:30 and you can meet Lisa right

1 outside the door like you have been doing all long
2 throughout the course of the trial and she will take you to
3 the jury deliberation room.

4 If that creates a problem for anybody with
5 jobs, if you'd let Lisa know I will be happy to call
6 employers and explain the situation to them. If the jury
7 has not reached a verdict by noon tomorrow, I will have
8 Lisa take you to lunch at the expense of the County over at
9 the Golden Nugget buffet.

10 So, again, once you reach a verdict, it
11 takes about a half hour to get everybody here to make the
12 arrangements to go ahead and have the verdict read.

13 The other thing I want to explain, as some
14 of you may know by being on jury duty, in a criminal case,
15 we have 12 regular jurors. In order to reach a verdict, as
16 we said in the Instructions, a verdict must be unanimous to
17 return a verdict. It's somewhat different than a civil
18 case. We also have 12 regular jurors and two alternate
19 jurors.

20 How we pick the alternate jurors, we do it
21 by chair numbers here. So, Mr. Barbeau, you and Mr. Blake
22 would be considered the alternate jurors being in chairs 13
23 and 14, but in the event any of the jurors have to be
24 excused before a result is made, we would substitute you in
25 immediately to deliberate just like the regular jurors

1 here.

2 So I need you to stick around to participate
3 through the deliberation process. However, you are not
4 permitted to be in the jury room itself. Lisa maybe can
5 have you come in the courtroom so you can kind of relax
6 there and we will wait the results of the jury this evening
7 and, if necessary, tomorrow morning.

8 So if you do come back tomorrow morning, I'd
9 ask you to bring magazines, books, anything like that. I
10 will probably have you wait in my office tomorrow morning
11 since we will have a court session going on. So, again,
12 that's the procedure we will need to follow.

13 So at this time what I would ask you to do,
14 ladies and gentlemen, is go ahead and if you'd take your
15 tablets with you and just follow Lisa. She will go ahead
16 and get you into the jury room. You can put everything
17 down and then we will go ahead and let you take a break and
18 we will get started with the deliberations this afternoon.

19 (At this time the jury left the courtroom.)

20 THE COURT: Okay, the record will reflect
21 the jury has left the courtroom.

22 Do we have any matters to put on the record
23 before we go into recess?

24 MR. COUMOU: Not by the State, Judge.

25 MR. SCISCENTO: No.

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THE COURT: Okay, we will be in recess.

(Off the record at 3:34 p.m.)

* * * * *

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF
PROCEEDINGS.

Patsy K Smith

PATSY K. SMITH, C.C.R. #190

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FILED IN OPEN COURT

OCT 19 1999

19:34pm

SHIRLEY B. PARRAGUIRRE, CLERK

BY

TINA MURD

DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,

Defendant.

Case No. C154293
Dept. No. VII
Docket P

VERDICT

We, the jury in the above entitled case, find the Defendant as to COUNT I:

- ☒ GUILTY OF CONSPIRACY TO COMMIT MURDER
☐ NOT GUILTY OF CONSPIRACY TO COMMIT MURDER

DATED this 19th day of October, 1999.

FOREPERSON

CE52

C. 154293

VER

FILED IN OPEN COURT

OCT 19 1999

19 1:34 pm

SHIRLEY B. PARRAGUIRRE, CLERK

BY Tina Hurd

TINA HURD

DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,

Defendant.

Case No.

C154293

Dept. No.

VII

Docket

P

VERDICT

We, the jury in the above entitled case, find the Defendant as to COUNT II:

- ☒ GUILTY OF FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
- ☐ GUILTY OF FIRST DEGREE MURDER WITHOUT USE OF A DEADLY WEAPON
- ☐ GUILTY OF SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON
- ☐ GUILTY OF SECOND DEGREE MURDER WITHOUT USE OF A DEADLY WEAPON
- ☐ NOT GUILTY

DATED this 19th day of October, 1999.

Robert M. Dwyer
FOREPERSON

C152

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FILED

OCT 22 4 33 PM '99

Shirley
CLERK

CHAD M. GOLIGHTLY, ESQ.
Nevada Bar No. 5331
CHAD M. GOLIGHTLY, LTD.
714 East Sahara Avenue, Ste. 250
Las Vegas, NV 89104
(702)388-9969

Attorney for Defendant
JERIMIAH JOHN DESKIN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JERIMIAH JOHN DESKIN,

Defendants

CASE NO: C154293B
DEPT NO: VII
DOCKET NO:

LETTERS IN SUPPORT OF DEFENDANT

COMES NOW Defendant, JERIMIAH JOHN DESKIN, by and through his attorney, CHAD M. GOLIGHTLY, ESQ. of the Law Offices of Chad M. Golightly, Ltd., and hereby submits the attached letters in support of Defendant.

DATED this 22nd day of October, 1999.

CHAD M. GOLIGHTLY, LTD.

Chad M. Golightly
CHAD M. GOLIGHTLY, ESQ.

Nevada Bar No. 5331
714 E. Sahara Ave., Ste. 250
Las Vegas, NV 89104
(702) 388-9969
Attorney for Defendant
JERIMIAH JOHN DESKIN

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OCT 21 1999

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T. and S. Knedl
DISTRICT ATTORNEY

HIGH DESERT SPRAY LLC

6205 BURNT HILLS DR.
LAS VEGAS NEVADA, 89130
702 656-6814

Affiliate:

**High Desert Drywall
16137 Greentree Blvd. #3
Victorville, CA 92392
(760) 245-6769**

October 19, 1999

This letter is to confirm the employment of Jerimiah Deskin. He has worked for our company High Desert Drywall for the past 30 days.

If you require further information regarding salary or work behavior you may contact our office at the above telephone number.

Jermiah is employed as a drywall laborer and has had previous experience with our affiliate company in Las Vegas.

Sincerely,



Jack Deskin
Owner

To Whom It May Concern:

Re: Jerimiah Deskin

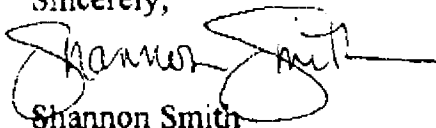
Jerimiah is my nephew. I have been fortunate to be able to spend a lot of time with him and his family as he grew up. We have always been a very close family and have lived in the same small town until about 6 years ago when they relocated to Las Vegas for employment opportunities. During the past 20 years of Jerimiah's life, I have spent many family vacations and holidays with him. He enjoyed being with the family and has always had a very close relationship with his mom, dad and brother. Jerimiah has been very fortunate to have parents that love him very much. They have always supported him in anything he chose to do.

My best memories of Jerimiah are of a happy child who loved to camp and fish. He always kept us amused with his outgoing personality.

A year ago he was blessed with a son and has truly proven himself in the last year to be a wonderful and caring father. It is obvious that the many years we have spent together as a family has had a positive effect on him as he is raising his son in the same environment.

We have all made some bad choices in our lifetimes and have done things we have sincerely regretted. Jerimiah has made some of those same mistakes but I truly believe that he has learned from his mistakes and is on the right path to better life for himself and his family.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shannon Smith", with a long horizontal flourish extending to the right.

Shannon Smith

Jerimiah's Aunt

October 18, 1999

To Whom This May Concern:

This letter is on behalf of our son Jermiah Deskin.

We would like to first say that we have 2 boys, one is older than Jerimiah. We have been married for 23 years and raised both children from infants in a small town of Apple Valley, California up until 6 years ago when the economy for home construction had a downfall. Not a choice we wanted to do, but financially was the only alternative.

Both our sons have had the normal upbringing; discipline was always given when things were getting out of hand. We always knew our children's friends their parents and tried to the best of our ability to not allow them to associate with people that may have bad influences. They attended for year's religious upbringing in the Lutheran Church and later both were involved while in their Jr. and Sr. High School years' church youth groups.

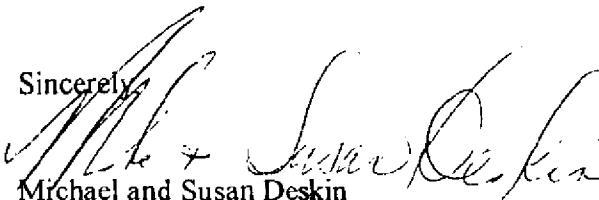
This tragedy has overcome our family with such deep emotions that we pray we will be strong and supportive know matter what the outcome may be.

Jerimiah has realized that he did not make the best choice of friends and that he did not make the right decision after this tragedy occurred, although he felt threatened by this person, he now realizes that he should have not been afraid and gone to the proper authorities. He is extremely sorry for all the grief that he has placed on the victim's family and to his own family.

Jermiah has tried to turn his life around since this tragedy. He is a father of a 15-month-old son and realizes how precious life can be. He was able to graduate with honors from a Tech-school while waiting his sentencing.

Although he says he will have to carry this grief around for the rest of his life we believe that the good Lord will help him through.

We love our children whom are so important to us, and we believe that our children would never intentionally harm another human being, we ask that you may grant our son a second chance.

Sincerely,

Michael and Susan Deskin
Parents of Jermiah Deskin

October 19, 1999

To Whom This May Concern:

This letter is on behalf of my brother Jerimiah Deskin.

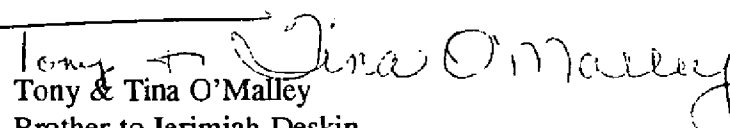
Jerimiah is my best friend; this situation that has happened to him took me quite by surprise. My brother is not this type of person. We grew up together in a small town and I think when my parents had to move (although I was 18 years old when we moved) to Las Vegas, Jerimiah might have not been ready for a large city. I question this because I'm trying to understand why this occurred. Although this is my thought of why this happened. He pretty much had the same friends growing up, and may not have made the right choices in friends here.

I moved out of the house on my own when we moved to Las Vegas and was not close for him as I would of liked for him to confide in me like when we lived together, Jerimiah always would talk to me about everything, like most brothers do. If I felt I could not help him, I confided in my parents.

I recently married this year, Jerimiah, when he would come to town, would visit everyday with his girlfriend and child. My wife and Jerimiah's family have been close for over 3 years. I can honestly say that he has grown up a great deal with just how responsible he is with his own family, just like how our parents raised us.

I also feel that he is saddened with what has happened, but I have assured him that my wife and I are behind him 100%, I believe in my brother, he is a good person, and our prayers are with him.

Sincerely,


Tony & Tina O'Malley
Brother to Jerimiah Deskin

October 20, 1999

To Whom It May Concern:

This letter is on behalf of our grandson Jermiah Deskin.

As a child Jermiah lived in a true American home environment. His family days involved family with camping, fishing, baseball, family gatherings as part of his upbringing. His Mother was at home while he was a small child. She was able to guide his thinking and lifestyle. Later when he was old enough he attended Christian School Pre-School and then public school. He was not a latchkey child without guidance.

Jermiah was outgoing, inquisitive and loved to read. He had animals and always treated them with love. He spent quality time with his father often going to the construction job with him. He was not a child with an attitude.

In our family we have eight Grandchildren and two great-grand children. Jermiah was just like every one of these healthy happy children. I am in the travel business and many times Jermiah would come along on a trip that would provide him new knowledge on places and people.

As many young people today he became involved with the wrong people after moving to Las Vegas.....a world much different than the small town of Apple Valley that he grew up within. His Father and Mother moved to secure employment when the economic pattern in our town was in deep trouble.

Unfortunately he was not strong enough to resist bad influences. The result is a terrible tragedy that has affected each member of this family. It is a situation that can not be undone with the only possible solution a learning from the event.

Since the event Jermiah has spent many hours in deep regret and has sincerely tried to turn his life around. He has worked back in California and attended a Trade School that he graduated from with good grades. He is raising his 15 month son by trying to be the Father that he had as a role model.

We ask that you give this boy a chance to continue and make something of himself and his family. The alternative would be another child lost in a world of crime and pressure. We pray that you agree a boy saved is not only saved for himself but also saved for the son he needs to raise with values. We believe that Jermiah will give back to society in the long run and that this tragedy did not occur in vain.

Sincerely,

Joan Deskin
Joan Deskin, Grandmother

Jack Deskin
Jack Deskin, Grandfather

10-20-99

TO Whom it May CONCERN:

I am writting This letter IN
concerns to my feelings for Jerimiah.
I Really wouldnt know where to Begin
My feelings Run deep Into the pit of
my Being down into the ground Binding
me still with emotions so strong
that I cannot move my soul
without him. When I first met
Jerimiah I was Overwhelmed with
joy and a tickling Sensation In
the Bottom of my Stomach, and
warmth and happiness Surrounded me
and I couldn't give this happiness
away for all the Jewels IN heaven
that pave the streets of gold. I
Really Truly Believe That he is a
great person and a worldly person
full of life and a Terrific father
and our son loves him dearly and
he loves our son the way I love
him and nobody could ask for
more love than he gives.

Thank you
Yaffine

CLERK

16

1 **JOCP**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

Nov 8 12 11 PM '99

Shirley L. Prosser
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JERIMIAH JOHN DESKIN,

12 Defendant.
13
14

Case No. C154293B
Dept. No. VII
Docket P

15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 12th day of November, 1998, the Defendant JERIMIAH JOHN
17 DESKIN, appeared before the Court herein with his counsel and entered a plea of guilty to the
18 crime(s) of ACCESSORY TO MURDER (Category C Felony), committed on the 17th day of
19 July, 1998, in violation of NRS 195.030, 195.040, 200.010, 200.030 and

20 WHEREAS, thereafter on the 28th day of October, 1999, the Defendant being present in
21 court with his counsel CHAD GOLIGHTLY, Esq., and FRANK JOHAN COUMOU, Deputy
22 District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty
23 thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment
24 Fee, sentenced Defendant to a maximum term of Sixty (60) months in the Nevada Department
25 of Prisons with minimum parole eligibility beginning after a minimum of Twenty-Four (24)
26 months has been served; said sentence suspended with the Defendant being placed on a fixed
27 term of probation not to exceed Five (5) years with the following special conditions: 1. Search
28 clause for the detection of weapons and evidence of gang affiliation; 2. Complete 40 hours of

COUNTY CLERK

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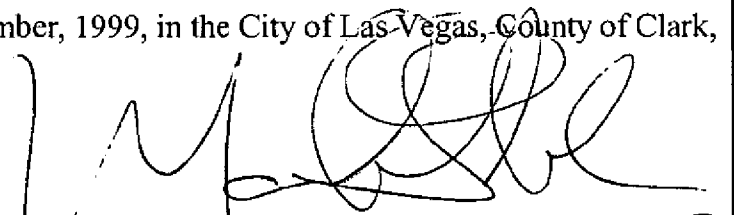
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1 community service work each month of the term of probation, not to exceed the provisions of
2 NRS 176.087, unless employed full-time; 3. Defendant to refrain from associating with co-
3 defendants Brendan Nasby, Tommie Burnside and Jotee Burnside during the term of probation;
4 4. Defendant to have no contact with any member of any gang during the term of probation; 5.
5 Defendant to pay \$10,000.00 during the term of probation at the rate of \$166.00 per month.

6 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
7 Judgment of Conviction as part of the record in the above entitled matter.

8 DATED this 3 day of November, 1999, in the City of Las Vegas, County of Clark,
9 State of Nevada.

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11 
12 DISTRICT JUDGE
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26 DA#98-154293b/msr
27 LVMPD EV#9807170541
28 ACCESS TO MURD -F
(TK 3)

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION
CARSON CITY, NEVADA 89711

PROBATION AGREEMENT AND RULES

V99/00-1073

Criminal Case No. C154293

Required to pay \$25 Administrative Assessment fee to the County Clerk's Office, Las Vegas, Nevada, 89155.

THE STATE OF NEVADA,

Plaintiff,

vs.

DESKIN, Jeremiah John

Defendant

ORDER ADMITTING DEFENDANT TO PROBATION
AND FIXING THE TERMS THEREOF

DEFENDANT is guilty of the Crime of ACCESSORY TO MURDER (F)

* + \$10,000 fine

DEFENDANT is sentenced to a term of imprisonment in the Nevada Department of Prisons. Execution of that sentence is suspended and the DEFENDANT is hereby admitted to probation for years under the following conditions: **a determinate period fixed 5 years

1. REPORTING/RELEASE: Upon release by the Court you are to report directly and in person to the Division of Parole and Probation. You are required to submit a true and correct written monthly report to your supervising probation officer each month on forms supplied by the Probation Division. In addition, you shall report as directed by your probation officer.

2. RESIDENCE: You shall not change your place of residence, employment, nor leave the community without first obtaining permission from your probation officer in each instance.

3. INTOXICANTS: You shall not drink or partake of any alcoholic beverages whatsoever in excess of 10 blood alcohol or above, as determined by any medically recognized valid test, shall be sufficient proof of excess).

4. CONTROLLED SUBSTANCES: You shall not use, purchase, possess, give, sell or administer any controlled substance, nor any dangerous drugs, unless first prescribed by a licensed physician. You shall submit to drug testing as required by your probation officer.

5. WEAPONS: You shall not possess or have under your control any type of weapon.

6. ASSOCIATES: You will not associate with people who have criminal records.

7. COOPERATION: You shall at all times cooperate with your probation officer and your behavior and attitude shall justify the opportunity granted to you by this probation.

8. LAWS AND CONDUCT: You shall comply with all municipal, county, state and federal laws, ordinances and orders and conduct yourself as a good citizen. You shall comply with convicted person registration requirements where applicable.

9. OUT-OF-STATE TRAVEL: You shall not leave the state without first obtaining written permission, in each instance, from your probation officer.

10. EMPLOYMENT/PROGRAM: You shall seek and maintain employment, or maintain a program as approved by the Probation Division.

11. SPECIAL CONDITIONS OF PROBATION:

OVER

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this 16

day of November, 1999, in the EIGHTH Judicial District Court of the State of Nevada,

in and for the County of CLARK

District Judge

MARK GIBBONS

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176.225.

APPROVED

Probation Officer

Linda A. Clary/397/ISC

Jeremiah John Deskin

SUP 306 (Rev. 7-96)

10-28-99/D-IV/clw

(0)-2745

SPECIAL CONDITIONS:

1. That the defendant submit to a search of person, residence, vehicle, or any property under defendant's control, at any time deemed necessary by any probation officer for the detection of weapons and evidence of gang affiliation; 2. That the defendant complete 40 hours of community service work each month of the term of probation not to exceed the provision of NRS 176.087, unless employed full time; 3. That the defendant refrain from associating with Brandan Nasby, Tommy Burnside, Joetee Burnside, and Damien Von Lewis, during the term of probation; 4. That the defendant have no contact with gangs; 5. That the defendant pay \$10,000 fine during the term of probation.

JOC
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

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DEC 2 9 54 AM '99

Shelley L. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690

Defendant.

Case No. C154293
Dept. No. VII
Docket P

JUDGMENT OF CONVICTION (JURY TRIAL)

WHEREAS, on the 24th day of November, 1998, the Defendant BRENDAN JAMES NASBY, entered a plea of not guilty to the crimes of CONSPIRACY TO COMMIT MURDER and MURDER WITH USE OF A DEADLY WEAPON, committed on the 17th day of July, 1998, in violation of NRS 199.480, 200.010, 200.030, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crimes of COUNT I - CONSPIRACY TO COMMIT MURDER and COUNT II - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON; and

WHEREAS, thereafter, on the 29th day of November, 1999, the Defendant being present in Court with his counsel JOSEPH SCISCENTO, Esq., and FRANK JOHAN COUMOU, Deputy District Attorney also being present; the above entitled Court did adjudge Defendant guilty thereof by reason of said trial and verdict and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the

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1 Nevada Department of Prisons for Count I and SENTENCED to LIFE WITH THE
2 POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE term of LIFE WITH THE
3 POSSIBILITY OF PAROLE for use of a deadly weapon. for Count II, CONSECUTIVE to
4 Count I, with 480 DAYS credit for time served.

5 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
6 Judgment of Conviction as part of the record in the above entitled matter.

7 DATED this 1 day of ^{December} ~~November~~, 1999, in the City of Las Vegas, County of Clark,
8 State of Nevada.

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DISTRICT JUDGE

DA#98-154293A/msr
LVMPD EV#9807170541
CONSP MURD; MWDW-F
(TK3)

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DEC 8 1 58 PM '99

Shirley B. Maguire
CLERK

ORDR
FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
330 S. Third Street #860
Las Vegas, Nevada 89101
(702) 598-1666

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,) CASE NO: C154293
) DEPT NO: VII
v.) DOCK NO:
)
BRENDAN JAMES NASBY,)
)
Defendant.)

ORDER APPOINTING COUNSEL

Based upon all proceedings previously held the Court being fully advised, this defendant is declared indigent and qualifies for court appointed counsel, and good cause appearing;

IT IS HEREBY ORDERED that FREDERICK A. SANTACROCE, ESQ., is appointed counsel for BRENDAN JAMES NASBY, and is hereby authorized to represent him in the Appeal.

Dated this 8 day of December, 1999.

[Signature]
DISTRICT COURT JUDGE

SUBMITTED BY:

[Signature]
FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
330 S. Third Street #860
Las Vegas, Nevada 89101

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1 **ORDR**
2 FREDERICK A. SANTACROCE, ESQ.
3 Nevada Bar No. 5121
4 330 S. Third Street #860
5 Las Vegas, Nevada 89101
6 (702) 598-1666

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DEC 8 3 11 PM '99

Shirley E. Pangione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,) CASE NO: C154293
9 v.) DEPT NO: VII
10 BRENDAN JAMES NASBY,) DOCK NO:
11 Defendant.)

ORDER WAIVING COSTS
(INSUFFICIENT PROPERTY OF INCOME
WITH WHICH TO PAY COSTS OF FILING)

14 From which it appears that Defendant, BRENDAN J. NASBY,
15 is without sufficient income, property, or other resources
16 with which to pay the costs of bringing this action; and good
17 cause appearing therefor,

18 **IT IS HEREBY ORDERED**, in accordance with NRS 12.015 that
19 Defendant, BRENDAN J. NASBY, may bring this action for appeal
20 without costs, and the Clerk of the Court may file or issue
21 any necessary writ, process, pleading or paper for Defendant
22 without charge, and the Sheriff may make personal service of
23 any necessary writ, process, pleading or paper for Petitioner
24 without charge.

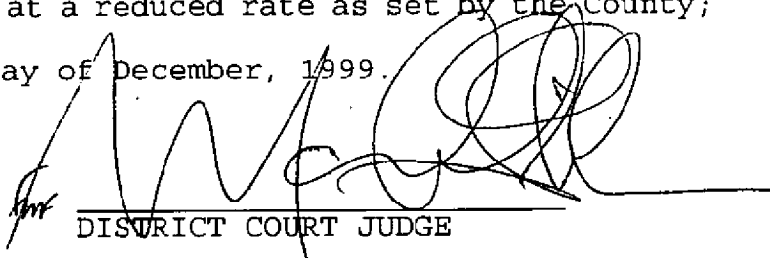
25 **IT IS FURTHER ORDERED** that if said Defendant is required
26 to have proceedings reported or recorded, or if the Court
27 determined that the reporting, recording or transcription of
28

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C154293

1 proceeding would be helpful to the adjudication or appellate
2 review of the case, the reporting, recording or transcription
3 shall be performed at the expense of the County in which this
4 action is pending, but at a reduced rate as set by the County;

5 Dated this 8 day of December, 1999.

6
7 
8 DISTRICT COURT JUDGE

9 SUBMITTED BY:

10 
11 FREDERICK A. SANTACROCE, ESQ.
12 Nevada Bar No. 5121
13 330 S. Third Street #860
14 Las Vegas, Nevada 89101
15
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28

1 **NOTC**

2 FREDERICK A. SANTACROCE, ESQ.
3 Nevada Bar No. 5121
330 S. Third Street #860
4 Las Vegas, Nevada 89101
(702) 598-1666
Attorney for NASBY

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DEC 14 3 50 PM '99

Shirley B. Longoria
CLERK

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
Plaintiff,) CASE NO: C154293
9 vs.) DEPT NO: VII
10 BRENDAN JAMES NASBY,) DOCK NO: M
11)
Defendants.)

12
13 CASE APPEAL STATEMENT

14 1. Name of judge who entered the order or judgment appealed
15 from:

16 Mark Gibbons, Conviction, November 29, 1999.

17 2. Name of all parties to the appeal:

18 Brendan James Nasby, appellant;

19 State of Nevada, respondent;

20 3. Names of all counsel and the party or parties they
21 represent:

22 Frederick A. Santacroce, Esq.
330 S. Third Street #860
23 Las Vegas, Nevada 89101

24 Joseph S. Sciscento, Esq.
330 S. Third St., #860
25 Las Vegas, NV 89101

26 Frank Coumou, Esq.
200 S. Third Street
27 Las Vegas, NV 89155

COUNTY CLERK

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1 4. Whether appellant was represented by appointed counsel in
2 the district court:

3 No.

4 5. Whether appellant was represented by appointed counsel on
5 appeal:

6 Yes.

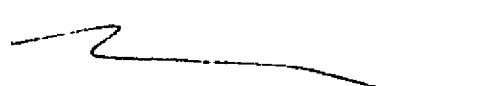
7 6. Whether appellant was granted leave to proceed in forma
8 pauperis and if so, the date of entry of the district court
9 order granting such leave:

10 Yes, Filed on 12/8/99.

11 7. The date the proceeding commenced in the district court:

12 August 11, 1998.

13 DATED this 11th day of December, 1999.

14 
15 FREDERICK A. SANTACROCE, ESQ.
16 Attorney for Appellant
17 NASBY
18
19
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28

NOTC
FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
330 S. Third Street #860
Las Vegas, Nevada 89101
(702) 598-1666
Attorney for NASBY

DEC 14 3 50 PM '99

Shirley B. Pennington
CLERK


DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO: C154293
	)	DEPT NO: VII
vs.	)	DOCK NO: M
)	
BRENDAN JAMES NASBY,)	
)	
Defendants.)	

NOTICE OF APPEAL

Notice is hereby given that BRENDAN JAMES NASBY,
Defendant above named, hereby appeals to the Supreme Court of
Nevada on the Judgement on the conviction entered in this
action on the 29th day of November, 1999.

DATED this 14th day of December, 1999.


FREDERICK A. SANTACROCE, ESQ.
Attorney for Defendant
NASBY

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CERT
FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
330 S. Third Street #860
Las Vegas, Nevada 89101
(702) 598-1666
Attorney for NASBY

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Shirley J. Bontine
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO: C154293
	)	DEPT NO: VII
vs.	)	DOCK NO: M
)	
BRENDAN JAMES NASBY,)	
)	
Defendants.)	

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of FREDERICK A. SANTACROCE, ESQ. and that on the 15th day of December, 1999, I deposited a true and correct copy of the Notice of Appeal, in the Post Office at Las Vegas, Nevada, enclosed in a sealed envelope upon which first-class postage was fully prepaid, addressed to the following:

Frank Coumou, Esq.
Deputy District Attorney
200 S. Third Street
Las Vegas, Nevada 89155

Kimberly J. Bontine
An Employee of
FREDERICK A. SANTACROCE, ESQ.

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DEC 15 1999
COUNTY CLERK

1 **CERT**

2 FREDERICK A. SANTACROCE, ESQ.
3 Nevada Bar No. 5121
4 330 S. Third Street #860
5 Las Vegas, Nevada 89101
6 (702) 598-1666
7 Attorney for NASBY

DEC 15 3 21 PM '99

Shirley J. ...
CLERK

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 BRENDAN JAMES NASBY,)

14 Defendants.)

CASE NO: C154293
DEPT NO: VII
DOCK NO: M

15 **CERTIFICATE OF MAILING**

16 I HEREBY CERTIFY that I am an employee of FREDERICK A.
17 SANTACROCE, ESQ. and that on the 15th day of December, 1999,
18 I deposited a true and correct copy of the Case Appeal
19 Statement, in the Post Office at Las Vegas, Nevada, enclosed
20 in a sealed envelope upon which first-class postage was fully
21 prepaid, addressed to the following:

22 Frank Coumou, Esq.
23 200 S. Third Street
24 Las Vegas, Nevada 89155

Kimberly A. Burtner
An Employee of
FREDERICK A. SANTACROCE, ESQ.

25
26
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DEC 15 1999
COUNTY CLERK

1 NOTC
2 FREDERICK A. SANTACROCE, ESQ.
3 Nevada Bar No. 5121
4 330 S. Third Street #860
5 Las Vegas, Nevada 89101
6 (702) 598-1666
7 Attorney for NASBY

DEC 21 10 12 AM '99
Patsy B. Smith
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

BRENDAN JAMES NASBY,)

Defendants.)

CASE NO: C154293
DEPT NO: VII
DOCK NO: M

ORDER FOR TRANSCRIPT

Good cause appearing, it is hereby ORDERED that Patsy Smith, court reporter of department VII, provide the defendant one original and three certified copies of the trial transcript. Costs of the transcript shall be borne by the State because Mr. Santacroce has been appointed by the court as attorney for the defendant.

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1 The trial dates were:

2 10/11/99---Jury Selection

3 10/12/99---Trial

4 10/12/99---Trial

5 10/13/99---Trial

6 10/14/99---Trial

7 10/15/99---Trial

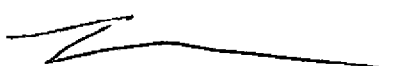
8 10/18/99---Closing Arguments

9 10/19/99---Verdict

10 Dated this 20 day of December, 1999

11 
12 DISTRICT COURT JUDGE

13 Submitted by:

14 
15 FREDERICK A. SANTACROCE, ESQ.
16 Nevada Bar No. 5121
17 330 S. Third Street #860
18 Las Vegas, Nevada 89101
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Shirley B. Higgins
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
	)	Case No. C154293
vs.	)	Dept. No. VII
	)	Docket No. P
JERIMIAH JOHN DESKIN,)	
#1519995)	
)	
Defendant.)	

Before the Honorable Mark Gibbons

Thursday, October 28, 1999, 9:00 a.m.

Reporter's Transcript of Proceedings

SENTENCING

APPEARANCES:

For the Plaintiff:	FRANK COUMOU, ESQ. Deputy District Attorney 200 South Third Street Las Vegas, Nevada 89155
--------------------	---

For the Defendant:	CHAD GOLIGHTLY, ESQ. Attorney at Law 714 E. Sahara, #250 Las Vegas, Nevada 89104
--------------------	---

For Parole and Probation:	SUSAN BOWLER
---------------------------	--------------

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

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JAN 13 2000
COUNTY CLERK

5 1 Las Vegas, Nevada, Thursday, October 28, 1999, 9:00 a.m.

2
3 * * * * *

4
5 THE COURT: Mr. Golightly, do you want to
6 get yours -- why don't you do the one with Mr. Coumou.
7 We'll do that one first here.

6 8 Let's go to the bottom of page
9 eight, Case Number C154293, the State of Nevada versus
10 Jerimiah John Deskin.

11 The record will reflect the
12 presence of Mr. Deskin; together with his attorney Chad
13 Golightly; the State of Nevada represented by Frank Coumou,
14 deputy District Attorney.

15 This is -- together with a
16 representative of the Division of Parole and Probation.

17 This is the time set for the
18 entry of judgment and imposition of sentence.

19 On the 12th day of November,
20 1998, the Court accepted the defendant's plea of guilty to
21 the crime of accessory to murder, a felony, as set forth in
22 the Information.

23 Mr. Golightly, does the
24 defendant have any legal cause or reason why judgment should

6 1 not be pronounced against him at this time?

2 MR. GOLIGHTLY: No, he does not.

3 THE COURT: Sir, by virtue of your plea of
4 guilty, you are hereby adjudged guilty of the offense of
5 accessory to murder, a felony.

6 Does the Division of Parole and
7 Probation have anything to add to its report?

8 MS. BOWLER: No, Your Honor.

9 THE COURT: The State have anything to add?

10 MR. COUMOU: Yeah, Judge, I do.

11 I would point out a couple of
12 things to the Court for the Court to have a full
13 understanding before you impose sentence on this man.

14 There was a plea negotiation
15 that was entered with this young man's counsel and he has
16 complied with all those terms.

17 And I'd like to impress on the
18 Court as to the magnitude -- as to the result of the
19 assistance that was -- was provided.

20 Basically, there is a gang that
21 no longer exists and that has been confirmed by myself, by
22 speaking to the North Las Vegas gang unit, individuals that
23 say it pretty much has gone.

24 The reason why this

6 1 defendant -- as a result of this defendant's aid, Jotee
2 Burnside and Tomme Burnside did not escape prosecution,
3 which they almost did, had it not been for the attendant
4 negotiations that we entered.

5 And then, ultimately, the prize
6 that the State really wanted was the conviction that we had
7 in this courtroom just a week or two ago, of Brendan Nasby
8 being the actual shooter and the instigator of this whole
9 situation.

10 So, with that in mind, I just
11 want to let the Court know as to the magnitude of the aid
12 that this man has provided, even though he did run and he
13 had to be extradited.

14 What I would ask the Court to
15 do, if you are considering probation -- I'm looking at -- on
16 page seven -- and quite frankly, I just don't understand
17 what P and P was thinking -- and this is not -- not a pot
18 shot to P and P, but I just don't understand, on the
19 recommendation for probation: Where is the punishment?

20 I just don't see that there is
21 any type of punishment, and I do feel that, under the
22 circumstances for the case and involvement that this young
23 man did have in the crime itself, that there should be some
24 punishment.

6 1 I ask the Court to -- instead
2 of imposing this 40 hours of the community work per month --
3 per month, unless he's full-time employed -- he is full-time
4 employed -- I ask the Court to impose a \$10,000 fine, along
5 with all the other conditions, and extend a fixed period of
6 five years probation, which translates to about \$166 per
7 month that he has to pay.

8 I don't think that's asking --
9 that's unreasonable, considering that if somebody were to go
10 and buy a car, today's prices of cars are \$20,000, if not
11 more, and people are easily willing to pay those monthly
12 fees.

13 And so, under this
14 circumstance -- I can't ask for more than a \$10,000 fine
15 because that's the max that we have.

16 But I do feel if the Court is
17 inclined on giving probation, that there has to be some type
18 of punishment and I think that would be appropriate in this
19 case.

20 THE COURT: Thank you.

21 Okay. Mr. Deskin, your
22 attorney will have an opportunity to make a statement on
23 your behalf.

24 At this time, do you wish to

7 1 make any statement to the Court or present any information
2 in mitigation of punishment before sentence is pronounced?

3 THE DEFENDANT: Yes. You know, I don't want
4 to leave anything out, so I prepared what I was going to
5 say.

6 First off, I want to thank you,
7 Your Honor, for allowing me to speak on my behalf today. I
8 want to thank the District Attorney, Mr. Coumou, for not
9 opposing my request for probation.

10 I also want to thank my family
11 for being supportive throughout the whole ordeal.

12 And, Your Honor, I couldn't
13 wish for a more loving and caring family than the one I
14 have. And --

15 (Whereupon, a sotto voce at this time.)

16 THE DEFENDANT: And to the family of Michael
17 Beasley, I want to thank them for being here to hear what I
18 have to say. I am truly sorry for the pain and loss that
19 they feel.

20 There isn't anything I wouldn't
21 give to go back and change all that has happened; and, once
22 again, I am sorry.

23 Your Honor, even though I was
24 involved in a serious crime, I am asking the Court to grant

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me probation. I've learned a lot during this time; mostly that the only people you need in life is your family.

If I'm granted probation, I can guarantee I will never be in the wrong again.

Throughout this ordeal, I found a foundation in life by being a father, going to school and graduating, so I could start a career and a new life with my girlfriend, who I plan to marry at the completion of my case.

I -- I also want to thank you, Your Honor, and lay myself before the Court and the Lord and ask: Please show mercy for the benefit of my family. I know your judgment will be fair.

THE COURT: Mr. Golightly.

MR. GOLIGHTLY: Yes, Your Honor, just briefly.

I know that Jerimiah's family is here, if they could stand up for the Court, those that are here to support him today.

He's got his father and his mother and grandfather and a couple of aunts; and his girlfriend, who hopes to be his future wife, is out in the hallway with his approximately year and a half old baby.

Your Honor, what Jerimiah did

7 1 in this case was both cowardice and also horrific. You
2 know, he shouldn't have been involved in this incident. He
3 knows that.

4 He followed around -- he hung
5 around with the wrong crowd, and he followed them and what
6 they did, even if it was wrong. But he came forward,
7 despite the -- what could have possibly happened to him by
8 doing so; and came forward and put himself in front of the
9 Court and gave an honest testimony that resulted in several
10 people going to prison in the Nevada State Prison.

11 And if Jerimiah was to go to
12 prison, he would be in that same prison with those same
13 people.

14 And I'm not going to argue
15 against the Court imposing a fine in this case. I think it
16 probably would be fair and it should be done that way.

17 And with that, I'm going to
18 submit it to the Court and ask the Court --

19 THE COURT: Okay. Well, let me tell you
20 this: I want to say a few things about this case, because I
21 had to sit through this trial; and let me tell you, this is
22 the most vicious, mean, cold blooded murder I've ever heard
23 of in my life.

24 And the thing that just -- and

7 1 I'm going to follow -- I just want you to realize I'm going
2 to follow what Mr. Coumou recommends to me, but let me tell
3 you a few things, to you.

4 You went over there to Michael
5 Beasley's house knowing that Brendan Nasby was going to kill
6 him; and you were to take him back to his house and you knew
7 it; and you could have warned him.

8 And he sat there and showed you
9 his baby; and you sat there and looked at his baby, and then
10 drove him over to Brendan Nasby's house, knowing he was
11 going to take him out in the desert and shoot him.

12 Now, why you didn't warn him is
13 just beyond my comprehension. Why you didn't call him or --
8 14 you say you were afraid of them afterwards; you know,
15 Brendan Nasby threatened you and everybody else after the
16 murder.

17 But you could have avoided this
18 whole murder if you just would have warned him and told him
19 what was going to happen. He could have run away or done
20 whatever.

21 But you didn't. You know, you
22 saw the baby; you drove him over to the house; they took him
23 out in the desert and shot him then, like that; and then you
24 drove away.

8 1 So, now, you are going to see
2 your baby. You are going to have a chance to grow up with
3 your baby. Michael Beasley won't. He's never going to see
4 his baby.

5 He saw his baby the last time
6 you walked out of the house with him to take him out there
7 to get shot.

8 I mean, if you hadn't made the
9 deal with the State and cooperated -- and your testimony
10 certainly was instrumental in convicting Mr. Nasby -- but
11 I'll tell you right now, I would give you the maximum and --
12 and the Burnside brothers, if they were in front of me, I
13 would too. I mean, there is just no excuse for this.

14 But you did do it. I'm going
15 to -- Mr. Coumou said you were helpful. There is no
16 question you helped in the prosecution and the State did get
17 a conviction against Mr. Nasby for first degree murder for
18 doing the shooting.

19 But, I just want you to know
20 there is no excuse for it. I don't know how you are going
21 to live with yourself the rest of your life. About all I'm
22 going to ask you to do, every time you look at your child,
23 think of Michael Beasley not being able to look at his child
24 for the rest of his life.

8 1 Okay. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. In addition to the \$25
4 administrative assessment, the Court does now sentence you,
5 Jerimiah John Deskin, to a maximum term of 60 months, with a
6 minimum parole eligibility of 24 months, in the Nevada
7 Department of Prisons.

8 Such sentence is suspended.
9 The defendant is placed on an indeterminate period of
10 probation not to exceed five years under the following
11 special conditions:

12 Number one: That the defendant
13 submit to a search of his person, residence, vehicle, or any
14 property under the defendant's control at any time deemed
15 necessary by any probation officer for the detection of
16 weapons and evidence of gang affiliation;

17 Number two: That defendant
18 complete 40 hours of community service work each month of
19 the term of probation, not to exceed the provisions of
20 N.R.S. 176.087, unless employed full time;

21 Number three: That the
22 defendant refrain from associating with Brendan Nasby during
23 the term of probation.

24 And I'm also going to add Jotee

8 1 Burnside and Tomme Burnside to that as well. You refrain
2 from any association with them.

3 Number four: The defendant
4 have no contact or association with any member of any gang
5 during the term of probation;

6 Number five: The defendant pay
7 a fine of \$10,000 during the term of probation.

8 What I want you to do is pay
9 it -- I think Mr. Coumou asked that you pay -- it's \$166
10 dollars a month? Is that roughly how much it is?

11 MR. COUMOU: That was my math, Judge, but --

12 THE COURT: Okay. I want you to pay it
13 monthly, so, you know, you think about it each and every
14 month, you know, as you write that check to pay that fine to
15 the court.

16 Okay. Sir, you are ordered to
17 report to the Division of Parole and Probation at 215 East
18 Bonanza as you leave the court here today.

19 If you fail to do so, a warrant
20 will be issued for your arrest.

21 MR. COUMOU: Judge --

22 THE COURT: So I hope you can turn your life
23 around, sir. That's all I can tell you. And I hope you can
24 live with your conscience the rest of your life.

8 1 Mr. Coumou.

2 MR. COUMOU: Can I just make it clear that
3 that's a fixed term of probation of five years?

4 THE COURT: Fixed term.

5 MR. COUMOU: Thank you.

6 THE COURT: Thank you for clarifying that.
7

8 * * * * *

9
10 ATTEST: Full, true and accurate transcript of proceedings.
11
12
13

14 

15 RENEE SILVAGGIO, C.C.R. NO. 122
16 OFFICIAL COURT REPORTER
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21
22
23
24

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JAN 28 11 28 AM '00

THE STATE OF NEVADA,)
)
 Plaintiff,)
)
 Vs)
)
 BRENDAN JAMES NASBY,)
)
 Defendant.)

CASE NO. 154293

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

MARK GIBBONS DISTRICT JUDGE

TUESDAY, OCTOBER 19, 1999, 1:34 P.M.

APPEARANCES:

FOR THE STATE:

FRANK J. COUMOU
 Deputy District Attorney

FOR THE DEFENDANT:

JOSEPH S. SCISCENTO, ESQ. &
 FREDERICK A. SANTACROCE, ESQ.

REPORTED BY:

PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER



1 TUESDAY, OCTOBER 19, 1999, 1:34 P.M.

2 THE COURT: Good afternoon, ladies and
3 gentlemen. This is the continuation of case number
4 C154293, State of Nevada versus Brendan J. Nasby.

5 The record will reflect the presence of Mr.
6 Nasby together with his attorneys, Joe Sciscento and Fred
7 Santacroce, and Frank Coumou representing the State of
8 Nevada.

9 Mr. Coumou, will you stipulate to the
10 presence of the jury?

11 MR. COUMOU: We do, Judge.

12 THE COURT: Mr. Sciscento?

13 MR. SCISCENTO: Yes.

14 THE COURT: Ladies and gentlemen, have you
15 elected a foreperson of the jury?

16 JUROR NO. 8: Yes.

17 THE COURT: Who is that?

18 Juror No. 8, Mr. Haynes.

19 Mr. Haynes, has the jury reached a verdict?

20 JUROR NO. 8: Yes, your Honor, we have.

21 THE COURT: Would you hand the forms of
22 verdict to the bailiff, please.

23 The clerk will read the verdicts out loud.

24 THE CLERK: "District Court, Clark County,
25 Nevada, the State of Nevada, plaintiff, versus Brendan

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 James Nasby, defendant, Case No. C154293, Department No.
2 VII, Docket P.

3 Verdict: We the jury in the above entitled
4 case find the defendant, as to Count I, guilty of
5 conspiracy to commit murder. Dated this 19th day of
6 October, 1999, Rodney M. Haynes, foreperson.

7 District Court, Clark County, Nevada, the
8 State of Nevada, plaintiff, versus Brendan James Nasby,
9 defendant, Case No. C154293, Department No. VII, Docket P.

10 Verdict: We the jury in the above entitled
11 case find the defendant, as to Count II, guilty of first
12 degree murder with use of a deadly weapon. Dated this 19th
13 day of October, 1999, Rodney M. Haynes, foreperson."

14 Ladies and gentlemen of the jury, are those
15 your verdicts as read so say you one, so say you all?

16 THE JURY: (In Unison) Yes.

17 THE COURT: Do either of the parties desire
18 to have the jury polled?

19 MR. SCISCENTO: Yes, your Honor.

20 THE CLERK: Melissa Marie Peter, are those
21 your verdicts as read?

22 A Yes.

23 Q Linn S. Smith, are those your verdicts
24 as read?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Janet Luty Vetter, are those your
2 verdicts as read?

3 A Yes.

4 Q Eloise Dominguez, are those your
5 verdicts as read?

6 A Yes.

7 Q Shirley Roark Flippin, are those your
8 verdicts as read?

9 A Yes.

10 Q Kenneth Moultray, are those your
11 verdicts as read?

12 A Yes, sir.

13 Q James Lewis Corwin, are those your
14 verdicts as read?

15 A Yes.

16 Q Rodney Martin Haynes, are those your
17 verdicts as read?

18 A Yes.

19 Q Carole Jeanette Manshreck, are those
20 your verdicts as read?

21 A Yes.

22 Q Tony Domenic Scaggiari, are those your
23 verdicts as read?

24 A Yes.

25 Q William Lindsay King, as those your

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 verdicts as read?

2 A Yes, sir.

3 Q Daniel Edward Huerbin, are those your
4 verdicts as read?

5 A Yes.

6 THE COURT: Okay, the clerk will now record
7 the verdict in the minutes of the Court.

8 Ladies and gentlemen, as you know, the right
9 to trial by jury is one of our basic and fundamental
10 constitutional guarantees. I firmly believe in this right,
11 that is the right of every person accused of a crime to be
12 judged by a fair and impartial jury.

13 You must have jurors and, unfortunately,
14 jury service is something that many persons shirk from.
15 They do not wish to become involved. That's why I'm so
16 pleased that you 14 men and women have been willing to give
17 your valuable time. You have been most attentive and most
18 conscientious. On behalf of the parties and the Eighth
19 Judicial District Court, I wish to thank you for your
20 careful deliberation which you gave to the case.

21 The question may arise now whether you may
22 talk to other persons regarding this matter. I advise you,
23 if you wish, you can talk to other persons and discuss your
24 deliberations which you gave to this case. You are not
25 required to do so however.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 I will be available shortly to speak to you,
2 if you so desire, and if any person persists in discussing
3 this case after you have indicated that you do not wish to
4 do so or raises objection as to your result or as to how
5 you have deliberated, you will report that fact directly to
6 me. The jury is now excused with the thanks of the Court
7 and counsel.

8 Ladies and gentlemen, what I'd ask you to do
9 is go back with Lisa to the jury room. I will be back
10 there in a couple minutes and I will be glad to answer any
11 questions you have about the case. However, you are not
12 obligated to stay. You can leave, but if you would like to
13 visit with me and ask me questions and the attorneys as
14 well, on perhaps some background about the case and what's
15 transpired here. So if you'd go with Lisa, we'll see you
16 in just a couple minutes.

17 (At this time, the jury left the courtroom.)

18 THE COURT: The record will reflect the jury
19 has left the courtroom.

20 Mr. Nasby having been found guilty of first
21 degree murder with use of a deadly weapon together with
22 conspiracy to commit murder, this matter is referred to the
23 Division of Parole & Probation for a presentence
24 investigation report and set over for entry of judgment and
25 imposition of sentence on?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE CLERK: November 29, 9 a.m.

2 THE COURT: And the defendant is remanded to
3 the custody of the Las Vegas Metropolitan Police Department
4 pending sentencing.

5 MR. COUMOU: Thank you, Judge.

6 THE COURT: The attorneys are welcomed to
7 come back if would you like to visit the jury with me.

8 (Off the record discussion not reported.)
9

10 (Off the record at 1:39 p.m.)
11

12 * * * * *

13 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF
14 PROCEEDINGS.

15 
16 PATSY K. SMITH, C.C.R. #190
17
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PATSY K. SMITH, OFFICIAL COURT REPORTER

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

C154293

BRENDAN JAMES NASBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 35319

MAR 19 11 09 AM '01

District Court Case No. C154293

CLERK

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "... we affirm the judgment of conviction."

Judgment, as quoted above, entered this 7th day of February, 2001.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 6th day of March, 2001.

Janette M. Bloom, Supreme Court Clerk

By: J. Richards
Chief Deputy Clerk

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MAR 12 2001

COUNTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,

No. 35319

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

FEB 07 2001

JANE M. FLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of murder with the use of a deadly weapon and conspiracy to commit murder.

The district court sentenced appellant Brendan James Nasby to two consecutive terms of life with the possibility of parole on the charge of murder with use of a deadly weapon and a consecutive term of forty-eight to one hundred twenty months in prison on the conspiracy to commit murder charge. This appeal followed.

First, Nasby asserts that he was denied a fair and impartial trial in that the State used coerced testimony to obtain his conviction. Nasby argues that his co-defendants were under strong compulsion to testify in a particular fashion. We disagree.

In *Sheriff v. Acuna*, 107 Nev. 664, 669, 819 P.2d 197, 200 (1991), the appellant challenged the testimony of a witness on the grounds that the witness was under compulsion to testify against him. In *Acuna*, this court held that:

any consideration promised by the State in exchange for a witness's testimony affects only the weight accorded the testimony, and not its admissibility. Second, we also hold that the State may not bargain for testimony so particularized that it amounts to following a script, or require that the testimony produce a specific result. Finally, the terms of the quid pro quo must be fully disclosed to the

COUNTY CLERK

MAR 12 2001

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jury, the defendant or his counsel must be allowed to fully cross-examine the witness concerning the terms of the bargain, and the jury must be given a cautionary instruction.

Id. at 669, 819 P.2d at 200.

This court, in Acuna, recognized that "withholding the benefit of the bargain until after the promisee testifies" is a permissible method for the State to use to ensure that the witness does not commit perjury or conveniently forget about his previous statements once he has received the benefit of the bargain. Id. at 668, 819 P.2d at 199. Thus, providing the benefit before the witness testifies may result in an "uncooperative or 'forgetful' witness." Id.

Nasby has failed to show how the State contravened the accepted practice of plea bargaining with co-defendants to secure testimony against a defendant on trial. No evidence suggests that the State bargained for particularized testimony or that the State required that the testimony produce a specific result. The terms of each accomplice's plea bargain were elicited through testimony, disclosed to the jury, and defense counsel was given the full opportunity of cross-examination. Therefore, the accomplice testimony in the case at hand was admissible and did not deny Nasby of his right to a fair and impartial trial.

Next, Nasby argues that insufficient corroborating evidence was produced at trial and that his convictions resulted from uncorroborated accomplice testimony. We disagree.

In a criminal case, the standard of review in determining whether there was sufficient evidence upon appeal is "whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt." Doyle v. State, 112 Nev. 879, 891, 921 P.2d 901, 910 (1996).

Corroborating evidence must independently connect the defendant with the offense. See *Evans v. State*, 113 Nev. 885, 891, 944 P.2d 253, 257 (1997). Corroboration evidence does not have to be "in itself . . . sufficient to establish guilt"- "it will satisfy the statute if it merely tends to connect the accused to the offense." *Heglemeier v. State*, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995) (citing *Cheatham v. State*, 104 Nev. 500, 504-05, 761 P.2d 419, 422 (1988)).

The record contains sufficient independent evidence to corroborate the accomplices' testimony that Nasby committed murder. Among other things, two witnesses testified that Nasby admitted to them that he killed Michael and there was expert testimony that the weapon found at Nasby's residence was the murder weapon. We therefore conclude that a reasonable jury could have been convinced of Nasby's guilt of murder beyond a reasonable doubt based on the corroborative evidence that connects Nasby to the murder.

Nasby also asserts that the only evidence of a conspiracy to commit murder came from accomplice Jeremiah Deskin's uncorroborated testimony. We disagree.

"[T]o sustain a conviction of conspiracy there must be independent proof of an agreement among two or more persons." *Myatt v. State*, 101 Nev. 761, 763, 710 P.2d 720, 722 (1985). It is difficult to find direct evidence of a conspiracy. Therefore, it often must be established "by inference from the conduct of the parties." *Doyle*, 112 Nev. at 894, 921 P.2d at 911. Furthermore, a conspiracy conviction may be proved by "a coordinated series of acts, in furtherance of the underlying offense, 'sufficient to infer the existence of an agreement.'" *Id.* (quoting *Gaitor v. State*, 106 Nev. 785, 790 n. 1, 801 P.2d 1372, 1376 n. 1 (1990)).

There was sufficient testimony to corroborate Deskin's testimony that there was an agreement. Specifically, a witness testified that Nasby told her that he and three other people took Michael to the desert to shoot a new gun and Nasby shot Michael twice in their presence. The witness further testified that Nasby told her that, as they got in the car to leave, someone said to get out and get the shells; however, Nasby got out and shot Michael a third time before they left. We therefore conclude that a jury could be convinced of Nasby's guilt of a conspiracy to murder beyond a reasonable doubt based on the corroborative evidence together with Deskin's testimony.

Next, Nasby contends that the standard credibility instruction that was given to the jury was insufficient. Nasby argues that the jury must be given a cautionary instruction when the State uses accomplice testimony in its case in chief.

Failure to make a timely objection during trial waives the appellant's right to raise the issue on appeal. See Pray v. State, 114 Nev. 455, 959 P.2d 530 (1998). However, this court "may address plain error and constitutional error sua sponte." Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992). Appellant Nasby waived this issue by failing to make a timely objection before the trial court. We conclude that it was not plain or constitutional error for the trial court to fail to give a cautionary instruction and therefore reject Nasby's argument regarding this issue.

In his next argument, Nasby asserts that the State's reference during opening statements to a letter that was later ruled inadmissible was an improper reference to criminal history and a violation of due process. Nasby asserts that

the court should not have allowed the State to refer to the letter in its opening statement without first having ruled on the admissibility of the letter.

Opening statements are to acquaint the jury and court with the nature of the case. See *Garner v. State*, 78 Nev. 366, 371, 374 P.2d 525, 528 (1962) (citing *State v. Olivieri*, 49 Nev. 75, 236 P. 1100 (1925)). During opening statements, it is appropriate for the prosecutor to present his theory of the case and propose facts he plans to prove. Id. It is counsel's duty to state the facts fairly and refrain from stating facts that he cannot, or will not, be able to prove. See *State v. Olivieri*, 49 Nev. 75, 236 P. 1100 (1925) (citing *People v. Stoll*, 143 Cal. 689, 77 P. 818 (1904)). Furthermore, an appellate court reviewing statements "will not usually predicate error on a statement to the jury that certain proof, which is later rejected, will be offered if the question of its admissibility is a close one, thus indicating that the prosecutor acted in good faith in making the statements." Garner, 78 Nev. at 371, 374 P.2d at 528 (citing *State v. Lyskoski*, 47 Wash.2d 102, 287 P.2d 114 (1955)); *State v. Albert*, 159 Or. 667, 82 P.2d 689 (1938)). See also *State v. Fisher*, 680 P.2d 35 (Utah, 1984) (where a witness whose testimony was outlined during opening statement was never produced, the court analyzed the good faith or lack thereof of counsel and the likelihood that the opening statement was unfairly prejudicial to the defendant.)

Prosecutorial misconduct "must be prejudicial and not merely harmless," to constitute reversible error. *Sherman v. State*, 114 Nev. 998, 1010, 965 P.2d 903, 912 (1998) (citing *Ross v. State*, 106 Nev. 924, 928, 803 P.2d 1104, 1106 (1990)). Harmless error occurs if the verdict would have been the same

absent the error. Id. (citing Witherow v. State, 104 Nev. 721, 724, 765 P.2d 1153, 1156 (1988)).

We conclude that the prosecutor in the case at hand presented, in good faith, facts to the jury that he thought he could prove, which included the evidence of the letter. Although the admissibility of the letter later became questionable, there is no evidence of bad faith on the part of the prosecutor at the time of his opening statement. Therefore, we cannot conclude that the prosecutor's reference to the letter during opening statements constitutes prosecutorial misconduct.

Furthermore, there was no other reference to the letter (in the presence of the jury) during the trial and the jury was instructed that counsel's arguments are not evidence. We therefore see no likelihood that the reference to the letter during opening statement was unfairly prejudicial. Even if the prosecutor's sole reference to the letter was error, we hold that such reference was harmless error and the jury verdict would have been the same absent the error.¹

Finally, Nasby asserts that the trial court erroneously used instructions similar to those used in Kazalyn v. State, 108 Nev. 67, 75-76, 825 P.2d 578, 583-84 (1992), rather than the instruction adopted by this court in Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

This court, in Byford, considered the Kazalyn instruction and set forth more preferable instructions for future cases. In Bridges v. State, 116 Nev. ___, 6 P.3d 1000 (2000), this court held that, because Bridges was tried prior


¹We note that when proposed evidence is the subject of a pending objection or motion in limine, a better practice would be for the district court to instruct the parties not to refer to the evidence until a ruling is made upon the motion or objection.

to the Byford decision, additional instruction pursuant to Byford was not required. Furthermore, in *Garner v. State*, 116 Nev. ___, 6 P.3d 1013 (2000), this court held that "with convictions predating Byford, neither the use of the Kazalyn instruction nor the failure to give instructions equivalent to those set forth in Byford provides grounds for relief." 116 Nev. at ___, 6 P.3d at 1025.


Nasby's argument is without merit. Nasby was tried prior to the decision in Byford. As such, the Byford instructions were not required and the instructions that were given were sufficient.

Having fully reviewed the briefs and the record, we conclude that Nasby's contentions lack merit. Accordingly, we affirm the judgment of conviction.

It is so ORDERED.


Maupin, C.J.


Rose, J.


Becker, J.

cc: Hon. Mark W. Gibbons, District Judge
Clark County District Attorney
Attorney General
Frederick A. Sanatcroce, Esq.
Clark County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 35319

District Court Case No. C154293

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: March 6, 2001

Janette M. Bloom, Clerk of Court

By: *J. Richards*
Chief Deputy Clerk

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Frederick A. Santacroce

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on MAR 14 2001

NORRETA CALDWELL
County Clerk

01-02583

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Shirley E. Rungius
CLERK

STEWART L. BELL
DISTRICT ATTORNEY
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711

Attorney for Plaintiff
THE STATE OF NEVADA

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff

-vs-

NASBY, BRENDAN JAMES
Defendant

CASE NO. C154293
DEPT. NO. XVII

ORDER RELEASING EVIDENCE

TO: NADINE BLOODSAW, CUSTODIAN OF THE EVIDENCE VAULT

Upon the ex parte application of the District Attorney's Office, by and through FRANK J. COUMOU, Deputy District Attorney, attorney for Plaintiff in the above-entitled matter, and good cause appearing therefore,

IT IS HEREBY ORDERED that the following items of evidence be released to the rightful owner, MARK GARLAND (DOB: 1/6/62, SS#311-80-6645):

SEND TO: Champaign Police Department, Attn: Sgt. Shelton P#924, 82 E. University Ave.,
Champaign, IL 61820

1. STATES EXHIBIT #52A,B: BROWNING 9mm Serial #4CH1969 & 2 clips

DATED this 24 day of May, 2001.

Frank J. Coumou
DISTRICT JUDGE

STEWART L. BELL
DISTRICT ATTORNEY

BY:

Frank J. Coumou
FRANK J. COUMOU #4577
Deputy District Attorney

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MAY 31 2001

COUNTY CLERK

STEWART L. BELL
DISTRICT ATTORNEY

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Shirley B. Rongjima
CLERK

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 200 S. Third Street
4 Las Vegas, Nevada 89155
5 (702) 455-4711

6 Attorney for Plaintiff
7 THE STATE OF NEVADA

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 NASBY, BRENDAN JAMES,
14 Defendant.

CASE NO. C154293

DEPT. NO. XVIII

PETITION FOR RELEASE
OF EVIDENCE

15 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney,
16 through FRANK J. COUMOU, Deputy District Attorney, and petitions this Honorable Court to
17 enter an order, pursuant to NRS 52.385, authorizing the release of the following items of
18 evidence to the rightful owner, MARK GARLAND:

- 19 1. STATES EXHIBIT #52A,B; BROWNING 9mm, serial #4CH1969 & 2 Clips

20 DATED this 24 day of May, 2001.

Respectfully submitted,

STEWART L. BELL
DISTRICT ATTORNEY

BY: *Frank J. Coumou*
FRANK J. COUMOU #4577
Deputy District Attorney

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MAY 31 2001

COUNTY CLERK

STEWART BELL
DISTRICT ATTORNEY

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 200 S. Third Street
4 Las Vegas, Nevada 89155
5 (702) 455-4711

6 Attorney for Plaintiff
7 THE STATE OF NEVADA

ORIGINAL

FILED

MAY 31 8 50 AM '01

Shirley B. Pungina
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 NASBY, BRENDAN JAMES,
13 Defendant.

CASE NO. C154293

DEPT. NO. XVII

PETITION FOR RELEASE
OF EVIDENCE

14
15 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney,
16 through FRANK J. COUMOU, Deputy District Attorney, and petitions this Honorable Court to
17 enter an order, pursuant to NRS 52.385, authorizing the release of the following items of
18 evidence to the rightful owner, MARK GARLAND:

- 19 1. STATES EXHIBIT #52A,B; BROWNING 9mm, serial #4CH1969 & 2 Clips

20 DATED this 24 day of May, 2001.

Respectfully submitted,

STEWART L. BELL
DISTRICT ATTORNEY

BY:

Frank J. Coumou
FRANK J. COUMOU #4577
Deputy District Attorney

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MAY 31 2001

COUNTY CLERK

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27
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STEWART BELL
DISTRICT ATTORNEY

S10

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

SEP 7 11 10 AM '01

BRENDAN NASBY,)
)
 Petitioner,)
)
 vs.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

CASE NO. C154293

DEPT. NO. III

Shirley D. Higgins
CLERK

AFFIDAVIT IN SUPPORT OF MOTION FOR
DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS

I Brendan Nasby being first duly sworn, depose and say that;

1.) I am the petitioner in the above-entitled case.

2.) I am currently preparing a petition for post conviction relief, and that the foregoing requested evidence and documents are necessary for me to effectively develop claims to be prevented therein.

3.) Without the above requested evidence and documents I have little chance of prevailing in a post-conviction proceeding.

4.) In order to show a claim of ineffective assistance of counsel, I must have access to the very same documents that counsel, at trial, did. Otherwise there is no chance of showing how counsel failed to use said documents at trial, on cross-examination.

5.) In order to show a Brady violation the state must be compelled to turn over the above requested evidence that it did not during Trial as it is not part of the record.

6.) That the photographs as well as the letter

request is the personal property of petitioner.

7.) That the State's agents siezed said photographs and letters in the course of investigating the case. The case is not concluded, and the state has no further use for the photographs or the letter. Therefore they should be returned to their owner. (Petitioner).

8.) Even if the state alleges a need to maintain possession of the photographs and letter, petitioner would be satisfied with copies of the same.

Under penalties of perjury, the undersigned declares that he is the petitioner name in the foregoing Affidavit and knows the contents thereof; that the pleading is true of his knowledge, except as to those matters stated on information or belief, and that as to such matters he believes them to be true.

Dated this 4th day of Sept. 2001.


PETITIONER IN PRO-PER

BRENDAN NASBY
I.D.NO. 63618
ELY STATE PRISON
P.O.BOX 1989
ELY, NEVADA 89301

FILED

SEP 7 11 10 AM '01

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley D. Higgins
CLERK

BRENDAN NASBY,)	
)	
Petitioner,	)	CASE NO. C154293
)	
vs.	)	DEPT. NO. III
)	
THE STATE OF NEVADA,)	
	)	TIME OF HEARING: 9/17/01
Respondent.	)	DATE OF HEARING: 9:00 Am
_____)	

**MOTION FOR DISCOVERY PRODUCTION
AND TRANSMISSION OF DOCUMENTS**

COMES NOW, the Petitioner, Brendan Nasby, in proper person and respectfully moves this Court for an order directing the State of Nevada to provide Petitioner with copies of the information listed below, in order to facilitate the development of claims to be presented in Petitioner's petition for post-conviction relief.

DATED this 4th day of September 2001

Brendan Nasby
BRENDAN NASBY
I.D.NO. 63618
ELY STATE PRISON
P.O.BOX 1989
ELY, NEVADA 89301
(PRO-SE PLEADING)

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COUNTY CLERK

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POINTS AND AUTHORITIES

The United State Supreme Court has burdened Petitioner with an obligation to develop the factual basis of a claim through diligence at the State level. Before a Federal Court will hear a claim, Petitioner must attempt to investigate and discover all evidence that tends to support the claim. See Williams v. Taylor 120 S. ct 1479, 1488 (2000) and 28 U.S.C.A 2254; Antiterrorism and Effective Death Penalty Act of 1996.

The instant Motion is an attempt to satisfy that requirement. Nevada Revised Statute 174.285 gives the Court discretion to grant a discovery motion, if it is in the interest of Justice, at any time.

Furthermore, the Eighth Judicial District Court Rule 7.28 provides in pertinent part, "After a judgment is final...the party or attorney who withdraws it shall file an affidavit with the clerk to the effect that the person who withdraws it is the owner of or lawfully entitled to the possession of the model, diagram or exhibit,...Withdrawal of any model, diagram or exhibit must be on court order..."

Petitioner contends that most of the evidence which he seeks is, in fact, his personal property and should be returned to him.

The State seized numerous photographs from Petitioner, contained in a photograph book, while some were loose. The State alleged that the photographs demonstrated gang affiliation. That allegation in and of itself, even were it true, does not render the photographs illegal. Thus, they should be returned to, or at least copied for Petitioner.

Moreover, the photographs show State witnesses associating with individuals whom they testified they did not know and was not friendly with. There are also photographs that show Charles D. Von Lewis, holding a nine millimeter hand gun. A nine millimeter hand gun is the same make and model of weapon that Petitioner was convicted of using in the murder of Michael L. Beasley. The conviction which Petitioner will challenge in his coming post-conviction petition. In addition to that, three State witnesses linked Charles D. Von Lewis to the same crime that Petitioner is now imprisoned for. Petitioner is aware of these photographs existence because, for one, they were confiscated from Petitioner and, two, they were employed by the State at Petitioner's sentencing.

Petitioner will allege in his forthcoming post-conviction petition that several prosecution witnesses perjured themselves while testifying for the State, and against Petitioner.

The Nevada Supreme Court is consistent and holds that a wide latitude of cross-examination is allowed in order to test the motives, interest, animus, accuracy, veracity and credibility of a witness. Lloyd v. State 85 Nev. 576, 460 P.2d 111 (1969).

Petitioner request the production of all voluntary statements made by Jotee Burnside, and any involuntary statements from the same.

Mr. Burnside perjured himself on the witness stand and exhibited a faulty memory. Petitioner will contend in his post-conviction petition that his attorney failed to sufficiently cross-examine this witness according to law. Strickland v. Washington, 466 U.S. 688, 104 S. Ct 2052; 80 L.Ed. 2d 674 (1984). Furthermore,

Petitioner believes Mr. Burnside's statements may contain exculpatory evidence and that the State prejudiced Petitioner's defence irreparably by failing to produce Mr. Burnside's statements until the middle of trial. Bradly v. Maryland 323 U.S. 83 (1965).

Petitioner request the production of a letter written by him to Brittny K. Adams. The State siezed this letter and held it during trial. The leter conclusively shows that Ms. Adams perjured herself at Petitioner's trial. As she testified falsely, regarding it's contents, which went directly to to the guilt or innocence of the Petitioner. This fact, again, establishes a viable claim of ineffective assistance of counsel, for failure to cross-examine, and witness perjury. See State v. Merrit, 66 Nev. 380, 212 P.2d 706 (1949); Summit v. State 101 Nev. 159, 697 P.2d 1374 (1985).

Petitioner request a list of Court appearances and charges against Charles D. Von Lewis or in the alternative the minutes of the Court between the dates of August 4, 1998 and October 30, 1999.

Detectives Thomas D. Thowsed and James Buczek testified at Petitioner's trial, that Mr. Von Lewis was unavailable for questioning and that they did not know where to look for him, and that they were considering a warrant for his arrest.

Petitioner believes that Mr. Von Lewis was in jail and that the above detectives were aware of that fact. In their efforts to protect Mr. Von Lewis these detectives perjured themselves.

Petitioner will allege in his post-conviction petition that collectively witness perjury prejudiced the defence. The above is based upon the trial transcripts which Petitioner has in his possession.

Petitioner's counsel at trial was ineffective for failing to effectively cross-examine the State's witnesses.

Petitioner's appellant counsel was ineffective for failing to discover these assignments of error.

In Peterson v. Warden 87 Nev.. 134, 483 P.2d 204 (1971), the standard for obtaining evidence after trial the Court said:

"So must satisfy the Court that points raised have merit and such merit will tend to be supported by a review of the record before he may have trial records supplied at the State's expense" Id. at 87 Nev. 135-36.

This decision directly conflicts with that of the United States Supreme Court in Taylor v. Williams 120 S. ct 1479, 1488 (2000), which makes it incumbent upon a petitioner at the state level to use "due diligence" at the "developmental" stage of a claim to discover all facts which tend to support that claim. Or any failure will haunt him later in the appellant process.

Moreover, most of the evidence requested is the Petitioner's personal property not of itself illegal and should be returned to Petitioner. See attached affidavit.

In conclusion Petitioner respectfully request that this Court order the State to return his personal property as well as evidence requested so that he may effectively pursue his post-conviction petition.

Respectfully submitted this 4th day of September 2001.


PETITIONER IN PRO-PER

CERTIFICATE OF MAILING

____ I hereby certify that I place a correct copy of the foregoing Motion for Production and Transmission of Documents in the District Attorney at the following address;

STEWART L. BELL
CLARK COUNTY COURT HOUSE
DISTRICT ATTORNEY OFFICE
200 SOUTH THIRD STREET, SUITE 701
P.O.BOX 552212
LAS VEGAS, NEVADA 89155-2211


PETITIONER IN PRO-~~PER~~

BRENDAN NASBY #63618

P.O. BOX 1989

ELY, NEVADA 89301

ELY STATE PRISON



SHIRLEY B. PARRAGUIRRE, COUNTY CLERK

200 S. THIRD ST.

P.O. BOX 551601

LAS VEGAS, NEVADA 89155-1601

89155-1601



Ely State Prison

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W

1 **Resp**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN NASBY,
12 #1517690

13 Defendant.
14

Case No. C154293
Dept. No. XVIII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR**
16 **DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS**

17 DATE OF HEARING: 9-17-01
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 H. LEON SIMON, Deputy District Attorney, and files this Opposition to Defendant's Motion
21 for Discovery Production and Transmission of Documents.

22 This opposition is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

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COUNTY CLERK

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 Brendan Nasby, hereinafter Defendant, was charged by an Amended Criminal Complaint,
4 filed on August 27, 1998, with Conspiracy To Commit Murder and Murder With Use Of A
5 Deadly Weapon. An Information, filed on November 9, 1998, charged Defendant with
6 Conspiracy To Commit Murder and Murder With The Use Of A Deadly Weapon.

7 A jury found Defendant guilty of Conspiracy To Commit Murder and First Degree
8 Murder With Use Of A Deadly Weapon. On July 29, 1999, Defendant was sentenced to a
9 maximum of one hundred twenty (120) months, with a minimum parole eligibility of forty-eight
10 (48) months, in the Nevada Department of Prisons on the Conspiracy To Commit Murder count.
11 On the First Degree Murder count Defendant was sentenced to a consecutive term of Life with
12 the possibility of parole, with a consecutive term of Life with the possibility of parole for the
13 deadly weapon enhancement. A Judgment Of Conviction was filed on December 2, 1999.

14 Defendant appealed his conviction to the Nevada Supreme Court. Defendant's conviction
15 was affirmed on February 7, 2001. A Remittitur issued on March 6, 2001.

16 Defendant filed the instant Motion For Discovery Production And Transmission Of
17 Documents on September 7, 2001.

18 ARGUMENT

19 **I. DEFENDANT'S MOTION FOR DISCOVERY PRODUCTION AND**
20 **TRANSMISSION OF DOCUMENTS SHOULD BE DENIED**

21 NRS 34.780(2) provides that discovery is available as provided under the Nevada Rules
22 of Civil Procedure, but only after the writ has been granted. Defendant's writ has not been
23 granted, nor even filed yet. Thus, Defendant's motion is premature and should be denied.

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1 CONCLUSION

2 For the reason mentioned above, the Court should deny Defendant's Motion For
3 Discovery Production And Transmission Of Documents.

4 DATED this 14 day of September, 2001.

5 Respectfully submitted,

6 STEWART L. BELL
7 DISTRICT ATTORNEY
8 Nevada Bar #000477

9 BY H. Leon Simon

10 H. LEON SIMON
11 Deputy District Attorney
12 Nevada Bar #000411

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 14th day of
15 September, 2001, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 Brendan Nasby, #63618
17 Ely State Prison
18 P.O. Box 1989
19 Ely, Nevada 89301

20 BY M. Lee

21 Secretary for the District Attorney's Office
22
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Shirley B. Pangione
CLERK

1 **ORDR**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 BRENDAN NASBY,
12 #1517690

13 Defendant.
14

Case No. C154293
Dept No. XVIII

15 **ORDER DENYING DEFENDANT'S PRO PER MOTION FOR DISCOVERY**
16 **PRODUCTION AND TRANSMISSION OF DOCUMENTS**

17 DATE OF HEARING: 9-17-01
18 TIME OF HEARING: 9:00 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the 17th
20 day of September, 2001, the Defendant not being present, in proper person, the Plaintiff being
21 represented by STEWART L. BELL, District Attorney, through DAVID T. WALL, Chief
22 Deputy District Attorney, and the Court having heard the arguments of counsel and good cause
23 appearing therefor,

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COUNTY CLERK

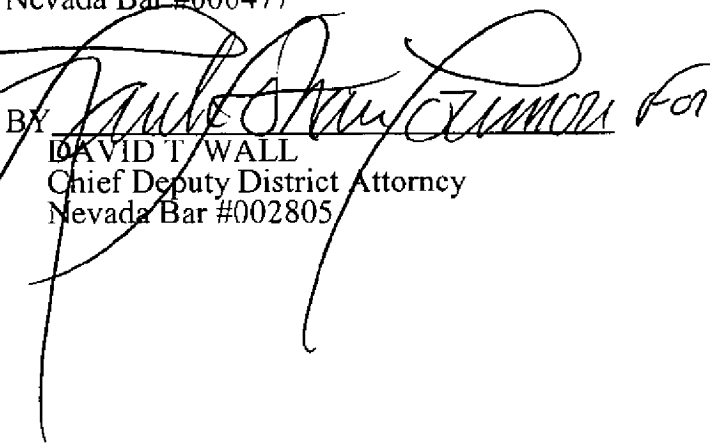
9/19

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Discovery
2 Production and Transmission of Documents, shall be, and it is denied.

3 DATED this 27th day of September, 2001.

4
5 
6 DISTRICT JUDGE

7
8 STEWART L. BELL
9 DISTRICT ATTORNEY
10 Nevada Bar #000477

11 BY  For
12 DAVID T. WALL
13 Chief Deputy District Attorney
14 Nevada Bar #002805
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BRENDAN NASBY
I.D. NO. 63618
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301

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DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley D. Longmire
CLERK

BRENDAN NASBY,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

CASE NO. C154293

DEPT. NO. XVIII

**REPLY TO STATE'S OPPOSITION TO PETITIONER'S
MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS**

COMES NOW, the Petitioner, Brendan Nasby, in Proper Person with this instant Reply to the State's Opposition to Petitioner's Motion For Discovery Production and Transmission of Documents.

This Reply is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the hearing on this matter.

Dated this 20 day of Sept 2001.

Brendan Nasby
BRENDAN NASBY #63618
PETITIONER IN PRO PER

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COUNTY CLERK

ARGUMENT

POINTS AND AUTHORITIES

I. PETITIONER'S MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS SHOULD BE GRANTED.

The State has argued that Petitioners should be denied based upon N.R.S. 34.780(2). This is the only argument offered by the State.

N.R.S. 34.780(2) holds that a petitioner may pursue discovery after his writ has been granted, according to the State's interpretation. However this view point is illogical. If discovery is only available after a writ has been granted then there would be no need for discovery. Only in limited circumstances would a petitioner seek discovery after his case has been reversed due to the issuance of a writ, and in all likelihood, it would be moreso to prepare for a new trial.

Here, Petitioner is trying to develop facts to support issues to be presented in his post-conviction petition as commanded by Supreme Court precedent. See Williams v. Taylor 120 S.Ct. 1479 (2000) (All facts necessary to claim must be developed at State Court level via Discovery).


Moreover, some of the items Petitioner requested in his Motion are his personal property, for which the State has no further use for. Therefore, those items deemed to be the property of defendants, should be returned regardless of the Court's interpretation of N.R.S. 34.780(2).

CONCLUSION

Petitioner respectfully request that the Court recognize that he is only trying to present all of his claims at once, avoiding a procedural bar. If the Court denies this motion, it will result in piece-meal litigation and Petitioner arguing claims blindly prolonging the appellate process. Consequently, this motion for discovery production and transmission of documents should be granted.

Dated this 20 day of Sept. 2001.

Respectfully Submitted,


BRENDAN NASBY #63618
PETITIONER IN PRO PER

CERTIFICATE OF MAILING

I hereby certify that I placed, in the hand of a prison guard at Ely State Prison, a correct copy of the foregoing Motion to place in the mail to:

STEWART L. BELL
DISTRICT ATTORNEY
200 S. 3rd STREET
Suite 701
P.O. BOX 552212
LAS VEGAS, NEVADA 89155-2211

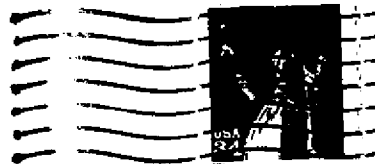

BRENDAN NASBY #63618
PETITIONER IN PRO PER

BRENDAN NASBY #63618

P.O. BOX 1989

ELY, NEVADA 89301

ELY STATE PRISON



SHIRLEY B. PARRAGUIRRE

COUNTY CLERK

200 S. THIRD ST.

P.O. BOX 551601

LAS VEGAS, NEVADA 89155-1601

89155-1601



Ely State Prison

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Brendan Nasby
I.D. No. 63618
P.O. Box 1989
Ely, Nevada 89301
Petitioner in Pro Se

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Shirley D. Thompson
CLERK.

**District Court
Clark County, Nevada**

Brendan Nasby,
Petitioner,

Case No. C154293

Dept. No. ~~III~~ XVIII

Docket E

-vs.-

E.K. McDaniel et al.,
Respondent

Memorandum of Points and Authorities

In Support of Petition For Writ of Habeas Corpus

(Post-Conviction N.R.S.34.720)

Date of Hearing: _____

Time of Hearing: _____

ARGUMENT

I. Petitioner was denied his right to equal Protection under the Fourteenth Amendment to the United States Constitution, when the State used it's Peremptory Challenges to exclude Jurors based on their race.

The Supreme Court in Batson v. Kentucky 476 U.S. 79, 106 S.Ct.1712, 90 L.Ed.2d.69 (1986), established a three-prong test to determine whether a Prosecutor's use of peremptory challenges violates the Fourteenth Amendment. The Court held; First, a Petitioner must establish a prima facie case of racial discrimination by showing that: (1) the Petitioner is a member of a cognizable racial group; (2) the groups members have been excluded from Petitioner's jury; (3) and the circumstances of the case raise an inference that the exclusion was based on race.

Petitioner is an African American, and he had on African American person on his jury venire. Her name is Miss McNeal, badge number 138. She was selected to the petit jury and excluded by the Prosecutor with his first peremptory challenge.

Thus, Petitioner has met the first two, of the three-prong test, to establishing an intentional case of racial discrimination. The third prong of the test, is however, more difficult to prove.

A Petitioner may rely on any relevant circumstance tending to support an inference of discrimination. Five factors are particularly relevant: (1) the number of racial group members in the venire panel; (2) the nature of the crime; (3) the race of the defendant and victim; (4) a pattern of strikes against racial group member; (5) the prosecution's questions and statements during voir dire. Batson Supra.

Here, Petitioner had one African American in his entire venire panel. That fact alone, is enough to show an inference of discrimination. U.S. v. Joe 8 F.3d 1488, 1489, 1499 (10th CIR 1993) (inference of discrimination in prosecution of Native American where Prosecutor used peremptory challenge to strike sole Native American juror).

Once a prima facie case has been made, the Prosecutor must provide a race-neutral explanation for the use of his challenge. U.S. v. Bishop 959 F.2d 820m 824 (9th CIR 1992). "Once a Prosecutor has offered a race-neutral explanation for the peremptory challenge and the Trial Court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether defendant has made a prima facie showing becomes moot." Id. at 824, (quoting Hernandez v. New York - U.S.--, 111 S.Ct. 1859 at 1866). The Trial Court's finding with regard to purposeful discrimination in

the jury selection will not be disturbed unless clearly erroneous, United States v. Power 881 F.2d 733, 739 (9th CIR 1989).

In the instant case, the Court held that the Prosecutor's race-neutral explanation satisfied the requirements set forth in Purkett v. Elem 514 U.S. 765, 766 (1995) (per curium) citing Hernandez v. New York 500 U.S. 352, 358-59 (1991), and was race-neutral. The prosecution's explanation must be more than an affirmation of good faith or an assumption that the challenged juror would be partial to the defendant because of their share race. Purkett 514 U.S. at 768. The Prosecutor's explanation will be deemed race-neutral unless intent inherently discriminatory. Hernandez 500 U.S. at 360.

Consistent with the Supreme Courts holding in Batson, "that a defendant may rely on any relevant circumstances tending to support an inference of discrimination", the Ninth Circuit recently held in McClain v. Prunty 217 F.3d 1209, 1221-22 (9th CIR 2000), that Petitioner can show intentional discrimination by proving that Prosecutor's reasons for excluding a member of Petitioner's racial group apply also to other members of jury that the Prosecutor did not challenge.

After the voir dire of Miss McNeal, the Prosecutor was preparing a Batson challenge before ever exercising his first peremptory challenge. Trail Transcripts Volume I, Pg. 133 (Hereinafter T.T.Vol.). Therefore, the State had ample time to prepare its race-neutral explanation.

During the Batson hearing, the Prosecutor cited the following in order, as race-neutral reason for excluding Miss McNeal:

- A) She was taking medication.
- B) Her religious belief and her views on the death penalty.
- C) Penalties in general.
- D) Personal convictions.
- E) Her son had been arrested and her nephew was a murder victim. Because she felt the police didn't do all they could to solve the murder, she would not trust witnesses, particularly law enforcement officers.
- F) She did not believe Petitioner stands a fair chance at trial.

Regarding explanations A, B, and C, the Trial Court assured her early in the voir dire process, that none of those things would be relevant at trial and the Court would make arrangements for her medication. T.T. Vol.I, Pgs. 35-40. Furthermore, a Juror may not be challenged for cause based on his view about the death penalty, unless those views would prevent or substantially impair their

performance and duties as a juror. Adams v. Texas 448 U.S. 38, 100 S.Ct. 2521 (1980).

Moreover, the death penalty was not an issue in Petitioner's case. Likewise, reasons A, B, and C, were obviously pretextual in nature.

Explanations D, E, and F are also pretextual. Miss McNeal's personal convictions are not a valid reason to challenge her. Especially when she repeatedly said she would follow the law and her own feelings would not stop her from being fair. T.T. Vol.I, Pgs. 122-125. Patton v. Yount 467 U.S. 1025, 1037 n.12 (1984); U.S. v. Miguel 111 F.3d 666, 673 (9th CIR 1997); See also U.S. v. Alexander 48 F.3d 1477, 1484 (9th CIR (1995) (no manifest error in refusing to excuse for cause, two prospective Jurors in Robbery prosecution who had been Robbery victims where one stated he could put aside his own experience and decide fairly and the other believed she could be fair).

These explanations equally applied to every other juror whom the Prosecutor did not challenge. Everyone has personal convictions.

Even more glaring, is the explanation the Prosecutor gave in reason "e". Here, he said that because her son had been arrested and was a murder victim, as well as her

opinion that the police did not do all they could to solve the murder, constitute race-neutral reasons.

Practically every Juror that sat on Petitioner's Jury, had knew someone who have been victims of a crime, including; Miss Vetter, Miss Barbeau, Mister Blake, Mister Corwin, Mister King, Mister Scaggiari, Mister Haynes. T.T. Vol. I, and Vol. II. As for Ms. McNeal not trusting the police, the same implication could have been deduced from the statements of Miss Barbeau and Mister Blake, who sat on Petitioner's Jury, but we not challenged by the Prosecutor. Miss Bareau referred to the police as "Humorous and Obnoxious", so did Miss Smith. Mister Blake said he did not believe police did enough to solve the assault of his son. T.T. Vo.II, Pg. 150. The Prosecutor maintained that Miss McNeal's feelings concerning how the police handled the murder of her nephew troubled him. It did not trouble him however, that Mister Blake felt the same way. T.T. Vol.I, Pg. 232.

The only difference between Miss McNeal and the other Jurors was that Miss McNeal was an African American. Both the prosecution and the counsel for the Defense immediately attacked her.

The Prosecutor's last reason for challenging Miss McNeal was that she said she believed Petitioner did not

stand a chance at trial. This statement was elicited during defense counsel's turn at voir dire. Wherein, defense counsel continued where the Prosecutor left off. It is clear that Petitioner's counsel was working in concert with the Prosecutor. T.T. Vol.I, Pg. 127. After making the statement, the Prosecutor objected to letting her explain why she didn't believe Petitioner would not get a fair chance. The Trial Court agreed. Miss McNeal never got a chance to explain herself, but maintained, specifically, that she had no animosity toward the police and that she would judge based on the evidence. T.T. Vol.I, Pgs. 122-125, and Pg. 128, after the Prosecutor's objection. At the conclusion of Miss McNeal's interrogation, the Prosecutor and defense counsel asked her if she would be fair to the Judge as well as themselves. T. T. Vol.I, Pgs. 129-130. They did not do this with any other Jurors.

On the contrary, when Miss Barbeau was asked about race, by Defense counsel, she replied that she believed that there are race relation problems all over the country. T.T. Vol.I, Pg. 213. This was not an answer that Defense counsel expected. He was surprised, so much so, that he started talking about other countries and their race problems. There was no objection, unlike Miss McNeal's

voir dire. In fact, the Prosecutor never objected to questions about race by Defense counsel, except when Miss McNeal was being questioned. Several potential Jurors, some who sat in the Jury, were asked about race, but only Miss McNeal received the attention of the State. It is clear that Defense counsel and the Prosecutor, did not want any African Americans on Petitioner's jury. This can be observed for the order in which the Prosecutor listed his race-neutral reasons. He starts off, grasping at reasons that don't apply, death penalty, medication, and other things of that sort. Then, he says she was a victim of a crime and dissatisfied with the job the police did, yet these explanations apply to other Jurors as well. See McClain v. Prunty 217 F.3d 1209, 1221-1222 (9th CIR 2000) (Prosecutor's explanation for striking African Americans was pretextual because claims of race-neutrality were not supported by the seating of African Americans on the jury panel and the explanations were either applicable to Jurors of different races not stricken or objectively contrary to facts in the record).

Equally important, is the fact that Miss McNeal was the only African American in the entire jury venire. To strike her for obvious pretextual reasons, then waive the majority of the peremptory challenges as the Prosecutor did

in this case, draws an inference of race discrimination, in and of itself. See U.S. v. Joe 8 F.3d 1488, 1489 (10th CIR 1993). Therefore, Petitioner's conviction must be reversed.

II. Cumulative effect of several instances of Prosecutorial Misconduct violated Petitioner's Right to Due Process under the United States Constitution.

Prosecutorial misconduct occurs when a Prosecutor uses improper methods calculated to produce a wrongful conviction. Berger v. U.S. 295 U.S. 78, 88 (1935).

In order for Petitioner to have his conviction reversed, it is not enough that Prosecutor's remarks or conduct were improper. "The relevant question is whether the Prosecutor's comments or conduct so infected the trial with unfairness as to make the resulting conviction a denial of due process". Darden v. Wainwright 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo 416 U.S. 637, 643 (1974)). Prosecutor's comments must be viewed in the context of the Entire Trial. U.S. v. Young 470 U.S. 1, 11-12 (1985).

Petitioner alleges several instances of Prosecutorial Misconduct, that alone or in combination, provide a bases for reversal of his conviction. U.S. v. Francis 170 F.3d 546, 552 (6th CIR 1999) (Although individual instances of

improper comments and questions by Prosecutor were insufficient, standing alone, to warrant reversal under standards applicable to flagrant and non-flagrant improprieties, new trial was warranted when numerous examples of improprieties were viewed together and in context of the whole trial.)

They are as follows:

- 1) The State violated Petitioner's Sixth Amendment Right to Counsel when they placed a Jail House Informant in close proximity to Petitioner in order to gain incriminating information against Him.

Petitioner was incarcerated at the Clark County Detention Center awaiting trial, when approached by John R. Holmes, around November of 1998. Mister Holmes repeatedly asked Petitioner questions about the charges pending against him. Specifically, he wanted to know if the rumors about Petitioner being guilty were true. Petitioner never did answer his questions or discuss his legal strategies with Mister Holmes. While Petitioner had met him before, he did not know him well enough to discuss his personal or legal affairs.

At Petitioner's trial, Mister Holmes testified that Petitioner confessed to him. The Prosecutor was allowed to refer to a letter allegedly written by Petitioner to Mister. Holmes, requesting that Mister Holmes intimidate

several witnesses, in his opening statement. The Prosecutor told the Jury that Petitioner had given this letter to Mister Holmes while confined at the Detention Center. T.T. Vol.II, Pg. 190.

Petitioner contends that Mister Holmes was acting at the behest of the State when he attempted to interrogate Petitioner at the Detention Center. Petitioner's counsel served a subpoena upon the custodian of the records at the Clark County Detention Center. A hearing on the issue of who had visited Mister Holmes ensued. Defense Counsel specifically requested the sign in sheet of everyone who had visited Mister Holmes. Mister Cohen, the custodian of records at the Detention Center, was willing to let the Defense inspect the documents, but the Trial Court was not. Instead, the Defense Counsel was provided with two sheets of paper that did verify that agents of the States had visited Mister Holmes. The dates, however, were murky. The Trial Court never gave an explanation as to why the Defense would not be able to review all the documents. Petitioner alleges that a complete review of papers will show that Mister Holmes was under a continuing obligation to provide information against suspects and that he had a long standing relationship with the State as an agent who

would help convict unsuspecting inmates, under terms of quid pro quo. T.T. Vol. V, Pgs. 5-8.

The operative date with regard to the letter Petitioner allegedly gave Mister Holmes is November 5, 1998. Mister Holmes testified that he received the letter after November 5, 1998, the date he decided to work for the Police on this case. T.T. Vol.II, Pgs.20-21. This may be true with regard to his duty to officially report his progress in a given case. Mister Holmes was, working with the State prior to November 5, 1998. He testified as follows:

Q: Okay. Now I want to see if I understand this; Prior to November 5th -- prior to getting this letter, (indicating)-- you agreed with police that you were going to work with them and they asked you, in fact, to work for them, correct:?

A: They asked me can I get them information.

Q: Okay. So they asked you to go out and get them information.

A: Yes.

T.T. Vol.II, Pg.23.

Mister Holmes, as indicated by his above testimony, was working with the State before he ever met Petitioner in the Clark County Detention Center. Detective Buczek

testified that he had been contacted by an unnamed officer, who told him Mister Holmes could provide valuable information against Petitioner. He also testified that he went to visit Mister Holmes despite the fact he considered the case solved. T.T. Vol.IV, Pgs. 164-165. When Detective Buczek was asked did he instruct Mister Holmes on how to get information, his answer, as well as the next eight pages is missing from the record. Petitioner asserts from recollection that these missing pages will demonstrate that Mister Holmes was a trained Jail House informant, whom the State had relied upon before he met Petitioner at the Clark County Detention Center. T.T. Vol.IV, Pgs. 165-173.

Despite the secrecy and lack of details regarding the unnamed officers who visited Mister Holmes at the Clark County Detention Center, and the nature and extent of Mister Holmes work with the State, both the Trial Court and the Prosecutor was aware that Mister Holmes was working as an agent of the State when he produced the letter allegedly written by Petitioner. T.T. Vol.II, Pgs. 19, 20, 21, and 25. The Trial Judge, however, unnecessarily, prolonged a ruling on this issue, when all relevant information was before Him in order to rule properly. The result was, that the Prosecutor took advantage of the Courts misstep and put before the Jury, information obtained in violation of

Petitioner's Right to Counsel. In his opening statement, the Prosecutor was not only allowed to talk about the letter, but witness intimidation as well, a prior bad act not proven.

In Petrocelli v. State 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), the Nevada Supreme Court said ("before evidence of a prior bad act can be admitted, the State must, by plain, clear and convincing evidence show that the defendant committed the offense."). Se also N.R.S. 48.045(2).

Although the Court eventually ruled in favor of Petitioner on this issue, the damage was already done, the Jury being thoroughly contaminated. Furthermore, the Prosecutor, again, elicited testimony on the letter from Brittny Adams. T.T. Vol.V, Pg. 173. Though the Petitioner is not sure if it is the same letter or a copy of one the Prosecutor alluded to in his opening statement, it is for this very reason that it prejudiced Petitioner. The jury could not have known whether it was the same letter either. The Prosecutor, therefore, continued to make use of information obtained in violation of Petitioner's Right to Counsel, as well introduce suspect evidence or prior bad acts in violation of Petitioner's Right to Due Process.

Improper reference to criminal history is a violation of Due Process and reviewing Court must determine whether error was harmless. Chapman v. California 386 U.S. 18, 24 (1967).

The Trial Court never offered any curative instruction. U.S. v. Kerr 981 F.2d 1050, 1053-54 (9th CIR 1992) (Prosecutor's improper vouching for credibility of Government witness was reversible error because curative instructions were overly general).

Information fabricated by Mister Holmes while acting as an agent of the State was devastating to Petitioner's case, particularly due to a denial of Counsel during Mister Holmes' interrogation of Petitioner. The State's actions in recruiting Mister Holmes to elicit information from Petitioner denied him both his Federal and State Rights, and the Trial Court's handling of information provided by Mister Holmes, served the same purpose. Thompson v. State 105 Nev. 151, 156, 771 P.2d 592, 596 (1989); Massiah v. Henry 447 U.S. 264 (1980); and Kuhlmann v. Wilson 477 U.S. 436 (1986).

Therefore, John R. Holmes should have not been allowed to testify at Petitioner's trial, that Petitioner confessed to him.

- 2) Trial Court erred in delaying the decision to admit evidence of Prior Bad Acts.

The Trial Court delayed the decision on whether to admit the letter, allegedly given to John R. Holmes, by Petitioner, which supposedly contained a confession as well as evidence of Witness Intimidation. As a result, the Prosecutor used the letter and referred to Witness Intimidation in his opening statement. Later, the Trial Court ruled that the same letter and evidence, was inadmissible, but the damage was done. This is clearly, an error, and taken in the context of the whole trial, it can not be Harmless, because there was no curative instruction. U.S. v. Taren Palma 997 F.2d 525, 532 (9th CIR 1993).

Though, in this case, the error was ruled harmless, it is only because the Court in that case found that a sufficient curative instruction was given and overwhelming evidence of guilt. While, in Petitioner's case, his conviction is based largely on witnesses that had made deals with the Prosecution and expected something in return.

- 3) State violated Petitioner's Right to Due Process under the United States Constitution when it introduced evidence of Petitioner's Prior Bad Acts.

N.R.S. 48.045(2) in pertinent part; Evidence of other Crimes, wrongs or acts is not admissible as to character of person in order to show that he acted in conformity

therewith. Federal Law is much the same. See U.S. v. Schuler 813 F.2d 978, 981-982 (9th CIR 1987) and Chapman v. California 386 U.S. 18, 24 (1967).

During the testimony of Brittny Adams, the Prosecutor elicited testimony from her regarding prior bad acts of Petitioner that improperly put Petitioner's character at issue, and since he did not testify, severely prejudiced him.

Brittny Adams testified as followed:

Q. Now you mentioned something about he wanted to kill her.

A. Yes.

Q. What exactly did he do or say to you?

A. Well, before we left, he offered me his gun, one of his guns to kill her.

Petitioner's counsel finally objected to this line of Questioning and the Court gave a brief curative instruction, but did not explain why the testimony was being stricken.

Immediately after the above testimony, the Prosecutor continued with Ms. Adams:

Q. On the way to the house of Tanesha Banks, did he offer anything to you?

A. Yes. He offered me a hammer.

A few lines down, the Prosecutor asked her what the hammer was for and she answered:

A. He said: You can just hit her between the eyes and kill her; just kill her.

T.T. Vol.V. Pgs. 158-159.

Detective Thowsen testified that Petitioner had tried to intimidate a witness, specifically, Tanesha Banks, but could not prove it was Petitioner who phoned in the alleged threats. T.T. Vol.V, Pgs 254-262.

Then, there's the letter that Petitioner allegedly gave John Holmes, which the State mentions in their opening statement and after it was ruled inadmissible during testimony of Ms. Adams. T.T. Vol.V, Pg. 173.

Moreover, the Prosecutor reinforced these same arguments concerning witness intimidation in his closing. T.T. vol., Pgs. 35-36.

Furthermore, the Court must note that Ms Adams was under a strong compulsion to testify as the State wanted her to. The State bolstered the charges against her. She was, originally, charged with first degree kidnapping, intimidating a witness, battery with the intent to cause bodily injury and speeding, all stemming from a single blow or punch thrown. She did not know that Ms. Banks would be a witness at Petitioner's trial and she certainly did not

kidnap Ms. Banks. Thus, the State charged her with crimes they could not prove and this tactic was effective. She changed her story and implicated Petitioner. T.T. Vol.IV, Pgs. 187-189 and Vol.V, Pg. 171.

"A Prosecutor's intimations of witness intimidation by a defendant are reversible error, unless the Prosecutor also presents substantial credible evidence that the defendant was source of the intimidation. Lay v. State 110 Nev. 1189, 1193, 886 P.2d 448 (1994). The State failed to prove conclusively that Petitioner was the source of intimidation.

By the time the Jury had heard all of the Petitioner's alleged prior bad acts, character was totally destroyed and the verdict inevitable. U.S. v. Sanchez 176 F.3d 1214, 1221 (9th CIR 1999) (Prosecutor's use of prior bad acts to impeach defendant's testimony was reversible error). Here, Petitioner did not testify, but the Prosecutor launched a furious attack on his character anyway. U.S. v. LeQuire 943 F.2d 1554, 1571 (11th CIR 1991) (Prosecutor's elicitation of testimony on five occasions about previous convictions of defendant was reversible despite curative instruction). Prior bad acts and convictions are the same for they refer to a crime Petitioner allegedly committed. Pertaining to the letter of John Holmes making, See U.S. v.

Spinner 152 F.3d 950, 960-962 (D.C. CIR 1998) (Prosecutor's questioning of defendant's girlfriend regarding letter she sent to him indicating prior bad acts was reversible error because Prosecutor emphasized letter in his closing argument).

The testimony about prior bad acts, the Prosecutor's closing and opening statements about prior bad acts, clearly warrants reversal of Petitioner's conviction.

- 4) State violated Petitioner's Due Process Rights under the United States Constitution when it prevented Defense Witness from testifying.

Where the substance of what the Prosecutor communicates to a defense witness is a threat over and above what the record indicates was timely, necessary, and appropriate, the inference that the Petitioner sought to coerce a witness into silence is strong. Kitchen v. U.S. 227 F.3d 1014, 1022-1023 (7th CIR 2000).

In the instant case, Miss Colleen Warner was set to testify in Petitioner's defense regarding how Petitioner came to possess the murder weapon. See attached affidavit of Colleen Warner. Miss Warner's testimony is crucial to Petitioner's defense, because Prosecution presented testimony that Petitioner maintained possession of the gun

in question, both before and after the crime. Miss Warner's testimony would have refuted that claim, especially since the incriminating testimony came from co-defendants testifying in order to receive short sentences. See attached affidavits of Jotee and Tommie Burnside. Miss Warner's testimony also could have shown that the Petitioner had nothing to hide and that is why he so readily gave the police the gun, because he possessed the gun does not in and of itself mean guilt, so how he came to possess the gun is extremely important. Furthermore, the presented testimony that appeared to imply Petitioner's guilt by virtue of him having the gun in his possession. T.T. Vol.IV, Pgs. 151-154.

Colleen Warner, ultimately did not testify. The reasons being: 1) The Prosecutor told her that because his co-defendants had beaten him to the punch and implicated him he did not have a chance. 2) The Prosecutor showed her a letter purportedly written by Petitioner. The letter contained several harsh and disparaging remarks about Miss Warner's character.

The Prosecutor had joked that he might show her the letter and the Trial Court specifically advised him not to. T.T. vol., Pg. 12. The Prosecutor however, did not follow the Court's instructions and showed her the letter in open

Court in the presence of Mister Sciscento and Mister Santacroce, Counsel for the Petitioner, at trial. He then asked her, "How do you feel about testifying now?"

The State clearly tampered with Miss Warner's Right to testify and prejudiced Defendant's right to a fair trial. "Whether substantial government interference with defense witness choice to testify occurred is a factual determination to be made by the District Court and is reviewed for clear error. Defendant alleging substantial interference with defense witness choice to testify is required to demonstrate misconduct by a preponderance of the evidence." U.S. v. Vavagas 151 F.3d 1185 (9th CIR 1998). "If witness did not testify and allegation of intimidation is true, no prejudice need be shown." U.S. v. Schelei 122 F.3d 994 (11th CIR 1997).

- 5) Prosecutor and Trial Court violated Petitioner's Due Process Rights under the United States Constitution when they vouched for the Credibility of State Witness and referred to things not in evidence.

"Improper vouching may occur when Government 1) Refers to facts outside record or implies that veracity of witness is supported by outside facts that are unavailable to jury; 2) implies guarantee of truthfulness; or 3) expresses personal opinion about credibility of witness." United States v. Santana 150 F. 3d 860 (8th CIR 1998).

In the case presently before the Court, Petitioner's conviction was based largely on the testimony of co-defendants and others who traded testimony for plea-bargains.

The Prosecutor in his closing argument to the Jury, said: "He had plead guilty to that and he has told the police, pursuant to that negotiation, what happened..." "He is guilty of his culpability in this crime and sure he has cooperated with the State." The Prosecutor was talking about Petitioner's co-defendant, Jerimiah Deskin. These statements imply the State's personal endorsement of Deskin's testimony. The fact that he connects Deskin's testimony with the fact that he negotiated with the State, impermissibly lends credibility to his testimony. Then he tells the Jury he "cooperated" with the State, certainly implies the State's satisfaction with his testimony. But, Prosecutor does not stop there. He goes on to tell the Jury, "they told you the truth and the truth came out." T.T. vol., Pgs. 64-68. The latter statement the Prosecutor is referring to all of the Petitioner's co-defendants and other criminals that testified for the State.

Statements such as those made by the State in Petitioner's case have been condemned by the Federal Courts. United States v. Kerr 981 F.2d 1050, 1053 (9th CIR

1992) (Prosecutor's vouching for credibility of four government witnesses was reversible error because witnesses testimony crucial to Prosecutor's argument, evidence connecting defendant to conspiracy only indirect. Improper vouching occurred when Prosecutor asserted own belief in witnesses credibility through comments including "I think [the witness] was candid. I think he was honest"). Improper vouching also occurs when a Prosecutor supports or implies the State's personal belief in witness credibility. Thus vouching does not have to be explicit. U.S. v. Francis 170 F.3d 546 (6th CIR 1999).

It is error for the Prosecutor to lead the Jury to infer that witness is telling the truth by virtue of a plea-bargain. U.S. v. Francis 170 F.3d at 549-50. No curative or accomplice instruction was given by the Court.

Between the above-cited comments, the Prosecutor moved on from vouching to testifying to alleged facts in evidence. The Prosecutor after explaining to the Jury how Deskin's testimony was in keeping with his plea-bargain, tells the Jury that the reason Jotee and Tommie Burnside, (also co-defendants), did not explicitly implicate Petitioner in the crime because they were afraid of being labeled snitches at the prison. He implies that he has special knowledge about their situation, and he continues

to emphasize they pled guilty as if that fact means that Petitioner is guilty as well. T.T. vol. Pgs. 65-66.

Both Jotee and Tommie Burnside testified at Petitioner's trial. The Prosecutor, however, did not ask them why they testified in the around about manner they did. The reason he did not ask them about it, is because he had already prearranged it with them. The Prosecutor decided that he would personally finish their testimony and explain why they testified in such an odd manner. His motive was being to add to their credibility. So he explained it with emotion. T.T. vol. Pg. 65-66. No reasonable person could believe what the Prosecutor was saying. No, the Prosecutor merely divided up the testimony and saved a portion for himself. None of this part of the Prosecutor's closing argument was in evidence. Opening argument, like closing, should not refer to matters that are not to be presented as evidence. U.S. v. Taren-Palma 997 F.2d 525 (9th CIR 1993). This was a device on the part of the State to vouch for the credibility of the testifying co-defendants. U.S. v. Kerr 981 F.2d at 1050, 1052-54.

Even more devastating to Petitioner's defense at trial was that the Trial Court vouched for Jerimiah Deskin's credibility as well. While Mister Deskin was testifying the following was said;

Q. Well, how did you feel about it, knowing that you took a man out there to kill-be killed in the desert?

A. Very bad.

Q. Now---

The Court: Sir, didn't you think of maybe warning him and saying don't go out in the desert whenever you went to pick him up? Did that cross your mind to do that?

The Witness: Yes

The Court: But you didn't do it?

The Witness: No. T.T. vol. pgs. 110-111.

Here the Trial Court passionately breaks in to the Prosecutor's questioning of Deskin, to find out why he did not try to save the victim's life. In doing so, the Trial Court indicated to the Jury that Mister Deskin's testimony was to be believed, because Trial Court believed him. There was no legal reason for the Trial Court to intervene with passionate curiosity and concern. It certainly inflamed the passions of the Jury and might have not only made Deskin credible, but lead the Jury to convict based on the Trial Court's apparent sorrow for the victim. The Prosecutor then took up his line of questioning where the

Trial Court left off. U.S. v. Amlani 111 F.3d 705, 714 (9th CIR 1997)

There was no accomplice instruction, cautionary instruction or curative instruction given. All the accomplices that testified thus appeared more credible than they would have had the proper instructions been given, as required in the State of Nevada. Sheriff v. Acuna 819 P.2d 197 (Nev. 1991) (Jury must be given cautionary instruction).

The Prosecutor further emphasizes the accomplice credibility in his closing argument, when he argued the standard credibility and believability Instruction in a general fashion. This would not have been possible if the cautionary Instruction had been given. In the same context he tells the Jury repeatedly that the accomplices all corroborate each other. T.T. vol. pg. 59. This is a misstatement of the Law. Accomplices can't corroborate each other in Nevada. Sheriff v. Gordon 96 NEV 205, 206, 606 P.2d 533, 534 (1980).

6) Prosecutor violated Petitioner's Due Process Rights under the United States Constitution when it presented scripted, and false testimony as well as conflicting theories of the case. Failure to give Accomplice Instruction Violated Petitioner's U.S. Constitutional Rights.

The Prosecutor may not "become the architect of a proceeding that does not comport with the Standards of Justice." Id. The Prosecutor, therefore, violates the Due Process Clause if he knowingly presents false testimony - whether it goes to the merits of the case or solely to witness credibility. Thompson v. Calderon 120 F.3d 1045, 1058 (9th CIR 1997) (quoting Napue v. Illinois 360 U.S. 264 79 S.Ct. 1173, 3L.Ed.2d 1217 (1959); Mooney v. Holohan 294 U.S. 103, 55 S.Ct. 340, 19 L.Ed. 791 (1935) n.12.

Petitioner was tried on the charges of conspiracy to commit murder and first-degree murder with the use of a deadly weapon. Petitioner was alleged to have conspired with Jerimiah Deskin, Jotee and Tommie Burnside. However, the only testimony with regard to a conspiracy came for Deskin. He exchanged testimony against Petitioner for a plea-bargain. He was allowed to plead guilty to accessory to commit murder and for a significantly lighter sentence. He was originally charged with the same crimes as Petitioner.

Accessory to commit a felony (murder) consist of:
"After the commission of a felony harbor, conceals, or aids such an offender with intent that he may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is

liable to arrest, is an accessory to the felony." See
N.R.S.196.030(1).

Deskin's testimony went way beyond what the Prosecutor claimed he was guilty of, in connection with Petitioner's case. His testimony also conflicted with the crime the Prosecutor allowed him to plead guilty to. In his closing argument the Prosecutor told the Jury that Deskin had admitted his culpability in this crime. He then defined that culpability to be "Accessory to Murder...not the actual puller of the trigger"...T.T. vol. pg. 63-64. That is not the correct definition of Accessory to Commit Murder. The crime of Accessory attaches after the crime occurs before the crime, then it is a conspiracy. Deskin did not testify that he was merely an accessory, but a conspirator. Thus the Prosecutor actually argued to the Jury that Deskin did not conspire with Petitioner in order to increase his credibility in the eyes of the Jury. The Prosecutor then emphasized the point by telling the Jury, "they told the truth", T.T. vol. Pg. 68, and that Deskin's testimony corroborated all the other witnesses testimony, T.T. vol. pgs. 64 and 68. Before the above comments, the Prosecutor argues the credibility and believability of the witnesses. T.T. vol. pg. 59.

The Prosecutor here not only misstated the law, U.S. v. Rodrigues 159 F.3d 439, 451 (9th CIR 1998), but presented false testimony and conflicting theories of the case. Thomas v. Calderon 120 F.3d at 1058-59. By prior Judicial Determination at Deskin's plea-bargaining hearing, his testimony at Petitioner's trial is necessarily false. Nichols v. Collins 802 F.Supp. 66(S.D. Tex 1992). The Prosecutor's erroneous description of what constitutes Accessory to Commit Murder could have confused the Jury as to the elements of Conspiracy to Commit Murder, leading them to think they are identical crimes. Therefore, in the minds of the Jurors mere knowledge of the crime after the fact would have been the same thing as conspiracy.

Accomplices' Jotee and Tommie Burnside also testified at Petitioner's trial. Their testimony mirrored each other's. They both testified in a cryptically, and mystifying fashion. In their original statement to police they did not implicate Petitioner in the crime, they identified someone else as committing the murder. After being offered plea-bargain by the State, they changed their stories. T.T. Vol.V pgs. 91, 92, 93, 113, 116, and 139. Tommie Burnside testified that "no one did it", T.T. Vol.V pg. 116, and Jotee Burnside testified only to who did not do it. Neither man directly implicated Petitioner or

provided a reason other than a plea-bargain for changing their stories. Nor did either man admit any conspiracy.

The Prosecutor knew that they were going to testify in the indirect fashion, leaving things unsaid and unexplained. Their testimony was designed to deflect any attempt at an effective cross-examination and to increase their credibility.

The Prosecutor, in his closing argument, instead of questioning them as to why they testified that way, finished their testimony for the Jury. He told a hard luck story about how they feared being labeled snitches in prison. T.T. vol. pg. 65. But they never testified to any such fear. The Prosecutor succeeded in bolstering their credibility by having them testify in such a style that it implied fear and hidden motives. They should have been required to tell the plain and clear truth.

The fact that the Prosecutor agreed to the scripted testimony of Jotee and Tommie Burnside explicitly violates N.R.S. 174.061, that provides in pertinent part: (2) A prosecuting attorney shall not enter into an agreement with a defendant which: (A) limits the testimony of the defendant to a predetermined formula. (B) Is contingent on the testimony of the defendant contributing to a specified conclusion. Sheriff v. Acuna 819 P.2d at 200 (Nev. 1991).

The Trial Court failed to give the cautionary accomplice instruction or any other curative instruction. The purpose of the cautionary instruction is, "that, it advises the Jury that it should view as suspect incriminating testimony given by those liable for prosecution for identical charged offense as accused. Riley v. State 110 Nev. 638, 653, 878 P.2d 272 (1994).

State violates a defendant's due process Right to Fundamental Fairness if it arbitrarily deprives the defendant of State law enforcement. Laboa v. Calderon 224 F.3d 972, 979 (9th CIR 2000) (Holding that violation of a state law prohibiting convictions based upon uncorroborated accomplice testimony can violate the constitution).

In Nevada it is the duty of the Trial Court to issue the accomplice instruction, inter alia, when a defendant is faced with testimony against him by accomplices who have plea-bargained for that testimony. In Sheriff v. Acuna, 819 P.2d at 200, the language is mandatory and leaves no room for doubt, ("Jury must be given cautionary instruction").

Failure to give the accomplice instruction in Petitioner's case was particularly prejudicial to Petitioner's defense, because Petitioner's conviction for Conspiracy to Commit Murder is based solely on

uncorroborated accomplice testimony and the Prosecutor resorted to various devices alleged earlier to bolster the credibility of accomplices testimony corroborated one another. Accomplices can not corroborate each other.

Sheriff v. Gordon 96 Nev. 205, 206, 606 P.2d 533, 534

(1980). This misstatement of the law would not have been possible had the cautionary instruction been given.

Plain error may result from failure to give accomplice instruction. United States v. Jones 673 F.2d 115, 119 (5th CIR 1982). Petitioner submits that this is such a case and fact that Counsel was allowed to cross-examine accomplices regarding their plea-bargains does not cure the defect considering the lengths the Prosecutor went to, in order to increase their credibility.

- 7) Prosecutor violated Petitioner's Right to Due Process Under the United States Constitution, when it withheld the whereabouts of Charles Von Lewis, Failed to Investigate and Inflamed the Passions of the Jury during Closing Argument.

During Petitioner's trial, counsel for the defense, though there was no defense, advanced a theory; that a person by the name of Charles Von Lewis actually committed the crimes for which Petitioner stood trial. Counsel for the defense mainly achieved this during cross-examination.

The Prosecutor had led Petitioner's Counsel to believe that Mister Von Lewis would be called as a witness for the Prosecution and Petitioner's trial Counsel believed it. Therefore, he did not include Von Lewis on the defense witness list.

At trial it became obvious that the State had no intention of calling Von Lewis as a witness. The reason remains unknown. Counsel for the defense, attempted to ascertain the reason during cross-examination of Detectives Buczek and Thowsen. They both testified that they tried, but could not locate him. T.T. Vol.IV pg. 1517.

Petitioner asserts that the detectives as well as the State were not telling the truth about not being able to locate Von Lewis, because he had been in their custody during Petitioner's trial. See Exhibit "A". Had Von Lewis been produced for Petitioner's trial, he could have impeached accomplices Jerimiah Deskin, Jotee and Tommie Burnside's testimony that he was not present during the commission of the crime, as well as other hearsay testimony by Crystal Bradley and Tanesha Banks. Von Lewis could have also testified to the true ownership of the murder weapon and the nature of his relationships with the victim. Von Lewis may have even taken the Fifth Amendment even that would have significantly affected the outcome of

Petitioner's trial given the position that Defense Counsel took throughout the trial that Von Lewis was the guilty party not the Petitioner.

For purposes of disclosure obligation under Brady prosecution was deemed to have known the true identity of Third person who also a suspect in the case, which would have disclosed his prior conviction and fugitive status, where this information was known by Police detective, whether or not Prosecutor had Actual Knowledge of the fact. Smith v. Secretary of New Mexico Dept. of Corrections 50 F.3d 801, 826-27 (10th CIR 1995); U.S. v Andrews 824 F.Supp. 1273 (N.D.Ill.1993).

Police officer who testified at Petitioner's trial and was the investigating officer qualified as arm of prosecution for purposes of Brady and his information was attributable to prosecution, Pina v. Henderson 586 F.Supp. 1452.

It is impermissible for governmental authorities knowing of crucial witness who might be helpful to defendant, to conceal such witness, Delgado v. New York City Department of Corrections 842 F.Supp. 711.

Compulsory Process and Due Process Right are both implicated where actions of Government prevents defendant from obtaining material and favorable evidence, thus when a

material and favorable witness is under Government control. Government has a certain degree of obligation to ensure that witness is not rendered unavailable to defendant, U.S. v. Hamilton 730 F.Supp. 1272.

Defendant's failure to request favorable evidence does not leave government free of all obligation to disclose such evidence to defendant, under Brady. Kyles v. Whitley 514 U.S. 419, 115 S.Ct. 1555 (1995). This includes impeachment evidence, Giglio v. U.S. 405 U.S. 150, 154 1972.

Furthermore, both detectives while maintaining they investigated the possibility that Charles Von Lewis A.K.A. Damion Von Lewis, A.K.A. Sugar Bear was the actual culprit, did nothing to eliminate him as a suspect, despite two statements from Jotee and Tommie Burnside identifying him as the gunman. T.T. Vol.IV pgs. 177, 178, as well as Brittny Adams. In the beginning of the investigation the Police had more evidence against Von Lewis than Petitioner, yet they did nothing more than run his name through scope. T.T. Vol.V pgs. 263-265. Neither detective could explain why or how Von Lewis was eliminated as a suspect. They never performed powder burn test, DNA test, or any other test to connect Von Lewis to the physical evidence. All

that was done was to issue plea-bargains to accomplices and others for an easier target.

Failure of Prosecution to investigate possibility of someone other than the accused committed the crime violates Due Process, Com. Of Northern Mariana Island v. Bowie 236 F.3d 1083 (9th CIR 2001).

In his closing argument the Prosecutor compared Petitioner to the wolf in the child's story about the wolf in sheep's clothing. He told the story in an extremely long-winded fashion in which he characterizes Petitioner co-defendants as helpless lambs victimized by the wolf, i.e., Petitioner. T.T. vol. pgs. 68-69. He also told the Jury that Petitioner had "asked for harm to come to himself", i.e., that Petitioner wanted the Jury to find him guilty. These comments violated Petitioner's Due Process Rights as well as his right not to testify by calling into question Petitioner's character. Prosecutor sought to inflame the passions of Jury and misstate accomplice role in the crime. U.S. v. Francis 170 F.3d 546, 549 (6th CIR 1999) (Prosecutors calling defendant "a liar" and "con man" was reversible error in absence of curative instructions); U.S. v. Schuler 813 F.2d 978, 981 982 (9th CIR 1987) (Prosecutor's comment on defendants laughter during testimony was Reversible Error because comment improperly

put defendant's character at issue and impugned defendant's Fifth Amendment Right to testify).

In closing the standard in Brecht v. Abrahamson 507 U.S. 619, 637 (1993), must be applied to the above allegations of Prosecutorial misconduct. The Supreme Court in Brecht said, "trial errors may be harmful only when the error had substantial and injurious effect or influence in determining the jury's verdict." (quoting Kotteakos v. U.S. 328 U.S. 750, 776 (1946)). The Supreme Court further held that trial errors can not be viewed as isolated from one another, but rather they must be viewed in the context of the entire trial and their cumulative effect analyzed. United States v. Young 470 U.S. 111, 105 S.Ct.1038 (1985).

The Brecht Court laid out two broad kinds of Constitutional violations that may occur in a criminal proceeding. One is "structural" affecting the basic elements of a trial... The other is "trial error", a Constitutional mistake made in the course of the trial. The first kind of violation vitiates the proceedings; it may not be considered harmless. The second kind is not necessarily fatal; it may in the light of the whole record, be found not to have caused actual prejudice. Brecht v. Abrahamson 507 U.S. 619, 113 S.Ct 1710 (1993).

Petitioner asserts that he has demonstrated both types of error. That alone or in combination violate Petitioner's Due Process Rights under the Constitution.

There is another type of error the Brecht Court recognized. It is called a Footnote Nine Error in reference to its location in the Brecht decision. See Hardnett v. Marshall 25 F.3d 875, 879 (9th CIR 1994). It is known as a hybrid error and is defined as follows, "a deliberate and especially egregious error of the trial type, or one combined with a pattern of Prosecutorial misconduct" as to infect the integrity of the proceedings" and warrant the grant of habeas relief even if it did not substantially affect the jury's verdict. *Id.* At 507 U.S. 638, n.9 113 S.Ct at 1722, n.9.

Petitioner respectfully request this Court to perform a Footnote Nine analysis as the pattern of Prosecutorial misconduct outlined above certainly infected the integrity of the trial and that is true regardless of whether this Honorable Court agrees that it also affected the Jury's verdict.

The combined effect of the Prosecutorial misconduct and other errors served to deny Petitioner a fair trial.

III. Petitioner's Right to Due Process under the United States Constitution was violated when

**Court failed to instruct the Jury on Willfulness,
Deliberation, and Premeditation.**

In instructing the Jury on premeditation the court used the Kazalyn instruction (Kazalyn v. State 108 Nev. 67. 75, 825 P.2d 578, 583 (1992)).

Defense Counsel objected to this instruction, instead offering Defense "A", T.T. Vol.VI pg. 3.

The Court rejected Defense "A" Id. at pg.5. In Byford v. State 116 Nev._____, 994 P.2d 700 (2000). The Nevada Supreme Court held that, "it is clear from the statute that all three elements, willfulness, deliberation and premeditation must be proven beyond a reasonable doubt before an accused can be convicted of first degree murder".

Byford directed district courts to "cease instructing juries that a killing resulting from premeditation is willful, deliberate, and premeditated murder". Id. This is exactly what the Jury was instructed to think in Petitioner's trial.

The Nevada Supreme Court recognized that the Kazalyn instruction "blurs the distinction between first and second degree murder. Byford supra.

Petitioner asserts that it does more than blurs the Jury's vision. It totally blinds them to the Prosecutor's obligation of proving every element of the crime of first

degree murder, thus violating Petitioner's Due Process Rights. U.S. v. Baudin 515 U.S. 506, 522-23 (1995). Furthermore, the Kazalyn instruction creates a mandatory rebuttable presumption that violates the Due Process Clause of the United States Constitution. Sandstrom v. Montana 442 U.S. 510, 99 S.Ct. 2450 (1979); Francis v. Franklin 471 U.S. 307, 105 S.Ct. 1965 (1985).

It forces Petitioner to disprove premeditation, willfulness, and deliberation. For the instruction orders the Jury is to presume the murder was willful, deliberate, and premeditated murder, if it finds the killing resulted from premeditation. Byford supra. Consequently only premeditation need be proven to find the Petitioner guilty of all the elements of first degree murder, because the others are presumed proven once the instruction is satisfied.

Petitioner's claim can be distinguished from the one made in Houston v. Dutton 50 F.3d 381 (6th CIR 1995), which is the origin of the Byford decision. Byford v. State 994 P.2d at 713, where the Sixth Circuit held no Federal Constitutional Right violated by lower courts failure to apply State v. Brown 836 S.W. 2d. 530, 538, (Tenn.1992)

In Houston the Petitioner did not argue or present the Kazalyn instruction issue in a Federal context. Rather,

he argued that the State applied State law to his disadvantage. Houston v. Dutton 50 F.3d at 385 (No Federal question presented).

However, your Petitioner here argues that his Federal Constitutional Rights were violated in two ways. First, the State was not obligated to prove every element of the crime and second, the instruction unconstitutionally shifts the burden creating a mandatory presumption. Yates v. Evatts 500 U.S. 391, 111 S.Ct. 1884 (1991).

IV. Petitioner's Right to Due Process under the United States Constitution was violated when Court Issued an Erroneous Malice Instruction combined with Problematic Reasonable Doubt Instruction.

The Nevada Supreme Court has held, in McCullough v. State 99 Nev. 72, 75 657 P.2d 1157, 1158 (1983), that "use of a disapproved reasonable doubt instruction constituted reversible error, when coupled with "any" other attempt to supplement change, or clarify the statutory reasonable doubt definition. Id. At 972 P.2d 342. See Holmes v. State 114 Nev. 1357, 972 P.2d 337 (Nev. 1998) and N.R.S. 175.211.

Similarly in Cordova v. State 6 P.3d 481 (Nev. 2000) the Court held that the jury instruction defining implied malice, N.R.S. 200.020 (2), is constitutionally valid as long as jury is properly instructed on the presumption of

innocence and State's burden to prove beyond a reasonable doubt every element of the crime charged. Id. At 6 P.3d 483 (quoting Doyle v. State 113 Nev. 879, 900-02, 921 P.2d 901, 915-16 (1996)).

Pursuant to N.R.S. 200.020, Petitioner had the same malice instruction issued at his trial as was discussed by the Court in Cordova. It read as follows; "Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart".

Unlike the Petitioner in Cordova, the Jury was not properly instructed on the State's burden to prove beyond a reasonable doubt every element of the crime charged. As argued above, the State was relieved of its burden to prove beyond a reasonable doubt, the elements of willfulness, deliberation and premeditation to first degree murder. See issue number three.

Moreover, while Nevada's reasonable doubt instruction is not unconstitutional alone and on its face, it is certainly problematic. Its various defects have been cured over the years. Ramirez v. Hatcher 136 F.3d 1209, 1213-14 (9th CIR 1998). Nevertheless, it still contains language that has been criticized by several courts. Specifically the "more weighty affairs of life language. The Ninth

Circuit did not endorse this language. Id. 136 F.3d at 1213.

In Victor v. Nebraska 114 S.Ct. 1252-52 (1994), the court criticized the more weighty affairs of life language, along with other Federal circuits. The Nevada Supreme Court itself has suggested that the language is improper. Bollinger v. State 901 P.2d 671, 674 n.2 (Nev. 1995). Nevada's reasonable doubt instruction containing the more weighty affairs of life language is problematic and susceptible to erroneous definition of the reasonable doubt standard. Such is the reasonable doubt standard issued in Petitioner's case.

Petitioner submits that the malice instruction in question here is what is known as a permissive inference instruction. Francis v. Franklin 471 U.S. 307, 105 S.Ct. 1965 (1985).

These kinds of instructions can violate due process as well, even though they don't require a jury to infer a specific conclusion if the Government proves certain predicate facts. Although such an instruction does not shift the burden of proof, it violates due process "if the suggested conclusion is not one that reason and common sense justify in light of the proven fact before the jury". Francis, 471 U.S. at 314-15, 105 S.Ct. at 1971.

Instructions are reviewed as a whole and reviewing Court considers how Jury would have reasonably understood them in the context of entire trial. U.S. v. Warren 25 F.3d 890, 897 (9th CIR 1994).

In Warren, the Court analyzed a permissive inference malice instruction and concluded it did not violate the due process clause because the lower court issued curative instructions in close proximity to the malice instruction. *Id.* 25 F.3d at 898.

No such instruction was issued at Petitioner's trial to cure or explain the challenged malice instruction. In fact, it was aggravated by the instruction defining malice aforethought, instruction number nine, this instruction does not refer to implied malice, but lists a veritable cornucopia of facts, that purport to define malice aforethought in general. Since instruction number nine does not clarify what kind of malice aforethought its defining, the Jury could have easily thought that all State's of mind and facts listed in instruction number, constitute implied malice or malice may be inferred from proof of any of those facts. The Jury must have been confused. Alexander v. Foltz 838 F.2d 140, 146 (6th CIR 1988) (The necessary factual element of malice may be permissibly inferred from the facts and circumstances of

the killing, but it can never be established as a matter of law by proof of other facts").

Like the Petitioner in Holmes supra, the attorney for Petitioner did not put on a defense or call any witnesses. Under these circumstances Petitioner asserts that plain error was committed by the combination of problematic reasonable doubt instruction and permissive inference malice instruction.

V. Ineffective Trial and Appellate Counsel violated Petitioner's Sixth Amendment Right to Counsel under the United States Constitution.

The Sixth Amendment guarantees the right to effective assistance of Counsel in a criminal proceeding. Strickland v. Washington 466 U.S. 668 (1984). The Supreme Court established a two-prong test to evaluate ineffective assistance claims. To obtain reversal of conviction, the Petitioner must prove: (1) that Counsel's performance fell below an objective standard of reasonableness, and (2) that Counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding. *Id.* At 687.

Right to effective assistance of Counsel is guaranteed even if Petitioner retains his own counsel. Stouffer v. Reynolds 168 F.3d 1155 (10th CIR 1999).

Petitioner must allege specific errors or omissions of Counsel to prove ineffective assistance of counsel. U.S. v. Cronin 466 U.S. 648, 665 (1984). What follows is a catalog of Counsel's errors and law that supports Petitioner's position:

(A) Petitioner's defense consisted of a double edge. One, that someone else committed the crime and two, an alibi defense, but not strictly speaking. What Petitioner means by an alibi defense is that he can establish a time line of his whereabouts whereas he could not have committed the crime charged. It does not mean, however, that Petitioner was not present at the scene of the crime before the crime occurred.

At trial Petitioner's Counsel failed to call a single witness, in fact Counsel offered no defense at all. "If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then that has been a denial of Sixth Amendment Rights which makes adversary process itself presumptively unreliable." U.S. v. Cronin 466 U.S. at 660.

Petitioner's Counsel submitted a list of alibi witnesses to be called at trial, but never called any of them. Had he called them, they could have testified to Petitioner's whereabouts during the time the crime

occurred, thereby changing the outcome of the trial.

Harris v. Reed 894 F.2d 871 (7th CIR 1990) (en banc) (Counsel's strategy not to call any witnesses at murder trial, despite existence of credible defense, and reliance on perceived weaknesses of prosecution's case was ineffective assistance because it fell outside wide range of professionally competent assistance at P. 878); See also Washington v. Smith 219 F.3d 620, 634-35 (7th CIR 2000) (Failure to produce possible alibi witnesses at trial resulted in prejudice to Petitioner).

Furthermore, Brittny Adams testified at Petitioner's trial. She testified that Petitioner had engaged in witness intimidation of a witness at trial (Tanesha Banks) T.T. Vol. V pgs. 148 through 175. Miss Adam's testimony also constituted admission of prior bad acts of Petitioner. Petrocelli v. State 101 Nev. 46, 52, 692 P.2d 503, 508 (1985). The Court allowed her to testify to prior bad acts because it ruled that it was more probative than prejudicial and her accounts of events were unchallenged. Lay v. State 110 Nev. 1189, 1193, 886 P.2d 448 (1994). Ms. Adam's testimony severely prejudiced Petitioner at trial because it went directly to the question of guilt or innocence. Lay supra.

There was another witness to the events that Miss Adams described in her testimony. Her name is Porsche Nichols. She gave a statement contradicting everything Brittny Adams said. Miss Nichols essentially said no witness intimidation occurred at the behest of Petitioner. See Exhibit B, Porsche Nichols statement to Police.

Petitioner's Counsel was aware of Miss Nichols statement, but did not call her as a witness at the Petrocelli hearing or as a rebuttal witness at Trial. If he had called her at the Petrocelli Hearing, it is doubtful the Court would have let Miss Adams testify at Trial to witness intimidation, because it would have been in doubt whether Petitioner was the source of the intimidation. See Lay v. State supra. If he had called her to Trial to rebut Miss Adams' testimony, it would have significantly changed the outcome of the proceedings. Miss Adams' testimony unchallenged, was devastatingly prejudicial to Petitioner's defense.

Petitioner's Counsel also failed to investigate the possibility of other witnesses to support the defense theory of the case. If he had, he would have located Madison Jones and Michelle McKinnon. Petitioner's Counsel advanced a theory during cross-examination that Charles Von Lewis actually committed the crime for which Petitioner is currently imprisoned. Mr. Jones and Miss McKinnon would

have testified that they saw Mr. Von Lewis put a nine-millimeter to Michael Beaseley's head and threatened to kill him with the gun because he wanted to leave the gang. Michael Beaseley is the murder victim in Petitioner's case. Madison Jones and Michelle McKinnon could have provided the Jury with the reason, motive, and capacity in which Von Lewis could have committed the murder. Petitioner located them (witnesses) by simple word of mouth and told Counsel to interview them and he did not, nor did he call them as witnesses. Instead, he chose to put on no defense at all.

Lord v. Wood 184 F.3d 1083, 1093-96 (9th CIR 1996)

(Counsel's failure to investigate and introduce three possible witnesses was prejudicial because testimony was the only support for defendant's alibi). Likewise, these witnesses were the only support for the defense theory that Mister Von Lewis committed the crime.

Petitioner asserts that his Counsel was bent on getting him to plea-bargain and his refusal to call any witnesses was a tactic to force Petitioner to plead guilty.

(B) Before Petitioner's trial began, Counsel for Petitioner entered into negotiations with the Public Defender's Office for employment. At some time before trial, Joseph S. Sciscento, Counsel for Petitioner, accepted employment with the Public Defender's Office. He

had actually relocated his practice to the Public Defender's Office prior to trial, though it is not known to Petitioner if he performed any duties for his new employer.

The Public Defender's Office represented Petitioner's co-defendants who testified against him. The Special Public Defender advised Petitioner's co-defendants to testify against Petitioner and accept a plea-bargain in exchange for their testimony. Co-defendants Jotee and Tommie Burnside accepted and acted upon the Public Defender's advice.

At Petitioner's sentencing, Mr. Sciscento advised the Court, albeit late, that there is a conflict of interest, because he works for the Public Defender, who represented Petitioner's co-defendants. On that basis he requested, the Court allow him to withdraw from Petitioner's case, to relieve him of any obligation to assist in the preparation of Petitioner's direct Appeal. The Court granted his request and appointed Frederick Santacroce to represent Petitioner on direct appeal.

Petitioner asserts that Mister Sciscento represented a conflict of interest during Petitioner's trial and labored under divided loyalty. Paradis v. Arave 130 F.3d 385 (9th CIR 1997).

Mr. Sciscento's conflicting interests were protecting Petitioner's co-defendants who were represented by Mister Sciscento's employer, and co-defendants' interest were diametrically opposed to Petitioners. Mr. Sciscento's actions prejudiced Petitioner at Trial, as Mr. Sciscento could not protect Petitioner's interest as well. In fact, Mr. Sciscento had an interest in seeing Petitioner convicted, because if Petitioner was found not guilty, additional charges could have been filed against his law firm (Public Defender's Office), other clients (Petitioner's co-defendants). Blankenship v. Johnson 118 F.3d 312, 318 (5th CIR 1997); U.S. v. Hall 200 F.3d 962, 966 (6th CIR 2000); Stoia v. U.S. 22 F.3d 766, 769 (7th CIR 1994; and U.S. v. Martin 965 F.2d 839, 842 (10th CIR 1992).

If one attorney in firm has actual conflict of interest Court imputes that conflict to all attorneys in firm. Freund v. Butterworth 117 F.3d 1543 (11th CIR 1997); U.S. v. Ross 33 F.3d 1507 (11th CIR 1994).

Mister Sciscento began Petitioner's trial by joking about how long Petitioner's sentence would be. T.T. Vol.I Pg. 132. This comment set the tone for Mister Sciscento's lackadaisical representation of Petitioner through trial.

Mister Sciscento called no witnesses to testify on Petitioner's behalf, presented no defense at all, and

failed to sufficiently investigate the case to locate witnesses listed above as well as Charles a.k.a. Damion Von Lewis. Mister Sciscento relied on the State to do that. Hess v. Mazurkiewicz 135 F.3d 905, 909-911 (3rd CIR 1998). See also Stoia supra.

Furthermore, Mr. Sciscento failed to introduce any evidence on Petitioner's behalf. He had in his possession a videotape that depicted Mister Von Lewis threatening Beaseley with a gun. If Counsel had introduced this tape, it would have established the possibility that Von Lewis followed up on his threats and murdered Beaseley not Petitioner. Counsel advocated this theory during cross-examination of the States' witnesses, but refused to introduce evidence of it.

Moreover, Mister Sciscento witnessed the Prosecutor show a potential defense witness a letter written by Petitioner, in an attempt to prevent her from testifying and did not report it to the Court. He was an eyewitness to the States witness intimidation of a defense witness and did not feel it was wrong.

Mister Sciscento was further ineffective in his attempt to protect his other clients, Tommie and Jotee Burnside, Petitioner's co-defendants. He did not object to the Court's failure to issue the mandatory cautionary

accomplice instruction, in order to insure that their testimony was credible and carried significant weight with the Jury. He did not request the accomplice instruction either, even though he was aware that most of the witnesses against Petitioner were accomplices.

Mister Sciscento allowed the Prosecutor to lead the Jury to believe that all testifying accomplices were only guilty of accessory to commit murder and did not expose the fact that if that were true, the Petitioner could not have been guilty of conspiracy to commit murder, for which he was charged, because he would have had no one to conspire with. He also allowed the Prosecutor to continually vouch for co-defendants' credibility. Both of these assignments of error occurred during direct examination and closing arguments. See above errors II and III.

Lastly, even when Mister Sciscento won an issue he refused to take advantage of the small victory. Mister Sciscento was successful in preventing the admission of testimony in regards to witness intimidation. On the basis that it came in the form of a letter that the Prosecutor could not prove Petitioner authored. The letter came from a Jailhouse informant who obtained it illegally at Police direction. According to the State, the letter was meant to intimidate potential witnesses for the State.

All the facts regarding how the informant received the letter and when he received it, the nature of its contents, and his connection with the Police were known the first day of trial. Yet, the Court did not make a ruling on its admissibility, allowing the Prosecutor to refer to it in his opening statement. When the Court finally did rule on its admissibility, it ruled in favor of Defense. The damage had been done. The Prosecutor advanced the idea that he only mentioned it in his opening because he thought it would be admissible. On what basis, he never said, but requested that Defense Counsel not be allowed to correct his error and Sciscento agreed. T.T. Vol.V Pgs. 198 and 199.

Mister Sciscento should have fought for the right to try to cure the error in closing argument or for the Court to issue a curative instruction, instructing the Jury to disregard the portion of the State's opening argument referring to the letter. Instead, the error went unchallenged and Sciscento sought a mistrial outside the presence of the Jury.

Mister Sciscento was not functioning as an advocate. Petitioner submits that he has presented a colorable claim of conflict of interest.

Petitioner has satisfied the standard of Cuyler v. Sullivan 446 U.S. 335, 350 (1980), for showing a violation of the Sixth Amendment by factually demonstrating: (1) that defense Counsel was actively representing conflicting interest and (2) that the conflict had an adverse effect on specific instances of Counsel'' performance. Id. at 348.

(C) Petitioner respectfully requests that the Court consider each of the individual allegations of ineffective assistance of Counsel listed above as part of the conflict of interest claim individually. Each of the instances of ineffectiveness of Counsel stated above can, on its own, constitute ineffective assistance of Counsel whether or not the Court agrees that there was a conflict of interest.

"Type of breakdown in adversarial process that implicates the Sixth Amendment is not limited to Counsel performance as a whole; specific errors and omissions may be the focus of a claim of ineffective assistance as well. U.S. v. Cronin 466 U.S. at 656, 657.

(D) Petitioner wanted to testify in his own behalf in light of the fact that Defense Counsel did not intend to call any witnesses on Petitioner's behalf, but Counsel refused to let Petitioner testify without explaining why, except to say it's "general practice". Petitioner did not have anything to hide, nor did he have any felony

conviction or any convictions at all at the time of Trial. The Prosecutor trampled Petitioner's character during closing arguments and the presentation of the State's case. Petitioner was restrained by Counsel from rebutting this or telling his side of the story regarding his alibi, why and how he came to possess the murder weapon, etc. Gallego v. U.S. 174 F.3d 1196, 1197 (11th CIR 1999) (Counsel's alleged refusal to allow defendant to testify, if proved, would fall outside range of reasonably effective assistance).

(E) Counsel on direct appeal was ineffective for Failure to raise the meritorious issues contained in this memorandum of Law. U.S. V. Mannino 212 F.3d 835, 845 (3rd CIR 2000); Bell v. Jarvis 198 F.3d 432, 444 (4th CIR 1999); U.S. v. Williamson 183 F.3d 458, 463-64 (5th CIR 1999); Delgado v. Lewis 181 F.3d 1087, 1092 (9th CIR 199) and Masen v. Hanks 97 F.3d 887 894 (7th CIR 1996) (Counsel's failure to raise obvious and significant issues was ineffective assistance because counsel's deficient performance creates presumption of prejudice).

Petitioner has set forth five claims of error and numerous sub-claims of error that violate his Constitutional Rights under the Fifth, Sixth, and Fourteenth Amendments.

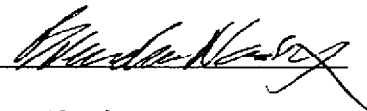
Wherefore,

Petitioner prays that this Honorable Court:

- 1) Allow this petition to be heard on the merits of claims made;
- 2) Grant an Evidentiary Hearing;
- 3) Order a new trial be held;
- 4) Order release of Petitioner from unconstitutional confinement.

Or whatever relief this Court deems true and appropriate.

Dated this 27 day of January 2002.

Signed By: 

Brendan Nasby
#63618
P.O. Box 1989
Ely, Nevada 89301
Petitioner in Pro-per

EXHIBIT "A"

District Case Inquiry - Case Summary

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Case 99-C-162235-C

Just Ct. 99-F -14708
Case#

Status CLOSED

Plaintiff State of Nevada
Defendant Von Lewis, Charles
Judge McGroarty, John S.

Attorney Bell, Stewart L.
Attorney Bolton, Jennifer
Dept. 16

Filed Date 10/07/1999

Closed Date 01/14/2002

Last Hear 01/10/2002

For STATUS CHECK: REVOCATION/CUSTODY

Outcome PROBATION REINSTATED

Next Hear

For

Pre-trial 08/21/2000 at 08:45 AM

Trial

Disposed

Disposition

Consolidated

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Case 99-C-162235-C

Just Ct. 99-F -14708
Case#

Status CLOSED

Plaintiff State of Nevada
Defendant Von Lewis, Charles
Judge McGroarty, John S.

Attorney Bell, Stewart L.
Attorney Bolton, Jennifer
Dept. 16

Total of 46 entries, presently displaying 41 through 46.
 Entries are displayed most recent first.

Filed Date	Description	
	Outcome	Performed
	For	
	Filed By	
10/18/1999	BAIL BOND #AS15 146351 \$11,000.00	
	Von Lewis, Charles	
	Von Lewis, Charles	
10/20/1999	CALENDAR CALL	
		03/03/2000
	Von Lewis, Charles	
10/20/1999	TRIAL BY JURY VC 3/3/00	
	VACATED	03/06/2000
	Von Lewis, Charles	
10/12/1999	INFORMATION	
		10/12/1999
	Von Lewis, Charles	
	State of Nevada	
10/07/1999	INITIAL ARRAIGNMENT	
		10/19/1999
	Von Lewis, Charles	
10/07/1999	CRIMINAL BINDOVER Fee \$0.00	

Entries: (1 - 10) | (11 - 20) | (21 - 30) | (31 - 40) | (41 - 46)

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EXHIBIT "B"

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,)	
)	
Defendant,)	
)	
vs.)	CASE NO. C154293
)	
THE STATE OF NEVADA,)	
)	
Plaintiff.)	
_____)	

THE AFFIDAVIT OF "COLLEEN WARNER"

I, Colleen Warner, being first duly sworn, deposed and say that on or about, October 13, 1999, I was present during the trial of Nasby v. State. Before the trial began, the District Attorney showed me a copy of a handwritten letter, while in the Courtroom, written by Mr. Nasby. At this time, myself and Mr. Nasby were engaged to be married.

In this letter, Mr. Nasby spoke extremely harsh words about me. Also, this letter was written to another woman, whom I believed to be a threat to the relationship between me and Mr. Nasby. The District Attorney who showed me the letter, knew that I was Mr. Nasby's Defense Witness and that by showing me this letter, I would be upset with Mr. Nasby and turn against him.

Out of anger, I informed the Defense Counsel that I would not testify for Mr. Nasby. For the following days of Mr. Nasby's trial, I made it a point not to be present.

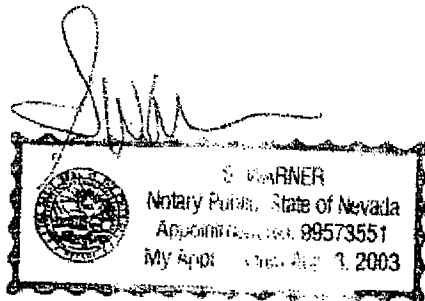
I was later informed that the Judge told the District Attorney that he was not to show me the letter, in which he did. I now feel

that the actions taken by the District Attorney were wrong and that I should have testified for Mr. Nasby. It was unfair for the District Attorney to play on my emotions, in order to keep me from testifying so that he may convict Mr. Nasby.

Were I to have testified, I would have informed the jury that I was at Mr. Nasby's house on the night that Michael Beasley was murdered, and witnessed Charles VonLewis (aka. Sugarbear) handing Mr. Nasby a black gun, which was later shown to be the gun that Michael Beasley was murdered with.

Under penalties of perjury, the undersigned declares that she is the Colleen Warner named in the foregoing affidavit and knows the contents thereof and that the statement is true.

Dated this 15 day of JANUARY 2002.



Colleen Warner
Colleen Warner
Apt. No. 1002
5250 Stewart Ave.
Las Vegas, Nevada 89110

EXHIBIT "C"

1 State of Nevada, Clark County

4 State of Nevada, Clark County,

5 Plaintiff,

6 vs.

7 Brendan James Nasby,

8 Defendant

Case No.: No. C 154293

AFFIDAVIT of Tommie Burnside

9 This statement is made freely and without duress or coercion regarding the
10 above named defendant and case. The final statement I provided the District
11 Attorney in 1999 regarding the circumstances surrounding the death of Michael
12 Beasley was provided under duress. This is the statement subsequently used
13 in trial of Brendan James Nasby in October 1999. This statement was given
14 for exchange of a significantly lighter sentence for my brother Jotee
15 Burnside and myself. It was also given with an explicit agreement that I
16 would not have to testify in the trial of Brendan James Nasby. In spite of
17 this agreement, I was called by the District Attorney's office to testify in
18 the trial of Brendan James Nasby. I was offered a shorter prison sentence in
19 exchange for testimony requested by the District Attorney's office.

21 Signed:

22 Name:

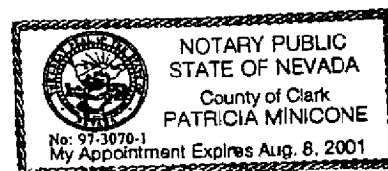
23 Address: 1841 Tyler St

24 City/State: Las Vegas, NV

25 SUBSCRIBED AND AFFIRMED TO before me this 22nd day of

July, 2000.

State of Nevada
County of <u>Clark</u>
Signed or attested before me on <u>7.22.00</u> by
<u>Tommie Burnside</u>
(Notary Stamp) <u>Patricia Minicone</u>
(Signature of notarial officer)



Affidavit - 1

1 State of Nevada, Clark County

4 State of Nevada, Clark County,

5 Plaintiff,

6 vs.

7 Brendan James Nasby,

8 Defendant

Case No.: No. C 154293

AFFIDAVIT of Jotee Burnside

9 This statement is made freely and without duress or coercion regarding the
10 above named defendant and case. The third and final statement I provided the
11 District Attorney in 1999 regarding the circumstances surrounding the death
12 of Michael Beasley was provided under duress. This is the statement
13 subsequently used in trial of Brendan James Nasby in October 1999. This
14 statement was given with an explicit agreement that I would not have to
15 testify in the trial of Brendan James Nasby. In spite of this agreement, I
16 was called by the District Attorney's office to testify in the trial of
17 Brendan James Nasby in October 1999. I was afraid that if I did not testify
18 that the decision for my parole date would be reversed.

20 Signed: *Jotee Burnside*

21 Name: *Jotee Burnside*

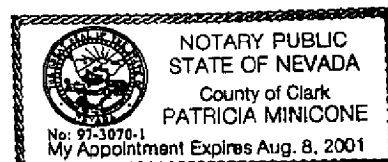
22 Address: *1341 Tyler St*

23 City/State: *Las Vegas, NV 89115*

24 SUBSCRIBED AND AFFIRMED TO before me this 22nd day of

25 July, 2000.

State of Nevada	
County of <u>Clark</u>	
Signed or attested before me on <u>7-22-00</u> by	
<u>Jotee Burnside (minor)</u>	
(Notary Stamp)	<i>Patricia Minicone</i>
	(Signature of notarial officer)



Affidavit - 1

EXHIBIT "D"

District Court

State of Nevada,	)	Case No.: C154293
)	
Plaintiff,	)	Affidavit of Brenda Nasby
)	
vs.)	
)	
Brendan James Nasby,)	
)	
Defendant)	
)	

I, Brenda Nasby, do now state that on or about September 17, 1999, Mr. Joseph S. Sciscento informed me that he was now an employee of the Public Defender's Office as a Special Public Defender. He also stated that he had spoken to his new employer and they felt it was okay to continue representation of Brendan J. Nasby. Mr. Sciscento at no time advised me of any potential conflict with his employment as a Special Public Defender and continued representation of my son, Brendan Nasby. He did not offer any alternatives, which could have alleviated this conflict.

Additionally, during the trial proceedings, Mr. Sciscento repeatedly used his identification badge to bypass the security to enter the courthouse. He made the statement that there was one benefit to being a government employee, i.e., bypassing the line to be screened by a metal detector prior to entering the Court.

During Mr. Nasby's trial, Mr. Sciscento requested the balance of his fees to be paid and I provided him with a check

for \$8000.00, in October 1999. This request was made as an employee of the Public Defender's office.

During the sentencing phase of Mr. Nasby's trial, Mr. Frederick Santacroce informed Mr. Sciscento that he thought it would be a conflict if he (Mr. Santacroce) represented Mr. Nasby on appeal. Despite this expressed concern, Mr. Sciscento recommended to the Court that Mr. Frederick Santacroce be appointed to represent Mr. Nasby on appeal. Mr. Sciscento also stated to the Court that he would be unable represent Mr. Nasby on the appeal due to his employment with the Public Defenders office creating a conflict of interest. This was the first time that I heard his employment and representation of my son, Brendan Nasby, was a conflict of interest. I assumed that both conflicts were due to scheduling or workloads. It was not until recently that I learned that the conflict that Mr. Sciscento and Mr. Santacroce were referring to were both legal conflicts. It is now apparent to me, that both of these attorneys represented my son during his trial and appeal with legal conflict of interests.

I now am aware that both Mr. Sciscento and Santacroce did not act in the best interest of Brendan Nasby as expected of them as professionals. I am disappointed that a plausible alternative was not presented when Mr. Sciscento accepted employment with the Public Defender's office.

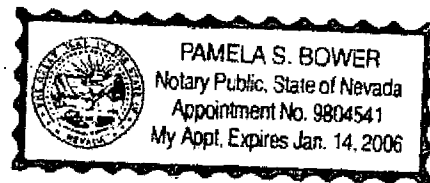
Under penalty of perjury I affirm that I am Brenda Nasby by the undersigned signature and that the contents of this affidavit are true to the best of my knowledge. Dated this 22nd day of January 2002.

Brenda Nasby
Brenda Nasby
5134 Water Coconut
St.
N. Las Vegas, NV
89031

Notarized this 23 day of January, 2002

By: Pamela S. Bower

Seal



Brendan Nasby
I.D. #63618
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989
Petitioner Pro Se

10
FILED

JAN 30 10 28 AM '02

Shirley A. Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,)
)
Petitioner,)
)
vs.)
)
E.K. McDANIEL, et al.,)
)
Respondent.)
_____)

CASE NO. C154293

DEPT. VII XVIII

**MOTION FOR
APPOINTMENT OF COUNSEL**

Petitioner, BRENDAN NASBY, in Pro Per, pursuant to 28 U.S.C. Section 1915(d), request this Honorable Court to appoint counsel to represent him in this habeas petition for the following reasons:

1. Petitioner is not able to afford counsel.
2. The issues involved in this case are complex.
3. The prison severely limits the hours that Petitioner may have access to the prison law library and the law materials contained there are very limited.
4. Petitioner has no knowledge of the law.
5. Petitioner must file a motion for an evidentiary hearing and will need legal representation.
6. The ends of justice would best be served in this case if an attorney was appointed to represent the Petitioner.

Dated this 27 day of January, 2002.

Brendan Nasby
Brendan Nasby Pro Se

RECEIVED
JAN 29 2002
COUNTY CLERK

Brendan Nasby
I.D. #63618
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989
Petitioner Pro Se

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,)	
)	
Petitioner,	)	CASE NO. <u>C154293</u>
)	
vs.)	
	)	DEPT. <u>VII</u>
E.K. McDANIEL, et al.,)	
)	
Respondent.	)	<u>PROPOSED ORDER</u>
_____)	

The above-entitled matter, having come before this Court upon the Petitioner's Motion for Appointment of Counsel, and this Court being duly advised, it is

ORDERED AND ADJUDGED that the Petitioner's Motion is hereby granted, and that _____, Esq., of _____, _____ is hereby appointed as Counsel to represent the Petitioner on his habeas petition.

DONE AND ORDERED in Clark County, Las Vegas, Nevada this _____ day of _____, 2002.

District Court Judge

Submitted by:


Brendan Nasby, Pro Se

FILED

JAN 30 10 28 AM '02

Shirley A. Thompson
CLERK

1 Case No. C154293
2 Dept. No. ~~III~~ XVIII

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IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
FOR THE COUNTY OF Clark

Brendan James Nasby,
Petitioner,
-vs-
E.K. McDaniel, et, al.,
Respondent.

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

COMES NOW the Petitioner, in propria persona, pursuant to N.R.S. §12.015, and respectfully moves this Honorable Court for an Order granting Petitioner leave to proceed in the above-entitled action in forma pauperis, without requiring Petitioner to pay or provide security for the payment of costs of prosecuting this action.

This motion is made and based upon the attached affidavit and certificate.

DATED this 27 day of January, 2002.

Respectfully submitted,
Brendan Nasby

1 Case No. C154293

2 Dept. No. III

3

4

5

6 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF Clark

8

9 Brendan James Nasby,

10 Petitioner,

11 -vs-

12 E.K. McDaniel, et., al.,

13 _____,

14 Respondent.

15

16 I, Brendan Nasby, hereby declare and state

17 that I am the Petitioner in the above entitled case; that in support
18 of my Motion to proceed without being required to prepay fees, costs
19 or give security therefor; I state that because of my poverty I am
20 unable to pay the costs of said proceeding or to give security
21 therefor; that I am entitled to relief.

22 I do X do not ___ request an attorney be appointed to
23 represent me.

24 I further swear that the responses which I have made to
25 questions and instructions below are true.

26 1. Are you presently employed: Yes ___ No X

27 a. If the answer is Yes, state the amount of your salary
28 or wages per month, and give the name and address of your employer:

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b. If the answer is No, state the date of last employment
and the amount of salary and wages per month which you received:
N/A

2. Have you received within the past twelve months any
money from any of the following sources?

a. Business, profession or form of self-employment?

Yes ____ No X

b. Rent payments, interest or dividends?

Yes ____ No X

c. Pensions, annuities or life insurance payments?

Yes ____ No X

d. Gifts or inheritances?

Yes ____ No X

e. Any other sources?

Yes ____ No X

If the answer to any of the above is "Yes" describe each
source of money and state the amount received from each during the
past twelve months: N/A

3. Do you own cash or equivalent prison currency, or do
you have money in a checking or savings account?

Yes X No ____

If the answer is "Yes", state the total value of the
items owned:

1 4. Do you own any real estate, stocks, bonds, notes,
2 automobiles, or other valuable property (excluding ordinary house-
3 hold furnishings and clothing)? Yes _____ No X _____

4 If your answer is "Yes", describe the property and state
5 its approximate value: N/A

6
7 5. List the persons who are dependent upon you for
8 support, state your relationship to those persons, and indicate
9 how much you contribute towards their support: _____

10

11

12 UNDER THE PENALTY OF PERJURY, pursuant to N.R.S. §208.165,
13 the above affidavit is true and correct to the best of affiants
14 personal knowledge.

15 DATED this 27 day of January, 2002 .

16

17

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Sign your name

Brendan James Nasby #63618
Print your name DOP#

Case No. C154293

Dept. No. ~~III~~ XVIII

FILED

JAN 30 10 28 AM '02.

Shirley H. Langston
CLERK.

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

Brendan James Nasby,

Petitioner,

v.

E.K. McDaniel, et. al.,

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
5 sentence. Failure to allege specific facts rather than just
6 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7
8 (7) If your petition challenges the validity of your
conviction or sentence, the original and one copy must be filed
9 with the clerk of the district court for the county in which
the conviction occurred. Petitions raising any other claims
10 must be filed with the clerk of the district court for the
county in which you are incarcerated. One copy must be mailed
11 to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
12 you were convicted or to the original prosecutor if you are
challenging your original conviction or sentence. Copies must
13 conform in all particulars to the original submitted for
filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty:

18 Ely State Prison

19 2. Name and location of court which entered the judgment
20 of conviction under attack: Eighth Judicial District Court of
21 Nevada, In and for the County of Clark

22 3. Date of judgment of conviction: October 19, 1999

23 4. Case number: C154293

24 5. (a) Length of sentence: 120 months and 2 Lifes w/poss-
25 ibility of parole.

26 (b) If sentence is death, state any date upon which
execution is scheduled: N/A

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No X _____. If "yes," list crime, case number and
2 sentence being served at this time: N/A
3 _____
4 _____

5 7. Nature of offense involved in conviction being
6 challenged: Conspiracy to commit Murder and Murder in the first
7 degree with the use of a deadly weapon.

8 8. What was your plea? (check one)

9 (a) Not guilty X _____

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A
16 _____
17 _____

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury X _____

21 (b) Judge without a jury: _____

22 11. Did you testify at the trial? Yes _____ No X _____

23 12. Did you appeal from the judgment of conviction?

24 Yes X _____ No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: Nevada Supreme Court

27 (b) Case number or citation: Case No. 35319
28 _____

1 (c) Result: Dismissed

2 (d) Date of Result: February 7, 2001

3 (Attach copy of order or decision, if available).

4 14. If you did not appeal, explain briefly why you did
5 not: N/A

6
7 15. Other than a direct appeal from the judgment of
8 conviction and sentence, have you previously filed any
9 petitions, applications or motions with respect to this
10 judgment in any court, state or federal? Yes _____ No X.

11 16. If your answer to No. 15 was "yes," give the
12 following information:

13 (a) (1) Name of Court: N/A

14 (2) Nature of proceeding: N/A

15
16
17 (3) Grounds raised: N/A

18
19
20 (4) Did you receive an evidentiary hearing on
21 your petition, application or motion? Yes _____ No N/A

22 (5) Result: N/A

23 (6) Date of Result: N/A

24 (7) If known, citations of any written opinion or
25 date of orders entered pursuant to each result: _____

26 N/A

(b) As to any second petition, application or motion,
give the same information:

(1) Name of Court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on
your petition, application or motion? Yes No N/A

(5) Result: N/A

(6) Date of Result: N/A

(7) If known, citations or any written opinion or
date of orders entered pursuant to each result:
N/A

(c) As to any third or subsequent additional
applications or motions, give the same information as above,
list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal
court having jurisdiction, the result or action taken on any
petition, application or motion?

(1) First petition, application or motion?

Yes No N/A

Citation or date of decision: N/A

(2) Second petition, application or motion?

Yes No N/A

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications
or motions? Yes No N/A

Citation or date of decision: N/A

1 e. If you did not appeal from the adverse action on
2 any petition, application or motion, explain briefly why you
3 did not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is
5 8 1/2 x 11 inches attached to the petition. Your response may
6 not exceed five handwritten or typewritten pages in length.)

7 Because Petitioner must exhaust his State remedies before
8 appealing to Federal Court. This is Petitioner's first petition.

9 17. Has any ground being raised in this petition been
10 previously presented to this or any other court by way of
11 petition for habeas corpus, motion or application or any other
12 post-conviction proceeding? If so, identify: identify:

13 a. Which of the grounds is the same: No

14
15 b. The proceedings in which these grounds were raised:

16 N/A

17 c. Briefly explain why you are again raising these
18 grounds. (You must relate specific facts in response to this
19 question. Your response may be included on paper which is
20 8 1/2 x 11 inches attached to the petition. Your response may
21 not exceed five handwritten or typewritten pages in length.)

22 N/A

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)
24 and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or
26 federal, list briefly what grounds were not so presented, and
27 give your reasons for not presenting them. (You must relate

1 specific facts in response to this question. Your response may
2 be included on paper which is 8 1/2 by 11 inches attached to
3 the petition. Your response may not exceed five handwritten or
4 typewritten pages in length.)

5 Petitioner's appellate counsel was ineffective and refused to
6 include the grounds now presented to this Court, on direct appeal.
19. Are you filing this petition more than 1 year

7 following the filing of the judgment of conviction or the
8 filing of a decision on direct appeal? If so, state briefly
9 the reasons for the delay. (You must relate specific facts in
10 response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition.
12 Your response may not exceed five handwritten or typewritten
13 pages in length.)

14 No, petition is timely.

15 20. Do you have any petition or appeal now pending in any
16 court, either state or federal, as to the judgment under
17 attack? Yes _____ No X _____.

18 If yes, state what court and the case number: _____

19 N/A

20 21. Give the name of each attorney who represented you in
21 the proceeding resulting in your conviction and on direct
22 appeal: At Trial Mr. Joseph S. Sciscento and Mr. Frederick A.
23 Santacroce. On Direct Appeal Mr. Frederick A. Santacroce

24 22. Do you have any future sentences to serve after you
25 complete the sentence imposed by the judgment under attack?

26 Yes _____ No X _____. If yes, specify where and
27 when it is to be served, if you know: _____

28 N/A

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

Petitioner was denied his right to Equal
(a) Ground one: Protection under the Fourteenth Amendment
to the United States Constitution, when the State used its peremptory challenges to exclude Jurors on Race.

Supporting FACTS (Tell your story briefly without citing cases or law): See Memorandum of Law in support of this petition attached hereto.

(b) Ground two: Cumulative effect of several instances of Prosecutorial misconduct violated Petitioner's Right to Due Process under the United States Constitution.
Supporting FACTS (Tell your story briefly without citing cases or law): See Memorandum of Law in Support of this petition attached hereto.

(c) Ground three: Petitioner's Right to Due Process under the United States Constitution was violated when Court failed to instruct Jury on willfulness, deliberation and premeditation.
Supporting FACTS (Tell your story briefly without citing cases or law): See Memorandum of Law in support of this petition attached hereto.

(d) Ground four: Petitioner's Right to Due Process under the United States Constitution was violated when Court issued an erroneous malice instruction combined with a Problematic Reasonable Doubt Instruction.
Supporting FACTS (Tell your story briefly without citing cases or law): See Memorandum of Law in support of this petition attached hereto.

WHEREFORE, Petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

(E) Ground Five: Petitioner's Sixth Amendmant Right to Counsel under the United States Constituion was violated by Ineffective Assistance of Trial and Appellate Counsel.

Supporting Facts: See Memorandum of Law in support of this petition attached hereto.

1 EXECUTED at Ely State Prison on the 27 day
2 of January, 2002.

3
4 
Signature of Petitioner

5 P.O. Box 1989
6 Address

7 Ely, NV 89301-1989

8 None
Signature of Attorney (if any)

9
10 Attorney for Petitioner

11 Address

12
13
14 VERIFICATION

15 Under penalty of perjury, the undersigned declares that he
16 is the petitioner named in the foregoing petition and knows the
17 contents thereof; that the pleading is true of his own
18 knowledge, except as to those matters stated on information and
19 belief, and as to such matters he believes them to be true.

20
21 
Signature of Petitioner

22 None
23 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Brendan Nasby, hereby certify pursuant
to N.R.C.P. 5(b), that on the 27 day of January,
2002, I mailed a true and correct copy of the foregoing
PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Brendan Nasby #63618
Respondent prison or jail official

P.O. Box 1989
Address

Ely, Nevada 89301

Attorney General
Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710

Stewart L. Bell, Clark County District Attorney
District Attorney of County of Conviction
200 S. 3rd Street, Ste. 701, P.O. Box 552212
Address
Las Vegas, Nevada 89155-2211


Signature of Petitioner

FILED

District Court
Clark County, Nevada

2002 FEB -1 A 10:29

Shirley B. Panagiere
CLERK

1 ORDR

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4 BRENDAN NASBY,
5 Petitioner,

6
7 vs

8
9 THE STATE OF NEVADA,
10 Respondent.

Case No: C154293

Dept No: 18

ORDER RE PETITION FOR
WRIT OF HABEAS CORPUS

11
12 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
13 January 30, 2002. The Court has reviewed the petition and has determined that a response
14 would assist the Court in determining whether Petitioner is illegally imprisoned and
15 restrained of his/her liberty, and good cause appearing therefor,

16 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of
17 this Order, answer or otherwise respond to the petition and file a return in accordance with
18 the provisions of NRS 34.360 to 34.830, inclusive.

19 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's
20 calendar on the 4th day of April, 2002, at the hour of
21 9 o'clock A. M. for further proceedings.

22 DATED this 31st day of Jan, 2002.

Tom Satta

DISTRICT COURT JUDGE

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FEB 01 2002

COUNTY CLERK

1 ORDR

2 **District Court**
3 **Clark County, Nevada**

2002 FEB -1 A 10:29

4 BRENDAN NASBY,

5 Petitioner,

7 vs

9 THE STATE OF NEVADA,

10 Respondent.

Case No: C154293

Dept No: 18

**ORDER RE PETITION FOR
WRIT OF HABEAS CORPUS**

12 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
13 January 30, 2002. The Court has reviewed the petition and has determined that a response
14 would assist the Court in determining whether Petitioner is illegally imprisoned and
15 restrained of his/her liberty, and good cause appearing therefor,

16 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of
17 this Order, answer or otherwise respond to the petition and file a return in accordance with
18 the provisions of NRS 34.360 to 34.830, inclusive.

19 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's
20 calendar on the 4th day of April, 2002, at the hour of
21 9 o'clock A. M. for further proceedings.

22 **DATED** this 31st day of Jan, 2002.

23
24 

25 DISTRICT COURT JUDGE

26
27 
28 FEB 01 2002

COUNTY CLERK

Order Re Writ of Habeas Corpus/Rev- 2/01/jh

\$18

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

FEB 4 11 03 AM '02

BRENDAN NASBY,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

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Shelly W. King
CLERK

CASE NO. C154293

DEPT. NO. III

AFFIDAVIT IN SUPPORT OF MOTION FOR
DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS

I Brendan Nasby being first duly sworn, depose and say that;

1.) I am the petitioner in the above-entitled case.

2.) I am currently preparing a petition for post conviction relief, and that the foregoing requested evidence and documents are necessary for me to effectively develop claims to be prevented therein.

3.) Without the above requested evidence and documents I have little chance of prevailing in a post-conviction proceeding.

4.) In order to show a claim of ineffective assistance of counsel, I must have access to the very same documents that counsel, at trial, did. Otherwise there is no chance of showing how counsel failed to use said documents at trial, on cross-examination.

5.) In order to show a Brady violation the state must be compelled to turn over the above requested evidence that it did not during Trial as it is not part of the record.

6.) That the photographs as well as the letter

COUNTY CLERK

FEB 01 2002

RECEIVED

request is the personal property of petitioner.

7.) That the State's agents siezed said photographs and letters in the course of investigating the case. The case is not concluded, and the state has no further use for the photographs or the letter. Therefore they should be returned to their owner. (Petitioner).

8.) Even if the state alleges a need to maintain possession of the photographs and letter, petitioner would be satisfied with copies of the same.

Under penalties of perjury, the undersigned declares that he is the petitioner name in the foregoing Affidavit and knows the contents thereof; that the pleading is true of his knowledge, except as to those matters stated on information or belief, and that as to such matters he believes them to be true.

Dated this 30 day of January 2001.


PETITIONER IN PRO-PR

FILED

BRENDAN NASBY
I.D.NO. 63618
ELY STATE PRISON
P.O.BOX 1989
ELY, NEVADA 89301

FEB 4 11 03 AM '02

Shirley L. Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. C154293

DEPT. NO. ~~III~~ XVIII

TIME OF HEARING: 02/18/02

DATE OF HEARING: 9:00AM

**MOTION FOR DISCOVERY PRODUCTION
AND TRANSMISSION OF DOCUMENTS**

COMES NOW, the Petitioner, Brendan Nasby, in proper person and respectfully moves this Court for an order directing the State of Nevada to provide Petitioner with copies of the information listed below, in order to facilitate the development of claims to be presented in Petitioner's petition for post-conviction relief.

DATED this 30 day of January 2001

Brendan Nasby
BRENDAN NASBY
I.D.NO. 63618
ELY STATE PRISON
P.O.BOX 1989
ELY, NEVADA 89301
(PRO-SE PLEADING)

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FEB 11 2002

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POINTS AND AUTHORITIES

The United State Supreme Court has burdened Petitioner with an obligation to develop the factual basis of a claim through diligence at the State level. Before a Federal Court will hear a claim, Petitioner must attempt to investigate and discover all evidence that tends to support the claim. See Williams v. Taylor 120 S. ct 1479, 1488 (2000) and 28 U.S.C.A 2254; Antiterrorism and Effective Death Penalty Act of 1996.

The instant Motion is an attempt to satisfy that requirement. Nevada Revised Statute 174.285 gives the Court discretion to grant a discovery motion, if it is in the interest of Justice, at any time.

Furthermore, the Eighth Judicial District Court Rule 7.28 provides in pertinent part, "After a judgment is final...the party or attorney who withdraws it shall file an affidavit with the clerk to the effect that the person who withdraws it is the owner of or lawfully entitled to the possession of the model, diagram or exhibit,...Withdrawal of any model, diagram or exhibit must be on court order..."

Petitioner contends that most of the evidence which he seeks is , in fact, his personal property and should be returned to him.

The State seized numerous photographs from Petitioner, contained in a photograph book, while some were loose. The State alleged that the photographs demonstrated gang affiliation. That allegation in and of itself, even were it true, does not render the photographs illegal. Thus, they should be returned to, or at least copied for Petitioner.

Moreover, the photographs show State witnesses associating with individuals whom they testified they did not know and was not friendly with. There are also photographs that show Charles D. Von Lewis, holding a nine millimeter hand gun. A nine millimeter hand gun is the same make and model of weapon that Petitioner was convicted of using in the murder of Michael L. Beasley. The conviction which Petitioner will challenge in his coming post-conviction petition. In addition to that, three State witnesses linked Charles D. Von Lewis to the same crime that Petitioner is now imprisoned for. Petitioner is aware of these photographs existence because, for one, they were confiscated from Petitioner and, two, they were employed by the State at Petitioner's sentencing.

Petitioner will allege in his forthcoming post-conviction petition that several prosecution witnesses perjured themselves while testifying for the State, and against Petitioner.

The Nevada Supreme Court is consistent and holds that a wide latitude of cross-examination is allowed in order to test the motives, interest, animus, accuracy, veracity and credibility of a witness. Lloyd v. State 85 Nev. 576, 460 P.2d 111 (1969).

Petitioner request the production of all voluntary statements made by Jotee Burnside, and any involuntary statements from the same.

Mr. Burnside perjured himself on the witness stand and exhibited a faulty memory. Petitioner will contend in his post-conviction petition that his attorney failed to sufficiently cross-examine this witness according to law. Strickland v. Washington, 466 U.S. 688, 104 S. Ct 2052; 80 L.Ed. 2d 674 (1984). Furthermore,

Petitioner believes Mr. Burnside's statements may contain exculpatory evidence and that the State prejudiced Petitioner's defence irreparably by failing to produce Mr. Burnside's statements until the middle of trial. Bradly v. Maryland 323 U.S. 83 (1965).

Petitioner request the production of a letter written by him to Brittney K. Adams. The State siezed this letter and held it during trial. The leter conclusively shows that Ms. Adams perjured herself at Petitioner's trial. As she testified falsely, regarding it's contents, which went directly to to the guilt or innocence of the Petitioner. This fact, again, establishes a viable claim of ineffective assistance of counsel, for failure to cross-examine, and witness perjury. See State v. Merrit, 66 Nev. 380, 212 P.2d 706 (1949); Summit v. State 101 Nev. 159, 697 P.2d 1374 (1985).

Petitioner request a list of Court appearences and charges against Charles D. Von Lewis or in the alternative the minutes of the Court between the dates of August 4, 1998 and October 30, 1999.

Detectives Thomas D. Thowsed and James Buczek testified at Petitioner's trial, that Mr. Von Lewis was unavailable for questioning and that they did not know where to look for him, and that they were considering a warrant for his arrest.

Petitioner believes that Mr. Von Lewis was in jail and that the above detectives were aware of that fact. In their efforts to protect Mr. Von Lewis these detectives perjured themselves.

Petitioner will allege in his post-conviction petition that collectively witness perjury prejudiced the defence. The above is based upon the trial transcripts which Petitioner has in his possession.

Petitioner's counsel at trial was ineffective for failing to effectively cross-examine the State's witnesses.

Petitioner's appellant counsel was ineffective for failing to discover these assignments of error.

In Peterson v. Warden 87 Nev.. 134, 483 P.2d 204 (1971), the standard for obtaining evidence after trial the Court said:


"So must satisfy the Court that points raised have merit and such merit will tend to be supported by a review of the record before he may have trial records supplied at the State's expense" Id. at 87 Nev. 135-36.

This decision directly conflicts with that of the United States Supreme Court in Taylor v. Williams 120 S. ct 1479, 1488 (2000), which makes it incumbent upon a petitioner at the state level to use "due diligence" at the "developmental" stage of a claim to discover all facts which tend to support that claim. Or any failure will haunt him later in the appellant process.

Moreover, most of the evidence requested is the Petitioner's personal property not of itself illegal and should be returned to Petitioner. See attached affidavit.

In conclusion Petitioner respectfully request that this Court order the State to return his personal property as well as evidence requested so that he may effectively pursue his post-conviction petition.


Respectfully submitted this 30 day of January 2001.


PETITIONER IN PRO-PER

CERTIFICATE OF MAILING

I hereby certify that I place a correct copy of the foregoing Motion for Production and Transmission of Documents in the District Attorney at the following address;

STEWART L. BELL
CLARK-COUNTY-COURT-HOUSE
DISTRICT ATTORNEY OFFICE
200 SOUTH THIRD STREET, SUITE 701
P.O.BOX 552212
LAS VEGAS, NEVADA 89155-2211


PETITIONER IN PRO-~~PER~~

SHIRLEY B. PARRAGUIRRE, County Clerk
200 S THIRD ST
PO BOX 551601
LAS VEGAS NV 89155-1601

BRENDAN NASBY, #63618
PO BOX 1989
ELY, NV 89301-1989

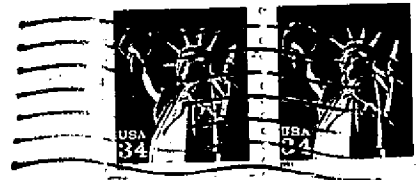


Brendan Nasby #63618

P.O.Box 1989

Ely, NV 89301-1989

ELY STATE PRISON



Shirley B. Parraguirre

County Clerk

200 S. Thrid St.

P.O.Box 551601

Las Vegas, NV 89155-1601

89155-1601



Brendan Nasby
ID. No. 63618
P.O. Box 1989
Ely, Nevada 89301
Ely State Prison
Petitioner In Pro Se

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Shirley S. Brumby
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

BRENDAN NASBY,
Petitioner,
vs.
E.K. McDANIEL et al.,
Respondent.

CASE No. C154293

DEPT. No. ~~154~~ XVII

DOCKET E

3/4/02

9:00am.

MOTION TO ATTACH SUPPLEMENTAL
EXHIBIT TO PETITION FOR POST CONVICTION RELIEF

Comes Now, Brendan Nasby petitioner in proper person with this Motion to attach Supplemental Exhibit to petition for Post Conviction Relief. This motion is made and based upon all papers and pleadings on file with the Court herein.

Dated this 5 day of February 2002.

By: *Brendan Nasby*
Brendan Nasby
Petitioner in Pro Se

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POINTS AND AUTHORITIES

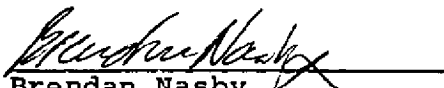
In this memorandum of Law in support of Petition for Post Conviction Relief (Habeas Corpus), Petitioner identifies as Exhibit B, the statement of Porsche Nichols to Police. This statement is an important part of Petitioner's argument with regards to his ineffective assistance of Counsel claim inter alia.

Through Petitioner's own omission the Exhibit is not attached to Post Conviction Petition. However, Petitioner now respectfully request that the Court attach it to his Petition as Exhibit B, and include it in the record.

In conclusion, Porsche Nichol's statement is extremely important to Petitioner's claim and attaching it to Petition will not prejudice Respondents.

Therefore, Petitioner prays that this Honorable Court grant this instant Motion and order the attached statement of Porsche Nichols included in Petition for Post-Conviction.

Dated this 5 day of February 2002.

By: 
Brendan Nasby
Petitioner in Pro Se


CERTIFICATE OF MAILING

I hereby certify that I placed in the hand of a correctional officer, a correct copy of the foregoing Motion, for Mailing to Respondents at their last known address as follows:

Stewart L. Bell
District Attorney
200 South Third St., ste.#701
P.O. Box 552212
Las Vegas, Nevada 89155-2212

Dated this 5 day of February 2002.

By:


Brendan Nasby

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980717-0541

DATE: 8/4/98

TIME: 1805 HRS.

PLACE: DETECTIVE BUREAU, 400 STEWART

Brittney Adams' Cousin
I, PORSCHE NICHOLS, am 14 years of age, and my address is [REDACTED]
telephone [REDACTED] Freshman at Las Vegas High School.

WARNING: Before you are asked any questions, you must understand your rights.

I am DET. T. THOWSEN of the Las Vegas Metropolitan Police Department and inform you that:

1. You have the right to remain silent.
2. If you give up that right to remain silent, anything you say can and may be used against you in a court of law.
3. You have the right to speak to an attorney before answering any questions, and to have an attorney present with you while you answer any questions.
4. If you cannot afford an attorney, an attorney will be appointed for you by the court at no cost to you, and you need not answer any questions until that attorney has been appointed for you.
5. If you decide to answer questions now, you may stop at any time and ask to talk to an attorney before any questioning continues.
6. If you decide to stop answering questions once you have begun, all questioning will stop.

WAIVER: *I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and waive these rights. I do not want a lawyer present with me during the making of this statement. I know that I may revoke this waiver at any time during the questioning and ask that an attorney be present. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me.*

PORSCHE NICHOLS (JUVENILE)

The following is the transcription of a tape-recorded interview conducted by DETECTIVE THOWSEN, P#1467, LVMPD Homicide Detail.

Q: Porsche when I...began talking a few minutes ago. I explained to you that you're not under arrest, however, I wanted to ask you some questions. Is that correct?

A: Yes.

Q: And when I ask you read a...rights card out loud, which you did. Is that correct?

A: Yes.

Q: And you...agreed to speak with me. Is that correct?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT: 980717-0541
980801-2492

A: Yes.

Q: Okay. And... You were explaining to me how...earlier in the evening, before you showed up to the police department to speak with us, um... Your cousin, Brittany got a phone call?

A: Uh hum (affirm).

Q: What's Brittany's last name?

A: Adams.

Q: And does she live with you at 1390 Honey Lake Street?

A: Yes.

Q: And your not sure what time the phone call, actually was, but it was just some time before you came down here? Is that... (talking at same time).

A: Yes.

Q: Okay. Do you know what the...person on the other...line was...? Who it was?

A: "Blue".

Q: "Blue"?

A: Uh hum (affirm).

Q: Okay, and do you know what they talked about?

A: He... I don't know, that he... Brittany just said..he told her that he was locked up.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT: 980717-0541
980801-2492

Q: And did he ask her to do anything for him?

A: Uh, no.

Q: Okay. What did Brittany do after she got off the phone? Who'd she talk to?

A: Her mom.

Q: And what did she ask her mom?

A: Could we leave...the house and could I go with her.

Q: And did she say where she was going?

A: Um...n— (incomplete). Over..to Tony's house or to his mom's house or something.

Q: Okay. So, when you left the house, you weren't sure where you were going?

A: Y— (incomplete). I wasn't.

Q: So then, when did you find out you were going to the police station?

A: Uh...after we got, like away from my house.

Q: Then she told you?

A: Yes.

Q: What did she explain to you?

A: Uh, she was like... Uh, I'm steady asking her, Brittany what happened, what happened and she was just saying how... "Blue" was locked up and his...baby mother something, don't know what's going on. We was going over there and then,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT: 980717-0541
980801-2492

I'm like what happened. She was like, "Blue" locked up and something. Something about that, these girls. She was like they wrong, they wrong. They got off into something stupid conversation and I was like, okay, fine.

Q: And so when you came to the Detective Bureau here, today?

A: Yeah.

Q: And uh... Do you know what information that Brittany was explaining to us, originally, about...having some knowledge about who, who killed uh...Michael Beasley?

A: Do I know about it?

Q: Yeah.

A: No.

Q: Had she told you earlier about it?

A: No.

Q: So, thinking back to this last Saturday. Uh, were you with..Brittany when she went over to a girls house?

A: Yeah.

Q: 'Bout what time a night was it?

A: I'm not sure... I know it was before eleven, I think.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 5

EVENT: 980717-0541
980801-2492

Q: Okay. And uh, who's car did you go in?

A: Brittany's.

Q: What kind is her car?

A: Kind?

Q: What kind was it?

A: A Nissan.

Q: What color is it?

A: Greenish, turquoise like.

Q: And..who was in the car with you?

A: Me and Brittany and her friend "Blue".

Q: And who was driving the car?

A: On the way or..?

Q: On the way up, who's driving?

A: Brittany.

Q: And then what happened after you got there?

A: Brittany got out the car, went to the girls house.

Q: And where did you and "Blue" stay?

A: In the car.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980717-0541

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Q: Okay.

A: And then, I got and I was just laying on the car. Then she came out and Brittany was just talking to her. Well, she introduced us and then the girl was like, uh huh. And then they was talking.

Q: Did she see "Blue"?

A: Uh uh (negative). I don't think. Then...they was talking. Then I was leaning on the car and just looking at 'em. Then they start fighting and then after Brittany...the girl fell. I grabbed Brittany up. Now that's enough, it's time to go.

Q: Who was hitting..the girl, besides Brittany?

A: Nobody.

Q: Did Brittany get hit by the girl?

A: Uh uh (negative).

Q: How many times did Brittany hit the girl?

A: Once. Then she fell.

Q: Where did she hit her?

A: In her face.

Q: What side of her face?

A: I don't know. I don't know.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT: 980717-0541
980801-2492

Q: Uh, did she kick her or do anything else?

A: Yeah.

Q: Where did she kick her?

A: I, I...in her side. I'm not sure. I...just was... I don't like fights. So, I'm just..

Q: -- (inaudible - talking at same time).

A: basically, just ran and got her.

Q: How many times did she kick her?

A: I don't know.

Q: Was Brittany trying to..pull her to the car?

A: No.

Q: Did "Blue" stay in the car, during the fight?

A: Yes.

Q: Did he move his position in the car?

A: Did he move?

Q: Yeah.

A: -- (unintelligible) after Brittany got out. He got on the driver side and then...

Q: He got in the driver side?

A: Yeah, and then Brittany said, when we got around the corner...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT: 980717-0541
980801-2492

Q: So, he was expecting to...be able to drive away quick?

A: Yeah. Then when Brittany. We got, like around the corner from the girl house, Brittany said, let me drive.

Q: After they drove away?

A: Yeah.

Q: And so, where did you guys go after that?

A: Dropped "Blue", went and got my little cousin and then we came back home.

Q: Did you, you or Brittany say anything to the girl about uh..."Blue"? When she was beating her?

A: No, she didn't. She was just saying that was my "homie", that was my "homie", talking about...Drew, Dre', something. Whatever this boy name that got kill, his nickname.

Q: Is there anything else you can think of?

A: Uh uh (negative).

Q: Did you ever hit the girl?

A: No.

Q: Did "Blue" ever get out of the car?

A: No.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 9

EVENT: 980717-0541
980801-2492

- Q: Did "Blue" tell Brittany anything, in front of you, to..to say to the girl or to do?
- A: No.
- Q: Okay. And how do you know it was "Blue" that Brittany was talking to tonight?
- A: Cause she... I say, who was that? She say, "Blue".
- Q: And did she say where he was calling from?
- A: Yeah, because my Lil' cousin answered the phone and somebody's locked up.
- Q: What's your cousin's name?
- A: Carmen.
- Q: And how old is Carmen?
- A: Eight or seven. Eight or nine, something like that.
- Q: Okay. Anything else you can think of?
- A: Uh uh (negative).
- Q: Is the same car that..Brittany was driving that night when this girl got beat up, the same car that you drove in tonight to get here?
- A: Yeah.
- Q: That'll be the end of the statement. The time is 1815. That's all, take care.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 10

EVENT: 980717-0541
980801-2492

I HAVE READ THIS STATEMENT CONSISTING OF 10 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT 1815 HOURS ON THE 4TH DAY OF AUGUST, 1998.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

TT.mc
982728

Brendan Nasby #63618

P.O.Box 1989

Ely, NV 89301-1989

Ely State Prison



Shirley B. Parraguirre

County Clerk

200 S. Third St.

P.O.Box 551601

Las Vegas, NV 89155-1601

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Shirley B. Ruggins
CLERK

1 MOTN
2 FREDERICK A. SANTACROCE, ESQ.
3 Nevada Bar No. 5121
4 706 S. Eighth Street
5 Las Vegas, Nevada 89101
6 (702) 598-1666
7 Attorney for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,)
13)
14 vs.)
15)
16 BRENDAN JAMES NASBY,)
17)
18 Defendant.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)

CASE NO: C154293
DEPT NO: VII
DOCK NO: M *XVIII*

4/8/02
GA

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

COMES NOW, FREDERICK A. SANTACROCE, ESQ., and moves this Honorable Court for an Order allowing Counsel to withdraw as attorney of record for the Defendant, BRENDAN JAMES NASBY, herein.

This Motion is made and based upon the Points and Authorities attached hereto, the Affidavit of Counsel and any oral argument allowed at the time of hearing.

DATED this 1st day of April, 2002.

FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
706 S. Eighth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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YOU AND EACH OF YOU PLEASE TAKE NOTICE that counsel for Defendant will bring the above and foregoing Motion on for hearing before the above-entitled Court on the 8 day of April, 2002 at the hour of 99 .m., or as soon thereafter as counsel may be heard.

FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
706 S. Eighth Street
Las Vegas, Nevada 89101
Attorney for Defendant

Supreme Court Rule 46 entitled "Withdrawal or change of attorney" states, in pertinent part: .

• • •

- • •

1 (b) Counsel in any case may be changed only:
2

3 (2) When no attorney has been retained to replace
4 the attorney withdrawing, only by order of the court, granted
upon written motion thereof, and

5 (i) If the application is made by the attorney, he
6 must include in an affidavit the address, or last known
7 address, at which the client may be served with notice of
8 further proceedings taken in the case in the event the
application for withdrawal is granted, and he must serve a
copy of the application upon the client and all other parties
to the action or their attorneys. . .

9
10 The defendant is representing himself in proper person for
11 Post-Conviction Relief.

12 DATED this 15th day of April, 2002.

13
14 FREDERICK A. SANTACROCE, ESQ.
15 Nevada Bar No. 5121
16 706 S. Eighth Street
Las Vegas, Nevada 89101
Attorney for Defendant
17
18
19
20
21
22
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28

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

FREDERICK A. SANTACROCE, being first duly sworn, deposes and says:

1. That I am the attorney of record for BRENDAN NASBY in this case and am testifying based upon my personal knowledge.

2. That the Defendant is representing himself in proper person for Post-Conviction Relief.

3. That the last known address of Defendant and where all future pleading and correspondence may be served is:

Brendan James Nasby #63618
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

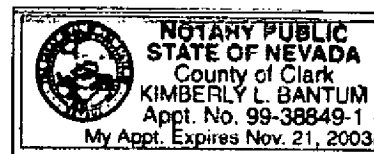
4. That a copy of this Motion will be served upon the Defendant in a manner authorized by statute.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

FREDERICK A. SANTACROCE, ESQ.

SUBSCRIBED and SWORN to before
me this 15 day of April, 2002.

Kimberly L. Bantum
NOTARY PUBLIC in and for said
County and State.



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ROC
FREDERICK A. SANTACROCE, ESQ.
Nevada Bar No. 5121
706 S. Eighth Street
Las Vegas, Nevada 89101
(702) 598-1666
Attorney for Defendant

FILED

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Shirley B. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN JAMES NASBY,

Defendant.

CASE NO: C154293
DEPT NO: VII
DOCK NO: M

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing Motion to Withdraw as
Attorney of Record is hereby acknowledged this 1 day of April,
2002.

STEWART BELL, ESQ.
DISTRICT ATTORNEY

By: *[Signature]*
Deputy District Attorney

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CLERK'S OFFICE

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1 CERT

2 FREDERICK A. SANTACROCE, ESQ.

3 Nevada Bar No. 5121

4 706 S. Eighth Street

5 Las Vegas, Nevada 89101

6 (702) 598-1666

7 Attorney for Defendant

CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRENDAN JAMES NASBY,

12 Defendant.

CASE NO: C154293

DEPT NO: XVII

DOCK NO: 12

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of FREDERICK A. SANTACROCE, ESQ. and that on the 21st day of March, 2002, I deposited a true and correct copy of the Defendant's Motion and Notice of Motion to Quash Temporary Protective Order in the Post Office at Las Vegas, Nevada, enclosed in a sealed envelope upon which first-class postage was fully prepaid, addressed to the following:

Brendan James Nasby #63618

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301

STEWART BELL, ESQ.

Clark County District Attorney

200 S. Third Street

Las Vegas, Nevada 89155

Kimberly D. Banton
An Employee of
FREDERICK A. SANTACROCE, ESQ.

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APR 03 2002

COUNTY CLERK

Brendan Nasby
I.D.No. 63618
P.O.Box 1989
Ely, Nevada 89301-1989
Ely State Prison
Petitioner In Pro Se

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Shirley J. Higgins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

Brendan Nasby,
Petitioner,

Case No. C154293

vs.

Dept. No. ~~III~~ XVIII

E.K. McDaniel et. al.,

Docket: E

Respondent.

4/8/02

MOTION FOR EVIDENTIARY HEARING

Comes Now, Brendan Nasby, Petitioner in Proper Person, with this Motion For Evidentiary Hearing, and respectfully moves this Court for an Order to hold a hearing regarding the claims presented in Petition For Writ Of Habeas Corpus (Post-Conviction Petition).
This Motion is made and based on the following Points and Authorities.

Dated this 12 day of March, 2002.

Brendan Nasby
Brendan Nasby
Petitioner in Pro Se

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APR 01 2002
COUNTY CLERK

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COUNTY CLERK

POINTS AND AUTHORITIES

I. ARGUMENT

Petitioner has filed with this Court a Petition For Post Conviction Relief, (Habeas Corpus) challanging his convictions for Murder and Conspiracy to Commit Murder. This Petition contains several claims of error, Among them are;

1) Prosecutorial Misconduct, State intimidation of Defense witness and placing a known Jail House informant in close proximity to Petitioner to elicit information.

2) Ineffective Assistance of Counsel, Conflict of Interest.

An Evidentiary Hearing is needed to establish Facts necessary to the above claims and to comply with the United States Supreme Court Rule that a State prisoner must make every effort to develop the record and facts necessary to his Constitutional claims. A State prisoner can only develop the record via Evidentiary Hearing on his claims. Williams v. Taylor 529 U.S. 420,437 (2000), 28 U.S.C. 2254(E) (2), See also, Miller v. Champion 161 F.3d 1249,1253 (10th Cir 1998) (Petitioner did not "fail" to develop factual basis of Ineffective Assistance of Counsel claim because State Court denied Petitioner's request for Evidentiary Hearing-on issue.) -

The Nevada Supreme Court has consistently held that, "If a Post Conviction Petition alleges facts which if true, would entitle the Petitioner to relief, the Petitioner must be afforded an Evidentiary Hearing unless the available record repels the Petitioner's claims. If the record is silent an Evidentiary Hearing is warranted. Hargrove v. State 100 Nev 498,686 P.2d 222 (1984); Bolden v. State 99 Nev 181, 659 P.2d 886 (1983); and Hatley v. State 100 Nev 214,678 P.2d 1160 (1984).

Petitioner's Petition alleges, among other things, that the State intimidated Defense Witness who was set to testify in Petitioner's behalf. This claim is predicated on Petitioner's contention that the Prosecutor gave a Defense witness a copy of a letter allegedly written by Petitioner, wherein the witness is disparaged. The Prosecutor then suggested to the witness that she would be a fool to testify for the Defense. See Petition, attached Memorandum of Points of Authorities in Support, and Affidavit of Colleen Warner. If this is true, it would certainly entitle Petitioner to Relief, when combined with other errors. The record is silent on this issue and therefore can not repel the claim.

Petitioner also alleges that John Holmes is a known Jail House Informant and was placed in close proximity to Petitioner to elicit incriminating information. However eight crucial pages are missing from the record (trial transcripts pgs.166-172). The State has in it's possession, documents that show who visited Mr.Holmes during the relevant time period. Furthermore, Mister Holmes himself will testify that Petitioner's allegations are true. The record is again silent on this issue, except the portion that is cited in Petition For Post Conviction and it supports Petitioner's position. Likewise, if these allegations are true, relief is required. The record does not repel Petitioner's contention.

Petitioner asserts that his Counsel at Trial Labored under a Conflict of Interest. That the conflict prejudiced Petitioner at Trial, in that the conflict hampered Counsel, thereby rendering him ineffective.

Specifically, Petitioner contends that his Counsel at Trial

accepted employment for the Public Defender's Office, before Petitioner's Trial began. The Public Defender also represented Petitioner's co-defendant who testified against him. The conflict is apparent. However, Counsel waited until the conclusion of Petitioner's Trial to advise the Court of the conflict in order to be removed from the case.


An Evidentiary Hearing is needed to ascertain exactly when Counsel agreed to work for the Public Defender's Office and to determine the extent of the prejudice beyond what is known. See Memorandum of Points and Authorities in Support of Petition for more detail regarding the above claims of error.

This record is not contrary to any of the alleged facts above, and if true, this kind of Conflict of Interest demands a Per Se reversal of conviction.

II. CONCLUSION

Petitioner has satisfied the standard to receive an Evidentiary Hearing. Where if true, his claims would entitle him to relief and the record can not repel said claims because it is silent in them. Therefore, Petitioner respectfully request this Honorable Court to grant an Evidentiary Hearing.

Dated this 12 day of March, 2002.

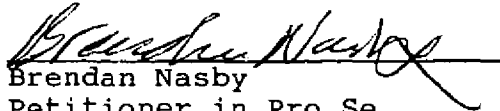

Brendan Nasby
Petitioner in Pro Se

CERTIFICATE OF MAILING

I hereby certify that I placed in the hand of a correctional officer, a correct copy of the foregoing Motion For Evidentiay Hearing, for mailing to the Respondents at their last known address as follows;

Stewart L. Bell
District Attorney
200 S. Third Street, ste.#701
P.O.Box 552212
Las Vegas, Nevada 89155-2212

Dated this 12 day of March, 2002.


Brendan Nasby
Petitioner in Pro Se

ORIGINAL

FILED

24

1 **RESP**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

2002 APR -5 A 9 15

Shirley B. Paragines
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.
14

Case No. C154293
Dept. No. XVIII

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR**
16 **APPOINTMENT OF COUNSEL**

17 DATE OF HEARING: 4-8-02
18 TIME OF HEARING: 1:00 P.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 FRANK JOHAN COUMOU, Chief Deputy District Attorney, and files this Response to
21 Defendant's Motion for Appointment of Counsel.

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 ...

26 **RECEIVED**

COUNTY CLERK

APR 05 2002

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Brendan Nasby, hereinafter Defendant, was charged by an Amended Criminal Complaint,
4 filed on August 27, 1998, with Conspiracy To Commit Murder and Murder With Use Of A
5 Deadly Weapon. An Information, filed on November 9, 1998, charged Defendant with
6 Conspiracy To Commit Murder and Murder With The Use Of A Deadly Weapon.

7 A jury found Defendant guilty of Conspiracy To Commit Murder and First Degree
8 Murder With Use Of A Deadly Weapon. On July 29, 1999, Defendant was sentenced to a
9 maximum of one hundred twenty (120) months, with a minimum parole eligibility of forty-eight
10 (48) months, in the Nevada Department of Prisons on the Conspiracy To Commit Murder count.
11 On the First Degree Murder count Defendant was sentenced to a consecutive term of Life with
12 the possibility of parole, with a consecutive term of Life with the possibility of parole for the
13 deadly weapon enhancement. A Judgment Of Conviction was filed on December 2, 1999.

14 Defendant appealed his conviction to the Nevada Supreme Court. Defendant's conviction
15 was affirmed on February 7, 2001. A Remittitur issued on March 6, 2001.

16 Defendant filed the instant Motion For Appointment Of Counsel on January 30, 2002.

17 **ARGUMENT**

18 **I. COUNSEL SHOULD NOT BE APPOINTED**

19 There is no federal constitutional right under the Sixth Amendment and no state
20 constitutional right to counsel in post-conviction relief proceedings. Coleman v. Thompson, 501
21 U.S. 722, 725, 111 S. Ct. 2546, 2552 (1991); McKague v. Warden, 112 Nev. 159, 163, 912 P.2d
22 255, 257-58 (1996). However, a district court judge has the discretion to appoint counsel under
23 the following conditions pursuant to NRS 34.750:

24 A petition may allege that the petitioner is unable to
25 pay the costs of the proceedings or to employ
26 counsel. If the court is satisfied that the allegation
27 of indigency is true and the petition is not dismissed
28 summarily, the court may appoint counsel at the
time the court orders the filing of an answer and a
return. In making its determination, the court may
consider whether:

(a) the issues are difficult;

1 (b) the petitioner is unable to
2 comprehend the proceedings;
3 or
4 (c) counsel is necessary to
5 proceed with discovery.
6 NRS 34.750 (1999).

7 As set forth in NRS 34.750, Defendant first must show that his petition will not be
8 summarily dismissed. However, Defendant has failed to do so (See State's Response to
9 Defendant's Petition For Writ Of Habeas Corpus (Post-Conviction). As such, Defendant is not
10 entitled to the appointment of counsel.

11 CONCLUSION

12 For the reasoning mentioned above, this Court should deny Defendant's Motion For
13 Appointment Of Counsel.

14 DATED this 4 day of April, 2002.

15 Respectfully submitted,

16 STEWART L. BELL
17 DISTRICT ATTORNEY
18 Nevada Bar #000477

19 BY *Frank Johan Coumou*
20 FRANK JOHAN COUMOU
21 Chief Deputy District Attorney
22 Nevada Bar #004577

23 CERTIFICATE OF MAILING

24 I hereby certify that service of the above and foregoing was made this 5th day of
25 April, 2002, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

26 Brendan James Nasby, #63618
27 P.O. Box 1989
28 Ely, Nevada 89301

BY *Miller*
Secretary for the District Attorney's Office

FILED

2002 APR -5 1 A 9 15

Shirley B. Pungineer
CLERK

1 **RESP**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.
14

Case No. C154293
Dept. No. XVIII

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION**
16 **FOR EVIDENTIARY HEARING**

17 DATE OF HEARING: 4-8-02
18 TIME OF HEARING: 1:00 P.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 FRANK JOHAN COUMOU, Chief Deputy District Attorney, and files this Response to
21 Defendant's Motion for Evidentiary Hearing.

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 ...

26 ...

27 ...

28 **RECEIVED**

APR 05 2002

COUNTY CLERK

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Brendan Nasby, hereinafter Defendant, was charged by an Amended Criminal Complaint,
4 filed on August 27, 1998, with Conspiracy To Commit Murder and Murder With Use Of A
5 Deadly Weapon. An Information, filed on November 9, 1998, charged Defendant with
6 Conspiracy To Commit Murder and Murder With The Use Of A Deadly Weapon.

7 A jury found Defendant guilty of Conspiracy To Commit Murder and First Degree
8 Murder With Use Of A Deadly Weapon. On July 29, 1999, Defendant was sentenced to a
9 maximum of one hundred twenty (120) months, with a minimum parole eligibility of forty-eight
10 (48) months, in the Nevada Department of Prisons on the Conspiracy To Commit Murder count.
11 On the First Degree Murder count Defendant was sentenced to a consecutive term of Life with
12 the possibility of parole, with a consecutive term of Life with the possibility of parole for the
13 deadly weapon enhancement. A Judgment Of Conviction was filed on December 2, 1999.

14 Defendant appealed his conviction to the Nevada Supreme Court. Defendant's conviction
15 was affirmed on February 7, 2001. A Remittitur issued on March 6, 2001.

16 Defendant filed the instant Motion For Evidentiary Hearing on or about February 17,
17 2002.

18 **ARGUMENT**

19 **I. DEFENDANT'S MOTION FOR EVIDENTIARY HEARING IS PREMATURE.**

20 After a Defendant has filed a petition for post conviction relief and the State has
21 filed a response, the judge shall review the pleadings and determine whether an evidentiary
22 hearing is required. NRS 34.770. As Defendant's Petition For Writ Of Habeas Corpus (Post-
23 Conviction) has not yet been reviewed by this Court, his Motion For Evidentiary Hearing is
24 premature, and should not be granted.

25 ...

26 ...

27 ...

28 ...

1 CONCLUSION

2 Defendant's Motion For Evidentiary Hearing is premature, and as such should be denied.

3 DATED this 4 day of April, 2002.

4 Respectfully submitted,

5 STEWART L. BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #000477

8 BY

Frank Johan Coumou
9 FRANK JOHAN COUMOU
10 Chief Deputy District Attorney
11 Nevada Bar #004577

12 CERTIFICATE OF MAILING

13 I hereby certify that service of the above and foregoing was made this 3rd day of
14 April, 2002, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

15 Brendan James Nasby, #63618
16 P.O. Box 1989
17 Ely, Nevada 89301

18 BY

Kim Tree
19 Secretary for the District Attorney's Office
20
21
22
23
24
25
26
27
28

ORIGINAL

24
FILED

2002 APR -5 A 9:15

Shirley B. Pungione
CLERK

1 **RESP**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 BRENDAN JAMES NASBY,
12 #1517690

Defendant.

Case No. C154293
Dept. No. XVIII

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR**
16 **WRIT OF HABEAS CORPUS (POST-CONVICTION)**

17 DATE OF HEARING: 4-8-02
18 TIME OF HEARING: 1:00 P.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 FRANK JOHAN COUMOU, Chief Deputy District Attorney, and files this Response to
21 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 **POINTS AND AUTHORITIES**

26 **STATEMENT OF THE CASE**

27 Brendan Nasby, hereinafter Defendant, was charged by an Amended Criminal Complaint,
28 filed on August 27, 1998, with Conspiracy To Commit Murder and Murder With Use Of A

COUNTY CLERK

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RECEIVED

1 Deadly Weapon. An Information, filed on November 9, 1998, charged Defendant with
2 Conspiracy To Commit Murder and Murder With The Use Of A Deadly Weapon.

3 A jury found Defendant guilty of Conspiracy To Commit Murder and First Degree
4 Murder With Use Of A Deadly Weapon. On July 29, 1999, Defendant was sentenced to a
5 maximum of one hundred twenty (120) months, with a minimum parole eligibility of forty-eight
6 (48) months, in the Nevada Department of Prisons on the Conspiracy To Commit Murder count.
7 On the First Degree Murder count Defendant was sentenced to a consecutive term of Life with
8 the possibility of parole, with a consecutive term of Life with the possibility of parole for the
9 deadly weapon enhancement. A Judgment Of Conviction was filed on December 2, 1999.

10 Defendant appealed his conviction to the Nevada Supreme Court. Defendant's conviction
11 was affirmed on February 7, 2001. A Remittitur issued on March 6, 2001.

12 Defendant filed the instant Petition For Writ Of Habeas Corpus (Post-Conviction) on
13 February 1, 2002.

14 STATEMENT OF THE FACTS

15 During its case-in-chief, the State presented overwhelming evidence of Defendant's guilt.
16 This evidence included testimony that Defendant had murdered Michael execution style, that
17 Defendant made admissions to two (2) different people and that Defendant voluntarily, led
18 police to the location of the murder weapon within Defendant's house. Furthermore, the State
19 offered evidence from Defendant's accomplices to detail the premeditated manner in which the
20 homicide took place.

21 The State called the three (3) accomplices that joined Defendant in the killing of Michael.
22 (Reporter's Transcript Volume III (RT III), p. 63; RT V, pp. 86, 118). The first accomplice,
23 Jeremiah Deskin ("Jeremiah"), testified that he knew Defendant as a member of the gang L.A.
24 Crazy Riders and that Defendant was the gang leader. (RT III, pp. 69-72). Jeremiah told the
25 jury that Tommie Burnside ("Tommie") and his brother Jotee Burnside ("Jotee") were also
26 members of the gang. (RT III, pp. 75-76). Jeremiah said that one (1) month prior to the July
27 16, 1998 killing of Michael, Defendant met with Jeremiah, Tommie, Jotee and another male
28 gang member to discuss whether Michael should be killed. (RT III, pp. 76-78). Jeremiah

1 specifically recalled that Defendant was soliciting opinions as to whether Michael should be
2 killed because Michael was allegedly trying to take Defendant's role in the gang. (Id.).
3 Jeremiah also related that the general consensus from the other gang members at that meeting
4 was that Michael should not be killed. (RT III, p. 79).

5 Jeremiah further testified that on the night of the murder he was at Defendant's house
6 when Defendant called him into the garage. (RT III, p. 80). There inside the garage with
7 Tommie, Defendant told Jeremiah to go pick up Michael so that they could take him to the desert
8 and shoot him. (RT III, pp. 80-81). Jeremiah then went with Tommie and Jotee to Michael's
9 residence. (RT III, pp. 81-82, 85-91). Upon returning to Defendant's home, Defendant displayed
10 his Browning 9mm handgun that he had purchased from an individual named David. (RT III,
11 pp. 91-92). Jeremiah explained that the "plan" was to go to the desert to shoot guns and smoke
12 weed, but that no one had any weed on them. (RT III, p. 94).

13 After driving out into the desert, Jeremiah recalled that he stopped his car near the edge
14 of a wash. (RT III, pp. 97-98). Jeremiah told the jury that all five (5) men got out of the car to
15 look amongst the garbage and debris for something to use as a target. (RT III, p. 97). He also
16 said that he kept the lights of his car on to illuminate the area. (Id.). At this time Defendant
17 asked Jeremiah to move his car closer to the edge to brighten the area of the wash where old
18 refrigerators were strewn about. (RT III, pp. 98-99). After he got out of the car, Jeremiah
19 observed Defendant approach Michael from behind as Michael continued looking into the wash
20 for something to use as a target. (RT III, 100-101). From closer than ten (10) feet away,
21 Defendant then raised the handgun and shot Michael in the upper back. (RT III, pp. 101-102).
22 Having never seen Defendant approach him from behind, Michael grabbed his neck/shoulder
23 area while dropping down onto one (1) knee. (RT III, pp. 102-103). Defendant then stepped
24 forward and fired another shot at Michael's neck/head area which caused Michael to fall forward
25 and roll over onto his back. (RT III, p. 103).

26 Jeremiah testified that Tommie, Jotee and Defendant then ran back to the car after
27 Defendant had shot Michael for the second time. (RT III, p. 104). Before Jeremiah was able
28 to start the car to leave, Defendant jumped out, ran over to Michael and shot once more at

1 Michael's head as Michael lay there on his back. (RT III, pp. 104-107). Jeremiah recalled that
2 when Defendant returned to the car, he muttered something like, "Try to take me off my own
3 set" which Jeremiah understood to mean that Defendant believed Michael was trying to remove
4 Defendant from the gang. (RT III, pp. 108-109).

5 Jeremiah further testified that on the way back to Las Vegas, Defendant threatened
6 Jeremiah and the Burnside brothers if any of them spoke of the killing. (RT III, p. 109).
7 Jeremiah explained to the jury that he had also been charged in the death of Michael, but agreed
8 to plead to a lesser charge in exchange for his testimony against Defendant. (RT III, pp. 115-
9 116). The Burnside brothers, Tommie and Jotee, testified that they had been at Defendant's
10 house on the night of the murder and that Defendant had shot Michael out in the desert. (RT V,
11 pp. 86-91, 118-128). They also explained that they too had been charged with the death of
12 Michael, but had agreed with the State to testify against Defendant. (RT V, pp. 91, 126-127).

13 Two women next testified for the State -- Tanesha Banks ("Tanesha") and Crystal
14 Bradley ("Crystal"). Tanesha related that she was the mother of Michael's son and had been
15 involved in a three (3) way conversation over the telephone with Crystal and Defendant on July
16 17, 1998. (RT IV, pp. 11-16). Tanesha stated that Defendant sounded "panicky" when she
17 incorrectly mentioned that she had seen Michael earlier in the morning of July 17, 1998. (*Id.*).
18 Tanesha also told the jury that she had been beaten by a friend of Defendant purportedly because
19 Tanesha had been telling people she believed Defendant was responsible for Michael's death.
20 (RT IV, pp. 20-22). Tanesha later explained that once Defendant had been arrested, she received
21 a threatening call from him when he was being held at the Clark County Detention Center
22 ("CCDC"). (RT IV, pp. 23-24).

23 Crystal next testified that she had been familiar with Defendant from the L.A. Crazy
24 Riders gang and that she had stayed in contact with the gang. (RT IV, pp. 38-39). She also
25 recalled the three (3) way telephone conversation with Tanesha and Defendant in which
26 Defendant abruptly told her that he needed to speak with only Crystal. (RT IV, pp. 41-42).
27 Crystal then testified that during this conversation, Defendant admitted to murdering Michael,
28 and he planned on attempting to make it look like another gang had committed the killing. (RT

1 IV, pp. 43-44, 46). Crystal revealed that while she didn't believe Defendant at first, she later
2 called Secret Witness when she confirmed that Michael was indeed dead. (RT IV, p. 48).

3 Brittney Adams ("Brittney") testified that she had talked to Defendant about Michael's
4 death and that she thought Defendant was "covering something up." (RT V, pp. 153-154).
5 Brittney also said that Defendant had told her Crystal and Tanesha were involved in Michael's
6 death and that he wanted Brittney to kill Tanesha because Tanesha was blaming him for the
7 death. (RT V, pp. 155-156). Brittney explained that she drove over to Tanesha's house with her
8 cousin and Defendant to get Tanesha's side of the story. (RT V, pp. 157-158). Defendant
9 offered Brittney a hammer to use in the assault of Tanesha telling her, "You can just hit her
10 between the eyes and kill her; just kill her, cuz; just kill her." (RT V, p. 159). Brittney told the
11 jury that she refused Defendant's offer to use the hammer, but did get into a fight with Tanesha
12 while Defendant remained inside the car. (RT V, pp. 159-163). Brittney recalled that when they
13 left Tanesha's house, Defendant repeatedly said to her, "You should have killed her, cuz, you
14 should have killed her." (RT V, p. 163).

15 Jomeka Beavers ("Jomeka"), Michael's aunt, testified that she was living with Michael
16 on the day he was murdered. (RT III, p. 222). She related that Michael had received a telephone
17 call early in the evening on the night he was killed. (RT III, pp. 225-226). Michael then asked
18 Jomeka to watch his infant son while he went out with his friends. (RT III, p. 227). Jomeka
19 specifically remembered that Michael got into a car with Jeremiah, whom she knew as
20 Woodpecker, but that Charles Damion Von Lewis a.k.a. Sugar Bear was not present. (RT III,
21 pp. 227-228).

22 Dr. Robert Jordan ("Jordan") testified that he performed the autopsy on Michael who had
23 three (3) bullet wounds, two (2) to the chest and one (1) to the head. (RT III pp. 163-166).
24 Jordan explained that the Michael had one entrance wound to the back, one exit wound to the
25 chest and one entrance wound above the left eye. (RT III, p. 167). Jordan also testified that the
26 only projectiles he recovered during the autopsy were bullet fragments from Michael's skull.
27 (RT III, p. 169).

28 Las Vegas Metropolitan Police Department ("Metro") homicide detectives James Buczek

1 ("Buczek") and Thomas Thowsen ("Thowsen") testified that they had been the lead investigators
2 into Michael's death. (RT IV, pp. 141-142; RT V, pp. 228-229). Buczek related that he had
3 developed Defendant as a suspect in the murder of Michael after he spoke with Tanesha who
4 told him about the three (3) way telephone conversation she had with Crystal and Defendant.
5 (RT IV, pp. 144-148). Buczek confirmed this information by speaking with Crystal and then
6 proceeded to have a search warrant drawn up to search Defendant's house for evidence. (*Id.*).
7 Defendant was placed under arrest after the execution of the search warrant and was advised of
8 his Miranda rights. (RT IV, pp. 149-150). As Buczek was transporting him to the police station,
9 Defendant immediately referred to a 9mm handgun as the murder weapon even though Buczek
10 never told Defendant what kind of weapon was used to kill Michael. (RT IV, pp. 151-153).
11 Defendant also told Buczek that the 9mm handgun was back at his house. (*Id.*). Metro found
12 the 9mm handgun in a bag under Defendant's bed. (RT IV, p. 153). Thowsen testified that he
13 had investigated a September 23, 1998 phone call from CCDC to Tanesha and confirmed that
14 it had come from a phone line within CCDC. (RT V, pp. 228-237). Further investigation by
15 Thowsen revealed that two (2) phone calls had been placed from the section of CCDC where
16 Defendant was being held. (RT V, pp. 256-257). The jury then heard from another inmate of
17 CCDC, John Holmes ("Holmes"), who testified that Defendant had admitted to killing Michael.
18 (RT V, pp. 211-213). Holmes stated that Defendant told him he murdered Michael because
19 Michael was trying to take his leadership spot in the gang. (*Id.*).

20 A number of Metro crime scene analysts testified for the State as well. Kelly Neil
21 ("Neil") testified that he recovered four (4) shiny, new-looking shell casings from the crime
22 scene amidst "hundreds" of expended shell casings. (RT III, pp. 23-24). Neil also recovered
23 three (3) Winston brand cigarette butts and took photographs of footprints. (RT II, pp. 24, 28).
24 Neil explained that three (3) of the four (4) shell casings he retrieved were 9mm cartridges. (RT
25 III, p. 26). Randall McPhail ("McPhail") testified that he collected evidence from Defendant's
26 house after the search warrant had been executed. (RT IV, pp. 71-76). McPhail explained that
27 he recovered a 9mm handgun, took pictures of seven (7) pairs of shoes and collected cigarette
28 butts bearing the brands Kool, Benson & Hedges and a generic brand. (*Id.*). A further check

1 on the 9mm handgun revealed that it had been reported stolen from North Las Vegas. (RT IV,
2 pp. 83-84).

3 Fred Boyd ("Boyd") next testified that he had run fingerprint analysis on the recovered
4 shell casings and 9mm handgun, but was unable to get any tangible latent prints. (RT IV, pp.
5 116-117). Boyd also explained that he could not find a match amongst the photographs of
6 footprint impression at the crime scene and the photographs of the seven (7) pairs of shoes from
7 Defendant's house. Firearms expert Torrey Johnson ("Johnson") testified that he conducted a
8 test fire on the 9mm handgun recovered from Defendant's house and that the shell casings
9 discovered at the crime scene were three (3) 9mm casings and one (1) .45 casing. (RT V, pp.
10 18-19). Johnson also told the jury that while he could not positively find that the shell casings
11 had been fired from the 9mm handgun seized at Defendant's house, the casings bore marks
12 consistent with that conclusion. (RT V, p. 20). Moreover, Johnson explained that based on the
13 assumption that the coroner removed bullet fragments from Michael's skull which were the
14 resulting cause of death, the 9mm handgun examined by Jordan was the murder weapon. (RT
15 V, pp. 25-29).

16 Before the Defendant's trial began, an evidentiary hearing was held to determine the
17 admissibility of evidence regarding intimidation of State's witnesses. (RT II, p. 4). The State
18 called witnesses Tanesha, Brittney, Holmes, Thowsen and hand-writing expert Jan Seaman-
19 Kelly ("Seaman-Kelly"). (RT II, pp. 6, 30, 57, 206, 223). The hearing was suspended so that
20 jury selection and opening statements could be done. (RT II, p. 65). Once opening statements
21 were completed, defense counsel filed a motion for mistrial to which the State responded that
22 the hearing was not a Petrocelli hearing, but one designed to determine the admissibility of
23 intimidation evidence pursuant to Lay v. State, 110 Nev. 1189, 886 P.2d 448 (1994). (RT II, pp.
24 199-200). Only during argument did defense counsel shift the focus of the hearing away from
25 introduction of intimidation evidence to an alleged Fifth Amendment violation. (RT II, pp. 201-
26 202). Nevertheless, the trial court noted that a ruling had not yet been made on this matter when
27 opening statements were given and that both counsel were free to state what they believed the
28 evidence would be at trial. (RT II, pp. 203-205). Finding that the prejudice outweighed the

1 probative value, the trial court did ultimately exclude evidence of two (2) documents that
2 Defendant had written to establish an alibi defense and to potentially intimidate State's
3 witnesses. (RT V, pp. 189-199). Accordingly, the prosecutor never referred to these documents
4 during the State's case-in-chief or closing arguments. (RT VI, pp. 16-36, 56-70).

5 ARGUMENT

6 **I. DEFENDANT'S EQUAL PROTECTION, PROSECUTORIAL MISCONDUCT, 7 AND DUE PROCESS CLAIMS ARE NOT COGNIZABLE.**

8 The State contends that this Court is not obligated to consider Defendant's Equal
9 Protection (claim one), Prosecutorial Misconduct (claim two), and Due Process (claims three and
10 four) claims. NRS 34.810(1) provides in pertinent part:

11 1. The Court shall dismiss a petition if the court
12 determines that: . . .

13 (B) The petitioner's conviction was the result of a
14 trial and the grounds for the petition could have
15 been:

16 (1) Presented to the trial court;

17 (2) Raised in a direct appeal or a prior petition for
18 a writ of habeas corpus or post-conviction relief; or

19 (3) Raised in any proceeding that the petitioner has
20 taken to secure relief from his conviction and
21 sentence, unless the court finds both cause for the
22 failure to present the grounds and actual prejudice
23 to the petitioner.

24 NRS 34.810(1). Additionally, NRS 34.810(3) imposes a burden on the Defendant to prove
25 specific facts that demonstrate good cause for Defendant's failure to present this claim in an
26 earlier proceeding and to show that Defendant was actually prejudiced in the manner in which
27 his trial and or direct appeal was conducted. NRS 34.810(3). Here, Defendant has not set forth
28 any reason for failing to raise these issues in his direct appeal. As such, he has failed to meet
his burden of proof to show good cause not to have raised these issues earlier. Accordingly, the
waiver of claims doctrine mandates the dismissal of Defendant's Equal Protection, Prosecutorial
Misconduct, and Due Process claims. Kimmel v. Warden, 101 Nev. 6, 692 P.2d 1282 (1985);
Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983).

...

...

1 **II. DEFENDANT'S CLAIM THAT THE JURY WAS IMPROPERLY INSTRUCTED**
2 **ON THE ELEMENTS OF PREMEDITATION IS BARRED BY LAW OF THE**
3 **CASE.**

4 In the present petition, Defendant argues that the jury was improperly instructed on the
5 premeditation. Defendant argues that the trial court erroneously allowed instructions similar to
6 those used in Kazalyn v. State, 108 Nev. 67, 75-76, 825 P.2d 578, 583-584 (1992). However,
7 this argument was presented to the Nevada Supreme Court, and in an Order Of Affirmance the
8 Supreme Court found that as Defendant's conviction predated the decision in Byford v. State,
9 116 Nev. 215, 994 P.2d 700 (2000), that the use of the Kazalyn instructions did not provide
10 Defendant with any grounds for relief. This ruling constitutes law of the case and can not be
11 revisited now. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

12 **III. DEFENSE COUNSEL WAS NOT INEFFECTIVE.**

13 In order to demonstrate ineffective assistance of counsel, a convicted defendant must
14 show both that his counsel's performance was deficient and that the deficient performance
15 prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064
16 (1984). The proper standard in evaluating whether an attorney's performance was deficient is
17 that of "reasonably effective assistance," i.e., that counsel's performance fell below an objective
18 standard of reasonableness. Id., 104 S. Ct. at 2055. This evaluation is to be done in light of all
19 the circumstances surrounding the trial. Id. "[S]trategic choices made by counsel after
20 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,
21 108 Nev. 112, 117, 825 P.2d 593, 596 (1992). Counsel has a duty to make reasonable
22 investigations or to make a reasonable decision that makes further investigations unnecessary.
23 Strickland, 466 U.S. at 691, 104 S.Ct at 2066. In Strickland, the United States Supreme Court
24 further instructed courts faced with ineffective assistance of counsel claims as follows:

25 Judicial scrutiny of counsel's performance must be
26 highly deferential. It is all too tempting for a
27 defendant to second-guess counsel's assistance after
28 conviction or adverse sentence, and it is all too easy
for a court, examining counsel's defense after it has
proved unsuccessful, to conclude that a particular
act or omission of counsel was unreasonable. . . . A
fair assessment of attorney performance requires
that every effort be made to eliminate the distorting

1 effects of hindsight, to reconstruct the
2 circumstances of counsel's challenged conduct, and
3 to evaluate the conduct from counsel's perspective
4 at the time. Because of the difficulties inherent in
5 making the evaluation, a court must indulge a
6 strong presumption that counsel's conduct falls
7 within the wide range of reasonable professional
8 assistance; that is, the defendant must overcome the
9 presumption that, under the circumstances, the
10 challenged action might be considered sound trial
11 strategy.

12 Thus, a court deciding an actual ineffectiveness
13 claim must judge the reasonableness of counsel's
14 challenged conduct on the facts of the particular
15 case, viewed as of the time of counsel's conduct. A
16 convicted defendant making a claim of ineffective
17 assistance must identify the acts or omissions of
18 counsel that are alleged not to have been the result
19 of reasonable professional judgment.

20 Id. at 689-90, 104 S.Ct. at 2065-66 (citations and internal quotations omitted). The Nevada
21 Supreme Court has held that it is presumed that counsel fully discharged his duties, and said
22 presumption can only be overcome by strong and convincing proof to the contrary. Donovan
23 v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978).

24 Defendant argues that trial counsel was ineffective for failing to provide him with equal
25 protection guarantees. In his equal protection claim, Defendant admits that a Batson challenge
26 was made by defense counsel, and that the trial judge found that the prosecutor had demonstrated
27 race neutral reasons for excluding a black juror. As such, defense counsel adequately sought to
28 protect his counsel's interests by requesting a Batson challenge and cannot be deemed
ineffective pursuant to Strickland and its progeny, supra.

Defendant also argues that the prosecutor elicited testimony of other bad acts, in violation
of his rights. However, the testimony which Defendant complains of served to provide a
complete version of events involving Defendant's crime, and therefore was properly admitted.
See, Powell v. State, 108 Nev. 700, 838 P.2d 921 (1992); Allan v. State, 92 Nev., 318, 549 P.2d
1402 (1976). As such, trial counsel was not ineffective for raising this issue as it was properly
before the court.

Defendant argues that the instructions provided to the jury were erroneous. However,

1 Defendant argued in his direct appeal that the use of the Kazalyn instructions was erroneous, and
2 this issue was denied by the Nevada Supreme Court. As such, trial counsel cannot be deemed
3 ineffective for failing to allege that these instructions were erroneous, when these instructions
4 have been upheld in his direct appeal. As such Defendant's claim must be denied.

5 Finally, Defendant argues, that defense counsel was ineffective for failing to call alibi
6 witnesses. However, the Nevada Supreme Court, in Young v. Ninth Judicial District Court has
7 adopted the holding of the Nix v. Whiteside, 475 U.S. 157 (1986) in stating that a criminal
8 defendant is not denied effective assistance of counsel when a defense attorney "refuses to
9 cooperate with the defendant in presenting perjured testimony. Young v. Ninth Judicial District
10 Court, 107 Nev. 642, 649, 818 P.2d 844, 848 (1991). Additionally, NRS 199.120 states that
11 anybody who suborns perjury shall be guilty of a category D felony. In the present instance, the
12 State was able to recover information which indicated that Defendant was coaching witnesses
13 with false testimony. (State's Exhibits 1-4). Two of these exhibits were presented in
14 Defendant's case. (State's Exhibits 3-4). Additionally, defense counsel was notified of
15 Defendant's attempts to stubborn perjury. As such, defense counsel was prohibited from putting
16 on witnesses that he knew would commit perjury. As defense counsel had originally filed a list
17 of witnesses, and as Defendant states that his case was proceeding on an alibi defense, defense
18 counsel cannot be deemed ineffective under the Strickland standards for failing to present
19 witnesses whom he knew would perjure themselves. As it is the Defendant's own actions which
20 required that his counsel proceed without calling his alibi witnesses, Defendant cannot now
21 claim that counsel was ineffective. For this reason, Defendant's claim of ineffective assistance
22 of counsel must be denied.

23 **IV. APPELLATE COUNSEL WAS NOT INEFFECTIVE.**

24 The United States Supreme Court has stated that a defendant has the ultimate authority
25 to make fundamental decisions regarding his case. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct.
26 3308, 3312 (1983). However, the defendant does not have a constitutional right to "compel
27 appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of
28 professional judgment, decides not to present those points." Id. In reaching this conclusion the

1 Supreme Court has recognized the "importance of winnowing out weaker arguments on appeal
2 and focusing on one central issue if possible, or at most on a few key issues." Jones, 463 U.S.
3 at 751 -752, 103 S.Ct. at 3313. In particular, a "brief that raises every colorable issue runs the
4 risk of burying good arguments . . . in a verbal mound made up of strong and weak contentions."
5 Jones, 463 U.S. at 753, 103 S.Ct. at 3313. The Court has therefore held that for "judges to
6 second-guess reasonable professional judgments and impose on appointed counsel a duty to
7 raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and
8 effective advocacy." Jones, 463 U.S. at 754, 103 S.Ct. at 3314.

9 Similar to the standards of ineffective assistance regarding trial counsel, appellate counsel
10 has the right and discretion to employ his professional knowledge and tactics in constructing a
11 defendant's appeal. Unless the defendant can demonstrate that counsel did not provide
12 "reasonably effective assistance" appellate counsel's professional conduct will be upheld as
13 effective. See, Strickland, 466 U.S. at 687, 104 S.Ct. at 2064; Love, 109 Nev. at 1138, 865 P.2d
14 at 323.

15 Defendant argues that appellate counsel was ineffective for failing to raise Claims One
16 through Four on appeal. This claim is without merit. In his equal protection claim, Defendant
17 admits that a Batson challenge was made by defense counsel, and that the trial judge found that
18 the prosecutor had demonstrated race neutral reasons for excluding a black juror. As such,
19 defense counsel adequately sought to protect his counsel's interests by requesting a Batson
20 challenge, and as it was determined that sufficient race neutral reasons were presented to the trial
21 court, appellate counsel cannot be deemed ineffective for failing to raise this issue on appeal.

22
23 Additionally, Defendant argues that appellate counsel should have argued about several
24 instances of prosecutorial misconduct. However, appellate counsel did raise the issue of
25 prosecutorial misconduct regarding the prosecutor's opening statement, and this issue was
26 denied by the Nevada Supreme Court. The State would also point out that appellate counsel is
27 limited by the record, and can only appeal those items which are contained therein.

28 Defendant also argues that the prosecutor elicited testimony of other bad acts, in violation

1 of his rights. However, the testimony which Defendant argues about serves to provide a
2 complete version of events involving Defendant's crime, and therefore was properly admitted.
3 (See argument supra). As such, appellate counsel was not ineffective for raising this issue as it
4 was properly before the court. Defendant argues that the instructions provided to the jury were
5 erroneous. However, Defendant argued in his direct appeal that the use of the Kazalyn
6 instructions was erroneous, and this issue was denied by the Nevada Supreme Court. As such,
7 appellate counsel cannot be deemed ineffective for failing to raise this issue on appeal, when
8 appellate counsel did in fact litigate this issue. As such Defendant's claim must be denied.

9 Finally, Defendant argues that appellate counsel was ineffective for failing to raise
10 ineffective assistance of trial counsel arguments in Defendant's direct appeal. As this issue is
11 properly raised in a petition for writ of habeas corpus (post-conviction), this argument, too, lacks
12 merit. See, Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983).

13 For these reasons, Defendant has failed to meet the requirements set forth in Strickland
14 and its progeny, by showing that appellate counsel acted un-reasonably in handling Defendant's
15 direct appeal. Additionally, Defendant's argument presents nothing more than a bare allegation
16 regarding appellate counsel's effectiveness, and Defendant is not entitled to relief. See, Hargrove
17 v. State, 100 Nev. 498, 686 P.2d 222 (1984).

18 CONCLUSION

19 For the reasoning mentioned above, Defendant's Petition should be denied.

20 DATED this 4 day of April, 2002.

21 Respectfully submitted,

22 STEWART L. BELL
23 DISTRICT ATTORNEY
Nevada Bar #000477

24
25 BY Frank Johan Coumou
26 FRANK JOHAN COUMOU
27 Chief Deputy District Attorney
28 Nevada Bar #004577

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 5th day of April, 2002, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Brendan James Nasby, #63618
P.O. Box 1989
Ely, Nevada 89301

BY *m. Shel*
Secretary for the District Attorney's Office

Brendan Nasby
#B17690

830 Casino Ctr. Blvd.
Las Vegas, NV 89101

Be Gentle
Legs.
Inside.

Crystal Sobrian
2686 LaVere Dr.
Long Beach, CA 90801

Love

EXHIBIT "1"

Sorry for the interruption, but once again, Colleen

(9-30-99)

Crystal,
Hello, Love! I've been meaning to write you all day, but it's 8:00 p.m. now. I didn't have anything in particular to tell you. I just felt the need to write you another letter.
I've been stressing over my case all day, but I swear that you keep popping into my head. I'm finding myself ~~staring~~ staring at you pictures and getting lost in love again.
I love you, Crystal, and I hope that we can be together. I see that you are serious about God, and to have a woman that honors Him is truly a blessing from Him. I need a woman like you to keep my head on straight. Most guys get locked up, praise God, and then forget about Him when they get out. If they had a woman that was serious about ~~honoring~~ honoring God, then they wouldn't stray away from Him.
Boo-Boo, you ~~met~~ meet all qualifications of the perfect woman. You're beautiful, sexy, smart, funny, hard working, "FREAKY", responsible, loving, and most of all → God fearing. You're exactly what I need. You're all I need. Crystal, you're such a special woman to me. I just hope that God allows me to come home and be with you.
(9-29-99)

Shattered my spirits. She was supposed to come and see me last night so that I could give her those notes, but she never showed up. I guess that she was like, "I got more important things to do." Anyways? I called her this morning and I had a talk with her. I asked her if she wanted me to get out. Then I asked her if she wanted me to be a father to Lyne. She answered both questions with a "yes." But being that she's hating on me → I asked her if there was any part of her that wanted me to stay locked down. Do you know what she said? "My heart!" She said that shed rather see me in jail, than with someone else. What kind of shit is that? Anyways? I just told her that me and her could still be together, but she has to take care of business. There was more to it, but that's basically what ~~she~~ I told her. Hopefully, she gets done what needs to be done. The reason I'm telling you this, is because I think you should know, and not be kept in the dark. What I tell her are only words. I'm only telling her what she wants to hear, so that I can get her to do what I need her to do. All of my love belongs to you now. To be honest with you → I hate Colleen. Looking at the situation that I'm in, I ~~will~~ have no doubt that you will understand. My ~~but~~ feelings are not involved with anything I tell Colleen. The only ~~and~~ emotion that she brings out of me is "anger." If I get out and God grants me that miracle, I only want to be with you. I don't

really. know how you feel about all of that, and to be honest, I don't really know how you feel about us. If you would
..... let me know, please. I love you, and I really want to be with you. Hopefully → you feel the same way.

Anyways! It's Thursday and I still haven't cut my hair. It's a must that I cut it ~~tomorrow~~ tomorrow. I go to trial in ten more days. My nerves are getting bad. Me and Joe were talking last week, and I might have to get put on the stand. ~~I hope I don't have to.~~

[illegible]

(10-1-99)

Well, a lots happened between yesterday and today. First of all, let me tell you why I had to cut this letter short, yesterday. In the middle of me writing this letter, the ~~the~~ board of classifications called me out of my cell to talk to me. ~~the~~ Guess what these people tell me..... After ten months of me being isolated, they don't even know why they've been isolating me. After ten months, they come and tell me that I can go back to general population. I couldn't believe it! I went threw all of that drama and almost killed myself, and now they want to tell me that I never had to be isolated in the first place! I don't know if I want to go back. I've gotten used to living like this. If I go back

to general population, I'll be able to watch T.V., have a cell mate, play cards and dominoes, see movies use the phone more, and come out of my cell for eight hours a day. But being around all of them fools like that → I'll be right back in the hole for fighting Oooh! I'll be able to go outside, breath some fresh air, and work out on the rec-yard. I think I might go, but I'm not sure. I don't like being around too many people like that.

~~I spoke with [redacted] today. He told I put on my~~
~~old witness [redacted] [redacted].~~ The examiner hasn't finish ed with the bullet testing, and if it comes back that it doesn't match, again, then we can exclude the weapon. So you know what that means → We're going to have to postpone trial, again. I hope we don't have to wait until December, because I don't want to miss Lynae's birthday, again. I already missed her first birthday, I would hate to miss another. I'm really tired of being in here, but I think that if I went back to general population, the time would go by a lot quicker, because I'm not used to having so many things to do. I know I'll get my size back if I go to general population, too. Who knows → It might ease the stress. Oooh! I'll have action at cigarettes and weed, too? You don't know how much I need to get high.

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1 And she says: You need to keep
2 your mouth shut about Blue.

3 And I was hit.

4 Q Okay. How bad were you hit?

5 A Bad enough to knock me out and send me to
6 the hospital.

7 Q Was Brittney by herself?

8 A No. She had a person with her, she said was
9 her cousin named Keshia.

10 Q How did she get there, do you know?

11 A In a car; in her car.

12 Q Did you see anybody else --

13 A No.

14 Q -- in the area?

15 A No, I -- I didn't see anybody else.

16 Q And so she told you keep your mouth shut
17 about Blue?

18 A Yes, she did.

19 Q Now, that happened August 1st, correct?

20 A Yes, it did.

21 Q Subsequent to that, this -- this thing that
22 happened between you and Brittney Adams -- was there a time
23 that you eventually found out that the defendant was, in
24 fact, arrested for the murder of Michael Beasley?

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1 Q -- as being the defendant?

2 A Yes.

3 Q Did -- did he say anything else besides that
4 he could have you touched?

5 A That he didn't kill Michael and he didn't
6 know who did; and he had my Social Security number and my
7 house number; and read it off to me, my social and my house
8 number.

9 Q And that's when he threatened you that he
10 could have you touched?

11 A Yes.

12 Q Now, do you happen to have a caller I.D. box
13 in your --

14 A Yes, I do.

15 Q -- your house?

16 Do you recall, Miss Banks, if
17 you contacted the police about this intimidation?

18 A Yes, I did.

19 Q And did the police respond to your house?

20 A Yes, they came over.

21 Q Do you recall what that number was that
22 showed up on the caller box?

23 A I'm not quite sure. It's a 315 number.

24 Q Okay. If I show a statement that you gave

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1 A Yes, he was.

2 Q And was that shortly after --

3 A Yes.

4 Q -- the beating you took from Brittney?

5 A Yes.

6 Q Now, I'm going to ask you to draw your
7 attention to September, approximately September the 23rd.

8 Does that date stick out in
9 your mind?

10 A Yes.

11 Q Why is that?

12 A Because, um, Blue called me from jail.

13 Q What -- do you know why he was calling you?

14 A To threaten me.

15 Q What exactly did he tell you?

16 A That he could have me touched if I testified
17 against him.

18 Q And when he said "I can have you touched,"
19 what -- what did you take that to mean?

20 A To kill me or beat me or anything; have
21 somebody kill me or beat me.

22 Q And is this the same voice you have always
23 recognized --

24 A Yes.

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1 to the police at that time, would that help refresh your
2 memory?

3 A Yes.

4 MR. COUNOU: Court's indulgence, Judge.
5 Counsel, page four, Voluntary
6 Statement, September 23rd.

7 Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. COUNOU:

10 Q Look at that statement, Miss Banks, on the
11 top portion. Read it to yourself, please.

12 And after you are done reading
13 it, if I could have that copy back.

14 A (Complies.)

15 Q Having looked at this statement, do you
16 recognize this statement as being a statement that you gave?

17 A Yes.

18 Q And having looked at it, does it help
19 refresh your memory as to what that number was?

20 A Yes, it does.

21 Q What number is that?

22 A 315-4415.

23 Q With the same area code as we have here,
24 702, correct?

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1 A Yes.
 2 Q Was that the only time he called you?
 3 A Um, yes.
 4 Q That you personally spoke to him, right?
 5 A Yes.
 6 Q Now, during this time, had you ever heard
 7 rumors that a fellow by the name of Sugar Bear may have
 8 killed -- killed Michael?
 9 A Only from -- coming from one person's mouth.
 10 Q And who is that?
 11 A That he was saying that he did it, and
 12 that's the -- Blue right there. (Indicating)
 13 Q So the defendant was accusing Sugar Bear?
 14 A Yes.
 15 Q Do you know who Sugar Bear is?
 16 A Yes, I do.
 17 Q And who is he?
 18 A He was a -- he was Michael's friend.
 19 Q Did Sugar Bear, to your -- from what you
 20 knew, since you were close to Michael, did -- did they have
 21 any problems?
 22 A No.
 23 Q And, in fact, when was the last time you saw
 24 Sugar Bear?

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1 A Um, he was a pall bearer at Michael's
 2 funeral.
 3 MR. COUMOU: Judge, I think I'll pass the
 4 witness.
 5 THE COURT: Mr. Sciscento.
 6 MR. SCISCENTO: Okay.
 7
 8 CROSS-EXAMINATION
 9 BY MR. SCISCENTO:
 10 Q Miss Banks, you said that Michael Beasley
 11 had a tattoo on him "CYN"?
 12 A Yes.
 13 Q What does that stand for?
 14 A Crazy Young Niggers.
 15 Q Is that a gang.
 16 A It's a clique. It's not a gang.
 17 Q What's the difference between a clique and a
 18 gang?
 19 A A gang is bigger.
 20 Q I guess I'm still not following you,
 21 A It -- they weren't doing the gang activity.
 22 It was just more of a group of friends; it was just a group
 23 of friends, close friends together, hanging out.
 24 Q Crazy young niggers?

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1 A Yes.
 2 Q Okay. Was Sugar Bear a member of L.A. Crazy
 3 Riders?
 4 A Yes, he was.
 5 Q Did you ever know Sugar Bear to walk around
 6 with a nine millimeter?
 7 A No, I didn't.
 8 Q You never seen him with a nine millimeter?
 9 A No, I didn't.
 10 Q Was Sugar Bear involved in this L.A. Crazy
 11 Riders gang?
 12 A Yes, he was.
 13 Q Was he a strong man in the gang?
 14 Let me rephrase that.
 15 Is he somebody that would take
 16 on the rest of the gang, maybe fight with each individual
 17 member?
 18 A No.
 19 Q He never would do that?
 20 A No.
 21 Q Are you sure about that?
 22 A To my knowledge, no.
 23 Q You never seen Sugar Bear with the nine
 24 millimeter gun?

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1 A No --
 2 MR. COUMOU: Objection; asked and answered.
 3 THE WITNESS: -- I haven't.
 4 BY MR. SCISCENTO:
 5 Q Or any other kind of firearm?
 6 A No.
 7 Q You said Brittney Adams came up and beat you
 8 up on --
 9 A August 1st.
 10 Q -- August 1st.
 11 Do you know why she did that?
 12 A She said because I was talking about Blue
 13 having Michael killed.
 14 Q Did she ever say that Sugar Bear did this?
 15 A No, she did not.
 16 Q You never heard from her that Sugar Bear --
 17 A No, I did not.
 18 Q Okay. When -- the phone call you received
 19 from the jail, there was a certain number on the caller
 20 I.D., a 315-4415 number, correct?
 21 A Yes, sir.
 22 Q And you're familiar with that number?
 23 A Yes.
 24 Q Why is that that you are familiar with it?

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1 A Because one of my friends -- boyfriends was
2 in jail at the time too.

3 Q And that's a Danny?

4 A Yes.

5 Q Okay. And in September, when you received
6 this phone call, Danny was also in jail?

7 A Yes.

8 Q And every time that he would call you, you
9 would receive the same number, the 315?

10 A 315, yes.

11 Q And then maybe a different suffix?

12 A Yes.

13 Q But it was always the same prefix, the 315?

14 A Yes.

15 Q Okay. And the 315 just comes -- means it's
16 coming out of the Clark County Detention Center?

17 A No. There is a recording also.

18 Q Okay. But I'm saying it shows that's where
19 the -- it's originated?

20 A Yes.

21 Q Okay.

22 A The majority of the time, yes.

23 Q Okay. So Danny would call you and sometimes
24 the number 315-4415 would appear --

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1 Q You never heard about him before?

2 A Not until Michael was killed, no.

3 Q But prior to that?

4 A No.

5 Q You said you used to hang around this gang
6 L.A. Crazy Riders?

7 A Yes.

8 Q And you were just a -- an associate or --

9 A I hung around them because Michael was
10 there.

11 Q Okay. And during this time, you never saw
12 Jottee Burnside?

13 A I saw -- I saw Tommie once.

14 Q You saw Tommie Burnside?

15 A Once.

16 Q How many times did you go with Michael to
17 these gang activities, or gang meetings, or just get -- get
18 together?

19 A We would just go to Blue's house to drop
20 Michael off after he got out of school and a lot of them
21 would be at his house.

22 Q The time that Brendan called you in
23 September, he told you specifically that he did not kill
24 Michael; is that correct?

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1 A No.

2 Q Never? Never?

3 A No, not to my knowledge, no.

4 MR. SCISCENTO: May I have the Court's
5 indulgence for one moment?

6 THE COURT: Yes.

8 (Whereupon, a sotto voce at this time.)

10 MR. SCISCENTO: Your Honor, could we
11 approach for a moment?

12 THE COURT: Yes.

14 (Unreported discussion at the bench.)

16 BY MR. SCISCENTO:

17 Q Do you know a Tommie Burnside?

18 A No, I don't know him.

19 Q Do you know Jottee Burnside?

20 A No.

21 Q Did you know Woodpecker?

22 A No.

23 Q A guy named Jeremiah Deskin?

24 A No.

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1 A Yes, he did.

3 (Whereupon, a sotto voce at this time.)

5 MR. SCISCENTO: Your Honor, I have no
6 further questions.

7 THE COURT: Mr. Coumou.

8 MR. COUMOU: I just have one question.

10 REDIRECT EXAMINATION

11 BY MR. COUMOU:

12 Q I forgot to ask you this, Miss Banks: Do
13 you remember that incident that Brittney came over to your
14 house and told you to keep your mouth shut about Blue --

15 A Yes.

16 Q -- did that lead to criminal charges
17 pressed -- charges against Brittney Adams for --

18 A Yes.

19 Q -- for what she did to you?

20 A Yes.

21 THE COURT: Mr. Sciscento.

22

23

24

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RECROSS-EXAMINATION

BY MR. SCISCENTO:

Q Was Brittney Adams arrested?

A Yes, as far as I know, yes.

Q And she was placed in custody?

A Yes.

Q And you never heard her say that Sugar Bear did it?

A No, I didn't.

MR. SCISCENTO: No further questions.

THE COURT: Do any of the ladies and gentlemen have any questions for Miss Banks?

(Negative response.)

THE COURT: Okay. Miss Banks, thank you very much for coming to court and testifying this afternoon. You are excused then.

(Witness excused.)

THE COURT: The State may call its next witness.

MR. COUNOU: Crystal Bradley.

Judge, now that Miss Banks is done testifying, could she remain in the courtroom?

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to any questions asked to you, please don't answer unless I tell you it is permissible to do so.

And could you state your name and spell your first and last name for the court reporter, please.

THE WITNESS: Crystal Bradley;
C-r-y-s-t-a-l, B-r-a-d-l-e-y.

THE COURT: Thank you.

Mr. Counou, you may proceed.

MR. COUNOU: Thank you.

DIRECT EXAMINATION

BY MR. COUNOU:

Q Good afternoon, Miss Bradley.

I'm going to direct your attention back to June of 1997, July '97.

During that time, were you involved in a particular group that had a particular name?

A Yes.

Q And what was the name of that group?

A L.A. Crazy Riders.

Q Could you tell the jury what kind of group that was?

A It was a gang.

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THE COURT: You are not going recall her, Mr. Sciscento?

MR. SCISCENTO: No, Your Honor.

THE COURT: Okay. The answer is yes then.

MR. COUNOU: Thank you.

THE COURT: Okay. Miss Bradley, if you would step around to your right, please here.

Okay. And put that down.

If you would face me, please, and raise your right hand.

Whereupon,

CRYSTAL BRADLEY

having been called as a witness by the state and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Thank you. Please be seated.

THE COURT: Okay. Miss Bradley, the attorneys are going to ask you some questions here this afternoon. Please answer them the best you can without arguing with any of the attorneys.

Also, if there is an objection

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Q Were you a member of that gang?

A Yes.

Q Did you have a -- a street name that -- that you had?

A Nocent.

Q Nocent. And that's spelled N-o cent?

A Uh-huh.

Q Did you -- were you very familiar with the people who were in this gang?

A Yes.

Q Was there any particular person in this gang who was kind of like the leader?

A Who thought he was the leader? Yes.

Q Who thought he was a leader.

Who is that person?

A Brendan Nasby.

Q Do you see him here in court today?

A Yes.

Q Can you please point to him and tell me what he's wearing today in court.

A The blue and white suit -- blue suit, white shirt.

MR. COUNOU: Okay. Judge, may the record reflect that -- I think Mr. Sciscento has a white suit.

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1 THE COURT: Is it the gentleman sitting in
2 the middle of the counsel table?

3 THE WITNESS: Yes.

4 THE COURT: The record will reflect the
5 witness has identified the defendant.

6 MR. COUNOU: Thank you.

7 BY MR. COUNOU:

8 Q How long had you known Blue, the defendant?

9 A For about two years.

10 Q And did he always think he was the leader of
11 the -- of the gang?

12 A Yes.

13 Q Could you explain why?

14 A Everybody kept in contact with him if nobody
15 else.

16 Q Was he the one who would call the shots on
17 what to do and stuff like that?

18 A Most of the time.

19 MR. SCISCENTO: Object to that, Your Honor.
20 I believe it's speculation.

21 THE COURT: Overruled.

22 BY MR. COUNOU:

23 Q What was your answer on that?

24 A Most of the time.

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1 contact with?

2 A Yes.

3 Q What was her name?

4 A Tanesha.

5 Q Now, during this time, you said that you --
6 describe the type of relationship that you had with the
7 defendant.

8 A We were just friends. We kept in touch. He
9 trusted me.

10 Q Do you know why he trusted you?

11 A Really, no.

12 Q Would he tell you a lot of things --
13 personal things?

14 A Yes.

15 Q And during this time, July 1998 then, had
16 you heard any rumors that there was maybe trouble between
17 the defendant, Brendan Nasby and Michael Beasley?

18 A No.

19 Q Now, I'm going to draw your attention to
20 July 17th, 1998.

21 Were you, in the morning,
22 talking to -- to Tanesha Banks?

23 A Yes.

24 Q And what were you talking about?

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1 Q Now, was there also an individual part of
2 this gang that -- that was -- whose name was Michael
3 Beasley?

4 A Yes.

5 Q And what was his street name?

6 A Um --

7 Q Was it Droop?

8 A Yes.

9 Q Now, what kind of relationship did you --
10 did you remain in this gang throughout the year going into
11 July of 1998?

12 A Yes. Actually, that last year of '98, I had
13 already stood up from them. I only kept in contact maybe
14 once a month for that year.

15 Q Who would you keep in contact with?

16 A With Blue, Brendan.

17 Q With Brendan?

18 A Uh-huh.

19 Q Was there any reason why you were keeping in
20 contact?

21 A Just to make sure everything was okay.
22 There was always somebody getting into trouble.

23 Q Was there any -- any girls that were
24 girlfriends with members of this group that you also kept in

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1 A We were gossiping about everything and
2 Michael's name came up.

3 Q Were you gossiping about Michael also?

4 A Yes.

5 Q What was brought up about Michael?

6 A I don't remember exactly. It was just
7 something about him leaving the gang.

8 Q And in the conversation of that, did you do
9 anything to try to find out about --

10 A Yes.

11 Q -- that gossip, that rumor then?

12 A Yes.

13 Q What did you do?

14 A We called Brendan on third way.

15 Q Okay. Who actually did the third way
16 calling?

17 A I did.

18 Q And you knew -- you still had his phone
19 number at this --

20 A Yes.

21 Q So did you call him at his home?

22 A Yes.

23 Q And what -- what happened when you dialed
24 the number and the telephone started ringing?

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1 A He answered.
 2 Q And it was the same voice that you've always
 3 recognized as being the defendant's?
 4 A Yes.
 5 Q What happened when -- when he answered?
 6 A We just got to conversating.
 7 Q With -- was Tanesha on the other --
 8 A Yes.
 9 Q -- now hearing also?
 10 A Yes.
 11 Q What was said among the three of you when
 12 you first got the defendant on the phone?
 13 A I don't remember exactly, but we were still
 14 gossiping about the same things.
 15 Q About Blue?
 16 A Uh-huh.
 17 Q I mean about Michael?
 18 A Bren- -- yes.
 19 Q And then what happened?
 20 A And then he told me -- Brendan told me he
 21 needed to talk to me by myself. So I got Tanesha off the
 22 phone and called him back.
 23 Q And did you -- did you talk to him
 24 personally?

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1 He said Mike grabbed the back
 2 of his neck and fell to his knees. He shot him again.
 3 And then they all got in the
 4 car. Somebody said to get back out and get the shells
 5 because prints was on it, and instead of getting out to get
 6 the shells, he got out and shot a third time and they left.
 7 Q And he told you this?
 8 A Yes.
 9 Q And this was all because he thought Michael
 10 was going to take away his clout --
 11 A Yes.
 12 Q -- in the gang?
 13 Did he express any remorse to
 14 you over the phone?
 15 A No.
 16 Q In fact, what was his voice tone like?
 17 A It was regular; it was normal.
 18 Q What were you doing when you were listening
 19 to all this?
 20 A I was watching TV and just listening to him.
 21 Q Did you believe him?
 22 A No, not at first.
 23 Q Why not?
 24 A Because I just didn't.

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1 A Yes.
 2 Q Why did he want to talk to you personally?
 3 What did he say?
 4 A He explained the fact that he had just
 5 murdered Michael.
 6 Q Did he say why?
 7 A Basically, because he was taking his clout
 8 or trying to take over.
 9 Q That Michael was trying to take his clout?
 10 A Uh-huh.
 11 Q Did he -- did he say how -- how it happened?
 12 A Yes.
 13 Q What -- what did he say?
 14 A He said that him and three other people went
 15 up and -- went to his house, picked him up, to explain
 16 that -- he told him he was going to shoot a nine he had just
 17 got.
 18 And he kind of hesitated and
 19 all of -- they went up to the desert; pulled in, got out;
 20 and he said that he kind of knew Droop knew something was
 21 happening because he kept his distance.
 22 So they got back in the car,
 23 drove out in the desert some more and got out and walked.
 24 While Mike was looking over the cliff, he shot him once.

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1 Q So after he told you this, what -- did you
 2 stay on the phone?
 3 A Um, we talked for maybe two minutes -- two
 4 minutes afterwards; and him saying how he would go to the
 5 funeral and cry like he was sorry.
 6 And we got off the phone and
 7 the news came on, and that's when I know he was telling the
 8 truth because they identified the body with the tattoos and
 9 that's how I knew it was Michael.
 10 Q What was it about the tattoos, that you knew
 11 from the newscast, that it was -- that it was Michael?
 12 A He had CYN. He had one with Droop on it;
 13 and T-Bone.(ph)
 14 Q Did you know what CYN stood for?
 15 A Yes.
 16 Q And what is that?
 17 A Crazy Young Niggers.
 18 Q And T-Bone, what does that stand for?
 19 A The Compton Crips.
 20 Q Is that another gang?
 21 A Yes, in California.
 22 Q When you mentioned that you talked for
 23 another two minutes with him, and that the defendant said he
 24 was going to go to the funeral and act like he was crying,

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1 did -- did he say anything else about that?

2 A No. No, he just said the fact that he would
3 go to the funeral and say he was sorry. He said he was
4 trying and make it look like the Gersons did it, which is
5 another gang here in Las Vegas.

6 Q So at -- this is the first time you heard
7 him already planning on blaming it on somebody else?

8 A Yes; yes.

9 Q And Gersons, is that a -- well, you said
10 that that's another gang here in -- in Las Vegas.

11 At the time, did the L.A. Crazy
12 Riders -- did they get along with the Gersons?

13 A No, that was a rivalry.

14 Q There was always a rivalry?

15 A Yes.

16 Q And back then, did -- the Gersons, did they
17 hang out at a particular area of town?

18 A Yes.

19 Q What -- where is that area?

20 A Off on Lake Mead and Martin Luther King.

21 Q And the defendant and this L.A. Crazy
22 Riders -- where did the defendant live?

23 A Um, he lived off of Cheyenne and Clayton.

24 Q So that's just a little bit further up the

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1 and ask his grandmother when Michael had left, because she
2 had previously said that he wasn't there.

3 I can't remember what her
4 answer was, but it wasn't the right one.

5 So, after we got finished
6 talking to her, I explained to her what happened and what he
7 had just told me -- that Blue had just told me.

8 Q So you told Tanesha what Brendan had just
9 told you?

10 A Yes.

11 Q Did you make any efforts on your own to
12 contact the police?

13 A Not on my own, no; with her on the phone, we
14 called Secret Witness.

15 Q You did call Secret Witness?

16 A Uh-huh, with her on the phone.

17 Q With Tanesha?

18 A Tanesha.

19 Q I see.

20 And -- and -- but you didn't
21 leave your name, right?

22 A No.

23 Q But the police found out about you?

24 A Yes.

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1 road heading north on --

2 A Yes.

3 Q -- on MLK?

4 A Yes.

5 Q So after you hear the news then, what --
6 what did you do?

7 A After I got off the phone with him and saw
8 the news, I called Tanesha.

9 Q What -- when you saw that news, what were
10 you feeling?

11 A Everything. I was, um, upset and I tried to
12 hold it down because I knew I had to let Tanesha know.

13 Q Why?

14 A Because that was her baby's father.

15 Q What kind of relationship did you have with
16 Michael?

17 A We were friends. We weren't best friends.

18 Q Did you call then Tanesha?

19 A Yes.

20 Q And what happened when you spoke to Tanesha?
21 A I told her to call Michael's house and see
22 if he was home; and if he wasn't, to talk to his grandmother
23 and tell her to bring the baby to her house. She did that.

24 Then I asked her to call back

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1 Q And what -- did you tell the police the
2 truth?

3 A Yes.

4 Q Why did you tell the police the truth?

5 A Because they were already there. They had
6 already talked to Tanesha obviously. They wanted her too.

7 Q You weren't going to lie to them?

8 A No.

9 Q And -- but did you tell Tanesha that you
10 didn't want to speak to the police or did you beg her to
11 say --

12 A Yes.

13 Q -- to say hey, don't -- don't mention my
14 name?

15 A Yes.

16 Q Why is that?

17 A Because I didn't want to be involved.

18 Q Is that normal?

19 Explain that to the jury. Is
20 that normal for people who are involved in gangs that you
21 just don't want to get involved --

22 MR. SCISCENTO: Your Honor, I'm going to
23 object to that, what is normal for gang members or people
24 involved in gangs.

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1 Could you direct the question
2 specifically to Miss Bradley?

3 THE COURT: Sustained.

4 MR. COUMOU: Sustained?

5 THE COURT: Sustained.

6 MR. COUMOU: Okay.

7 BY MR. COUMOU:

8 Q Since -- so the police came to you and you
9 cooperated, correct?

10 A Yes.

11 Q And you've testified previously in a prior
12 hearing to what you've testified today, correct?

13 A Yes.

14 MR. COUMOU: Judge, I'll pass witness.

15 Thank you.

16 THE COURT: Thank you.

17 (Whereupon, a sotto voce at this time.)

18 THE COURT: Mr. Sciscento.

19 MR. SCISCENTO: Thank you, Your Honor.

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1 Q Now, it's a basically California gang
2 transplanted in to Las Vegas?

3 A Yes.

4 Q And the people in this gang are anti-Las
5 Vegas people?

6 A Yes.

7 Q Do you know a person named Sugar Bear?

8 A Yes.

9 Q Sugar Bear is from California, correct?

10 A Yes, he is.

11 Q Do you know a person named Woodpecker?

12 A Yes.

13 Q Woodpecker is from California, isn't he?

14 A I don't know.

15 Q Okay. Now, these L.A. Riders do not like
16 the people from Las Vegas?

17 A Correct.

18 Q L.A. Crazy Riders is a compilation. I want
19 to make sure we understand this.

20 A Yes.

21 Q You have L.A. Riders and then you have Crazy
22 Young Niggers?

23 A Yes.

24 Q Crazy Young Niggers kind of form a bond with

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CROSS-EXAMINATION

1 BY MR. SCISCENTO:

2 Q Miss Bradley, let's focus for a little while
3 on the L.A. Crazy Riders.

4 That's a compilation of gangs,
5 is that correct?

6 A Yes.

7 Q Two gangs in to one, kind of.

8 A Yes.

9 Q Originated as an L.A. Riders; am I correct?

10 A Yes.

11 Q L.A. Riders is a gang coming out of Compton?

12 A Coming out of California.

13 Q Is it -- is it all of California or specific
14 areas of California?

15 A All of us were from a different part of
16 California.

17 Q It wasn't specified in Compton?

18 A No.

19 Q Okay. So it's coming out of California?

20 A Uh-huh.

21 Q And it comes in to Las Vegas and settles
22 there.

23 A Yes.

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1 L.A. Riders and become L.A. Crazy Riders?

2 A Yes.

3 Q Okay. So you have a mixture of people here
4 from different societies, one from Las Vegas, one from
5 California?

6 A Yes.

7 Q Okay. Now, what you have here is somebody
8 with a CYN, Crazy Young Niggers; he basically was an
9 original member of a Las Vegas gang?

10 A Yes.

11 Q He merges with the L.A. Riders, but he's not
12 really an original L.A. Rider?

13 A Correct.

14 Q And there may be some tension between the
15 person from California and the person from Las Vegas; would
16 you agree with that?

17 A No, not with this case, no.

18 Q What do you mean not with this case?

19 A Because there wasn't any tension between
20 anybody that I know of with Droop.

21 Q No, I'm not asking about that. I'm asking
22 specifically --

23 MR. COUMOU: Then I would object to
24 speculation.

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THE COURT: Well, let's see what the question is.

BY MR. SCISCENTO:

Q As a member of the L.A. Crazy -- I'm sorry -- L.A. Riders -- you were an original member of the L.A. Riders?

A Yes.

Q You came over here and you helped -- or there was a formulation of the L.A. Crazy Riders?

A Right.

Q Okay. Do you have knowledge if the people from California generally disliked the people from Las Vegas?

A Yes.

Q They did?

A Yes.

Q Okay. Now, I want to make sure I understand. This is a little complicated for me.

Crazy Young Niggers is a -- is a Las Vegas gang.

A Yes, but they are from California.

Q Okay. Somebody with CYN is holding his self out to be a Crazy Young Nigger gang member?

A Yes.

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Q Okay. Droop had CYN?

A Yes.

Q Okay. Now, L.A. Crazy -- L.A. Riders, Crazy Young Niggers form, but isn't it true that the L.A. Riders, even though they came here three years ago, disliked people from Las Vegas?

A Yes.

Q Okay. So it's safe to say if somebody was in the group who was from Las Vegas, and that being the group of L.A. Crazy Riders, there might be some dislike for that person because he's from Las Vegas?

A Not if they join our gang.

Q Okay.

A Because we're not going to let somebody from Las Vegas join.

Q That would make sense in the real world, but in a gang world, it's different, isn't that true?

A No, not with that, no.

Q There is rivalries amongst gang members --

A Yes.

Q -- in the same cliques; is that correct?

A Yes.

Q Which makes no sense to anybody except people in the gangs; isn't that correct?

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A Yes.

Q You said that you were out of the gang -- and I want to focus on July of 1998: You were out of the gang at that point?

A Yes.

Q How long had you been out of the gang?

A For almost a year.

Q How did you get out of the gang?

A I left.

Q Just --

A Yeah.

Q -- walked.

And what gang was that; was it L.A. Crazy Riders?

A Yes.

Q The compilation?

A Yes.

Q You just walked; you didn't get beat out or anything like that?

A No.

Q So it was easy for you to leave?

A Yeah.

Q What about the males of this gang, could they just walk out and leave?

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A I don't know. I had left at that time, so I didn't know what was going on.

Q While you were a gang member, did you notice anybody, any male gang members, whoever, just walked out and left.

A At that time --

Q Yes.

A -- there was nobody who just left.

Q Prior, did you ever hear of anybody doing that?

A No.

Q Okay. Could somebody have done that under the bylaws of this gang?

A Probably not.

MR. COUNTOU: Objection. I doubt that there is bylaws in a gang. It's not a corporate set up.

MR. SCISCENTO: Perhaps Miss Bradley wants to tell us how they set this up.

THE COURT: Miss Bradley, was there any type of written agreement regarding rules of the gang?

THE WITNESS: No.

THE COURT: Okay. Mr. Sciscento.

Objection sustained.

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BY MR. SCISCENTO:

Q Okay. Now, you are out of the gang for a year come July 1998?

A Uh-huh.

Q But you stay in contact with Mr. Nasby?

A Yes.

Q Why is that?

A Because I just did. That was a friend at that time.

Q How many times a week did you see Mr. Brad -- Mr. Nasby?

A There wasn't every week seeing him.

Q How many times -- give me what -- a guess?

A Ah --

Q How many times a week or how many times a month.

A After the first, I would say six to seven months that I was out, I hadn't seen him. We just kept in contact over the phone.

Q Okay. And so how many --

A And then maybe -- maybe -- after that, maybe once a month or so.

Q Well, how many times a month would you call him after that, after you got out of the gang?

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Q Okay. Now, you tell us that he confides in you on September -- or he confides in you on July 17th that he committed a murder?

A Yes.

Q Because he trusted you?

A Yes.

Q Had he ever confided in you with anything else he had ever done before?

A Yes.

Q You hear that he commits this murder, but you don't call the police?

A No.

Q As a matter of fact, you said you were watching TV at the time?

A Yes.

Q What were you watching?

A I don't remember. I was in to listening to what he had to say.

Q So there is something else going on out here and you are listening to this, and you don't take him serious at that time?

A No.

Q Okay. Did Tanesha Banks tell you to testify today?

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A It was -- it was maybe, ah, two or three times a month.

Q It started dwindling down after a while?

A Yes.

Q Months go by; you forget your old friends; you moved on to something new?

A Uh-huh.

Q Is that a yes?

A Yes.

Q And so after a few months, six, seven months, eight months, you really call him maybe once a month, right?

A Yes.

Q Okay. And you're really not that close of friends with Mr. Nasby, are you?

A No.

Q And you really weren't that close of friends with him before, were you?

A Yes, I was.

Q But -- as a gang member, you may have been?

A Uh-huh.

Q But other than that, you didn't socialize outside of the gang?

A No.

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A No.

Q Did she tell that Michael did this?

A No.

Q You didn't want to get involved at all with any of this --

A No, I didn't.

Q -- whatsoever, because you didn't like Michael Beasley that much?

A No, that's wrong.

Q Well, if you liked him so much, why wouldn't you call the police immediately?

A Well, first, immediately, I didn't believe him.

And after I saw the news and called Tanesha, I still didn't want to get involved because I know what Brendan is capable of.

Q You said Droop was trying to take Brendan's stripes?

A That's what Brendan says.

Q Some people said Michael was trying to get out of the gang.

A That's what I heard.

Q Well, some people say that in order for Michael to get out of the gang, he had to get beat out.

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1 A Okay. Well, I wasn't there at that time, so
2 I don't know what was going on.

3 Q So if he's trying to get out of the gang,
4 how could he try to take the stripes of Brendan.

5 A I don't know. Ask Brendan.

6 Q Well, I'm asking you.

7 A I don't know. I'm not in his head.

8 Q All right. Did you ever hear that Michael
9 Beasley was out of the gang?

10 A No.

11 Q You never heard that before?

12 A No.

13
14 (Whereupon, a sotto voce at this time.)

15
16 BY MR. SCISCENTO:

17 Q I have asked you earlier about a man
18 named -- a person named Sugar -- Sugar Bear.

19 A Uh-huh.

20 Q Have you ever heard of that person?

21 A Yes.

22 Q What is his real name?

23 A Charles.

24 Q His last name; he have a last name?

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1 Q Did you ever see him wave around any guns?

2 A No.

3 Q When you were with the Crazy -- the L.A.
4 Crazy Riders, did you go over there to Brendan's or
5 whoever's house --

6 A Yes.

7 Q -- to have meetings?

8 A Yes.

9 Q Would do you rapping?

10 A I wouldn't. They would.

11 Q They would get together and they would rap?

12 A Yes.

13 Q During these rap sessions, have you ever
14 seen Sugar Bear, Damion Von Lewis pull out a gun?

15 A No.

16 MR. COUNOU: Judge, I'm going to object. I
17 think the witness has been asked and answered she has not
18 seen this Sugar Bear, this accusation constantly being made.

19 THE COURT: Okay. Sustained.

20 MR. SCISCENTO: No further questions, Your
21 Honor.

22 THE COURT: Mr. Counou.

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1 A Yes, he does, but I don't remember it.

2 Q Is it Von Lewis?

3 A I think so.

4 Q Does he also go by the name of Damion Von
5 Lewis?

6 A Yes. Damion is his middle name.

7 Q So Charles Damion Von Lewis?

8 A Yes.

9 Q Also known as Sugar Bear?

10 A Yes.

11 Q And Sugar Bear was from California?

12 A Yes.

13 Q He was an original L.A. Rider?

14 A Yes.

15 Q He came over here and helped form the group
16 Crazy -- L.A. Crazy Riders?

17 A Yes.

18 Q He always walked around with L.A. caps?

19 A No.

20 Q Do you know if Sugar Bear ever walked around
21 with nine millimeters or guns?

22 A Not that I know of.

23 Q Did you ever see him with any guns?

24 A Not -- no.

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REDIRECT EXAMINATION

2 BY MR. COUNOU:

3 Q You indicated, Miss Bradley, that the
4 defendant confided a lot in you?

5 A Yes.

6 Q Him and -- and his girlfriend?

7 A Yes.

8 Q What's his girlfriend's name?

9 A Coleen.

10 Q And he would confide in a lot of aspects of
11 personal stuff?

12 A Yes.

13 Q Stuff that normally is kept very personal,
14 correct?

15 A Yes.

16 Q And he certainly has said things to you
17 that -- that's not -- that's so personal you don't want to
18 expose readily --

19 A Yes.

20 Q -- to anybody, correct?

21 A Yes.

22 MR. COUNOU: Nothing further then, Judge.

23 THE COURT: Mr. Sciscento.

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RECROSS-EXAMINATION

BY MR. SCISCENTO:

Q Miss Bradley, are you saying that Brendan Nasby had a girlfriend at the time?

A Yes.

Q WHAT was her name?

A Coleen.

Q But, he would confide in you on these matters, which are pretty serious, but wouldn't confide in his girlfriend: Is that what you are saying?

A I don't know if he would with her or not, but with me, yes.

Q Even though you hadn't spoken to him or seen him personally within the last few months of the time he said this?

A Yes.

MR. SCISCENTO: No further questions.

MR. COUNOU: Nothing further, Judge.

THE COURT: Okay. Do any of the ladies and gentlemen of the jury have any questions for Miss Bradley?
(Negative response.)

THE COURT: Okay. Miss Bradley, thank you very much for coming to court and testifying. You are

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nine millimeter magazine clips or magazines themselves listed as item 12 collectively; appeared 52-C, a blue sports bag, item 16.

THE COURT: Okay. And, Mr. Sciscento, you stipulate to the chain of custody?

MR. SCISCENTO: As to those items, yes.

THE COURT: Okay. Thank you very much.

Mr. Counou, why don't we do this -- because we may have some other materials not relevant here -- why don't you approach with our court clerk and maybe we can pull out those items.

MR. COUNOU: Absolutely.

THE COURT: Do you need Mr. McPhail to assist you in that regard?

MR. COUNOU: I think I'm old enough now. I can handle it.

THE COURT: Well, okay.

MR. COUNOU: Thank you for the Court's indulgence.

(State's Exhibits 52, 52-A, 52-B, 52-C marked for identification.)

THE COURT: Okay. Mr. McPhail, could you stand and raise your right hand, please.

THE WITNESS: Yes, I do.

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excused then.

(Witness excused.)

THE COURT: Mr. Counou.

MR. COUNOU: Thank you, Judge.

The State will call Randy

McPhail.

(Whereupon, a sotto voce at this time.)

MR. COUNOU: Can we approach for a second?

THE COURT: Yes.

(Unreported discussion at the bench.)

THE COURT: Okay. It's my understanding the parties want to enter into a stipulation regarding the chain of custody of the weapon in question.

Mr. Counou, what is it that we're going to refer to that's --

MR. COUNOU: Judge, we will be referring to -- and what I will be asking the court clerk to mark as State's Proposed Exhibit 52, 52-A, being a Browning nine millimeter Ingles pistol listed as item 11; as 52-B, two

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THE CLERK: Thank you. Please be seated.

THE COURT: Mr. McPhail, the attorneys are going to ask you some questions here this afternoon. Please answer them the best you can without arguing with any of the attorneys.

Also, if there is an objection to any question asked to you, please don't answer it unless I tell you it's permissible to do so.

And could you state your name and spell your first and last name for the court reporter, please.

THE WITNESS: Yes, Your Honor.

Randall Mark McPhail; last name is spelled M-c-P-h-a-i-l.

THE COURT: Thank you very much.

Mr. Counou, you may proceed.

MR. COUNOU: Thank you.

DIRECT EXAMINATION

BY MR. COUNOU:

Q Good afternoon, Mr. McPhail.

Could you please tell the jury as to your profession.

A I'm a crime scene analyst with the Las Vegas

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1 Metropolitan Police Department.

2 Q And are you familiar with a Sherree Norman
3 and Kelly Neil?

4 A Yes. I work with them.

5 Q Do you perform the same type of job
6 functions as they do?

7 A Yes, I do, yes.

8 Q You also have the same training as they do?

9 A Yes.

10 Q Now, I'm going to draw your attention to --
11 to a specific situation.

12 Do you also, as part of a crime
13 scene analyst, respond to search warrants that are being
14 executed by the police department?

15 A Yes, sir.

16 Q And what would be the purpose for a crime
17 scene analyst to respond to an area where a search warrant
18 is being executed?

19 A It would be primarily to document the
20 locations of any kind of evidence that we happen to find at
21 the scene. We would document it through photography,
22 through police reports, through our notes, and even diagrams
23 when necessary; and to collect that evidence, possibly
24 fingerprint evidence; basically do our jobs at that one

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1 there.

2 Q Now, this is what -- describe the residence
3 or what's the building that's located at this 4509
4 Switchback?

5 A It's a single family or -- yeah, single
6 family, two story residence. It was on the west side of
7 Switchback, the bedrooms being in the upstairs part of the
8 residence; the entryway downstairs on the southeast corner.

9 Q Now, once the search warrant was executed,
10 is there anything of -- in particular that you were asked to
11 look for?

12 A They -- the detectives had been through
13 prior to my being there, and they had pointed out a couple
14 of things that they wanted noted and possibly collected.

15 To start with, there was a
16 package -- a black plastic bag on the steps as I was
17 entering the upstairs area. It was at the foot of the steps
18 near the downstairs actually. And it had, um, 13 shotgun
19 cartridges inside, meaning complete cartridges. They had
20 not been fired.

21 Six of those were the same
22 brand and -- I'm sorry -- 12 of those were the same brand
23 and there was one additional brand, Gold Metal brand --

24 Q I'm going to ask you though, did you focus

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1 scene.

2 Q Now, I'm going to draw your attention
3 specifically to an event number that is reported as
4 980717-0541.

5 Are you familiar with that
6 event number, sir?

7 A Yes, sir.

8 Q And drawing your attention specifically to
9 August the 4th, 1998, were you asked to perform your duties
10 as a crime scene analyst on a search warrant that was being
11 executed at a -- at an address located at 4509 Switchback,
12 located in North Las Vegas, Clark County, Nevada?

13 A Yes, sir.

14 Q And what was the reasons that you were being
15 asked to respond for the search warrant?

16 A Um, I -- I wasn't told anything
17 specifically, but I was under the impression, like we
18 mentioned before, that I was there to document that scene
19 and to pick up any evidence that was there.

20 Q Did you know which -- were there any
21 detectives at the scene when you were --

22 A Yes.

23 Q -- at this home?

24 A I believe Tom Thowsen and Jim Buczec were

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1 your attention at a particular bedroom --

2 A Yeah.

3 Q -- of the house?

4 A Yes, the upstairs northwest bedroom is where
5 I primarily spent my time.

6 Q And when you got into the northwest bedroom,
7 was there a blue bag that your attention was directed to?

8 A Yes, sir.

9 Q Where was this blue bag located?

10 A It was on top of the bed. There was a crib
11 and a bed in the room, but the bed, I think, was a queen
12 size bed. It was in the northwest corner. The headboard
13 was against the north side of the room and the side of the
14 bed was actually, I believe, touching the west side of the
15 room. It was on top of that bed.

16 Q And inside this blue bag, was there
17 something that you ultimately impounded for evidence?

18 A Yes.

19 Q And what was that?

20 A There was a Browning style Ingles nine
21 millimeter semi automatic handgun in that bag.

22 Additionally, there were two
23 magazines, both empty, nine millimeter in size in that bag
24 too.

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1 Q And you impounded these items, correct?
 2 A Yes, sir.
 3 Q Have you just surrendered those to the
 4 court --
 5 A Yes.
 6 Q -- this morning?
 7 A Yes.
 8 Q Or this -- I'm sorry. This afternoon?
 9 A Right.
 10 Q Now, part of the search warrant, did you
 11 also impound and photograph shoes?
 12 A Yes, I did.
 13 Q And where would -- where did you locate
 14 these shoes?
 15 A There was about seven pairs of shoes
 16 throughout the room. Most of them were on the floor, but --
 17 excuse me. The room was kind of cluttered. It had quite a
 18 few clothing, baby items, what not, on the floor and some of
 19 the shoes were actually on top of these clothing items. But
 20 they all came from the general floor area of the room.
 21 Q So you just impounded shoes for one
 22 particular room, but there are how many -- do you recall how
 23 many rooms there were in this house?
 24 A I didn't go through the rest of the house.

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1 Q So your answer would be no?
 2 A Yes.
 3 Q Now, everything that -- everything that you
 4 just testified, was this also photographed, sir?
 5 A Yes.
 6 MR. COUNTOU: Judge, if I can have what we've
 7 already marked now as 11-A, -B and -C.
 8 Thank you.
 9 Could the record reflect I am
 10 showing -A, -B and -C, 52-A, -B and -C, to both defense
 11 counsels.
 12 If I may approach, Judge?
 13 THE COURT: Yes, you may.
 14 BY MR. COUNTOU:
 15 Q Now, you mentioned a blue bag, sir.
 16 Take a quick look at that.
 17 Does that look like the blue
 18 bag?
 19 A Yes, it does. This is it.
 20 Q And is that the blue bag that you found the
 21 nine millimeter weapon in?
 22 A Yes, sir.
 23 Q Okay. And then look at the -- these two
 24 items that have been marked 52-A.

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1 I know there was at least one other room, but there was
 2 other rooms.
 3 Q But it was a substantial size house?
 4 A Yeah.
 5 Q So you only focused your attention to one
 6 room and took the shoes from that room?
 7 A That's correct.
 8 Q Do you know if you took all the shoes?
 9 A I believe I did. We may have been looking
 10 for a specific size and we may have restricted female shoes.
 11 I can't remember specifically, but -- that, no.
 12 Q Okay. Did you also notice any smoking items
 13 that were inside the -- inside this bedroom?
 14 A Yes, sir. There was multiple cigarette
 15 butts inside the room.
 16 Q Did you mark down as to the name brand
 17 and --
 18 A Yes, sir.
 19 Q Could you explain to the jury what type of
 20 cigarette butts -- brands did you find.
 21 A I found primarily three different brands.
 22 There was Kool, Benson & Hedges and a no name brand.
 23 Q Did you find Winston brand cigarettes?
 24 A I haven't indicated that.

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1 That weapon is in a safe
 2 condition, right?
 3 A Yes, it is.
 4 Q Okay. Is that why it's pulled back like
 5 that?
 6 A Uh-huh.
 7 Q All right. And these are the two magazine
 8 clips?
 9 A Yes, sir.
 10 Q They were empty, weren't they --
 11 A Yes.
 12 Q -- when you found them? There was no
 13 bullets whatsoever in them?
 14 A I found no nine millimeter cartridges or
 15 cartridge cases at that scene.
 16 Q Now, was that weapon in that condition when
 17 you saw it, with -- clicked back?
 18 A I can't recall.
 19 Q Okay. If you looked at photographs that
 20 were taken at this crime scene, would that help refresh your
 21 memory?
 22 A Yes.
 23 Q But is there a reason why that weapon is now
 24 clicked back like that?

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1 A Customarily, we render it safe this way.
2 Often, we do this when we're going to impound it as evidence
3 so that people who look at it immediately can tell that it's
4 not loaded and it's safe to handle.

5 MR. COUMOU: Judge, at this time, I will
6 move to admit State's Proposed Exhibits 52, being the
7 package that it came in, 52-A, -B and -C, the items that
8 have been marked.

9 THE COURT: Any objection?

10 MR. SCISCENTO: No objection.

11 THE COURT: Okay. Proposed 52 and 52-A, -B
12 and -C are received.

13 MR. COUMOU: Thank you.

14 (State's Exhibits 52, 52-A,
15 52-B, 52-C admitted into
16 evidence.)

17 BY MR. COUMOU:

18 Q During this time, did you know whose bedroom
19 this was that you were in, where you found this -- this
20 weapon?

21 A I -- I really don't know very much about the
22 scene -- about the circumstances at all.

23 Q Okay. And, in fact, as a crime scene
24 analyst, you are there to just perform your duty, but it's
not part of the -- you are not part of the actual learning

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1 (Whereupon, a sotto voce at this time.)

2
3 MR. COUMOU: Can we approach? Sorry.
4 THE COURT: Yes.

5 (Unreported discussion at the bench.)

6 MR. COUMOU: Judge, I'll withdraw then 54.

7
8 THE COURT: Okay. Mr. Coumou, you may
9 proceed.

10 MR. COUMOU: Thank you.

11 Does counsel have objections?

12 MR. SCISCENTO: No objection.

13 THE COURT: What are those numbers then?

14 MR. COUMOU: These will be then 53, 56, 57,
15 and 58.

16 THE COURT: And you have no objection to
17 those, Mr. Sciscento?

18 MR. SCISCENTO: No objection.

19 THE COURT: Proposed 53, 56, 57, 58 are
20 received.

21 (State's Exhibits 53, 56, 57
22 58 admitted into evidence.)
23
24

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1 the facts and investigating, solving crimes, is that
2 correct?

3 A Not unless it pertains to helping us do our
4 job better. If they can give us some idea on what we're
5 looking for, then we'll go in that direction, or the tests
6 that might need to be done, we'll go in that direction also;
7 but we have to -- generally speaking, we don't have the full
8 story on what happened and I certainly didn't this time.

9 Q Mr. McPhail, this weapon, since you
10 impounded, do you recognize if it has been touched or opened
11 since you closed it and sealed it?

12 A Um, yeah. It looks like it's been marked by
13 one of our firearms examiners, Torrey Johnson?

14 A It looks like it's got his mark on it.

15 MR. COUMOU: Okay. Judge, if I can have
16 from the clerk now State's Proposed Exhibits 53 through 58.
17 Judge, I'm going to have to
18 exclude 55.

19 THE COURT: That will be withdrawn then?

20 MR. COUMOU: I'm going to -- I'm not going
21 to move to admit 55 at this time.

22 If the record could reflect
23 then 58, 57, 56, 54 and 53, I am showing to defense
24 counsels.

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1 BY MR. COUMOU:

2 Q Look at those photographs, sir,
3 collectively, and tell me if you recognize them.

4 A Yes, sir.

5 Q What's depicted in those four or five
6 photographs that you have?

7 A The first one is the residence where we
8 performed the search warrant and I went out on that one.

9 The second one is an overall
10 showing the nine millimeter handgun I have here in front of
11 me. (Indicating)

12 The third one will be a closer
13 up showing the make on the handgun. (Indicating)

14 And the last one being a serial
15 number on the handgun. (Indicating)

16 Q And, now, do you verify if that -- do you do
17 anything with that serial number?

18 A I document it and photograph it. That's
19 pretty much it.

20 Q Okay. Now, those photographs don't -- don't
21 refresh your memory if the -- if the weapon was, in fact,
22 pulled in a safe condition like that, right?

23 A I -- I have a document with me that I could
24 check and see what the original condition was. I just don't

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1 recall.

2 Q Would that help refresh your memory?

3 A Yeah.

4 Q Yeah, please refer to that document then.

5 MR. COUNOU: Judge, I'll move to admit these
6 photographs of the weapon, 58, 57, 56 and 53.

7 THE COURT: I think they were already
8 admitted.

9 MR. COUNOU: Oh, are they? Okay.

10 MR. SANTACROCE: Can we also know what
11 document he's referring to?

12 THE COURT: Okay. Again, would you do that,
13 Mr. McPhail, advise me what notes you just referred to.

14 THE WITNESS: I sure will.

15 It's a firearms document where
16 we indicate the type of firearms that we collect, whether it
17 was loaded, whether the safety was on; and it also
18 indicates, through pawn detail, whether the -- the weapon
19 has a want on it for it being stolen or used in a crime.

20 BY MR. COUNOU:

21 Q Okay. Did you -- did you check that out?

22 A Yes, I did.

23 Q And what's the -- what's the reference to
24 that?

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1 Q And did you find out as to this serial
2 number anything about this weapon?

3 A Yes.

4 Q Okay.

5 A I gave them the serial number and they gave
6 me a report back.

7 Q And what was that report?

8 A That it was stolen from North Las Vegas.

9 Q Now, again looking at that report that you
10 have, that you -- that you prepared, looking at it, does it
11 help refresh your memory if that weapon was actually in a
12 safe pulled condition as it is right now?

13 A The hammer indicates down. I would not have
14 seen the hammer because you can see the hammer's hidden
15 inside here when it's in the safe position.

16 So I have it indicated on the
17 report that it was safe, but because the hammer indicates
18 down, I would say that -- and it's hidden normally in a safe
19 condition, that it was not in a safe condition when I found
20 it.

21 Q Now, do you -- you are familiar with
22 firearms because of your training and your job, correct?

23 A Yes.

24 Q Are you familiar with nine millimeters?

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1 A I am under the understanding that it was
2 reported stolen from North Las Vegas.

3 Q Now, did you -- refreshing your memory, was
4 the weapon in that safe condition or not?

5 MR. SANTACROCE: Let me object and move to
6 strike that last statement as non-responsive to the
7 question.

8 The question was: Could you
9 tell from the document whether or not the chamber was open?

10 His response was it was stolen
11 from North Las Vegas. I move to strike that.

12 THE COURT: Okay. That motion is granted.

13 Please rephrase it, Mr. Counou.

14 MR. COUNOU: Okay.

15 THE COURT: And clean it up for the record.

16 BY MR. COUNOU:

17 Q Did you check the serial numbers by pawn
18 detail?

19 A Yes.

20 Q When you do that, what do you mean -- what
21 exactly is involved in that?

22 A I simply call pawn detail; give them the
23 name and make of the gun and ask them to check and see if
24 it's wanted for anything and give them a serial number.

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1 A Yes, sir.

2 Q Is this -- this pistol style weapon then, is
3 it the kind that once you fire a cartridge, it spits out the
4 expended casing?

5 A Yes, sir. It's a semi automatic.

6 Q And that's common for semi automatic guns,
7 correct?

8 A That's correct.

9 Q Is there a difference on guns that retain
10 the expended casing inside the weapon?

11 A Yes, sir.

12 Q What kind of weapon is that?

13 A That would be a revolver.

14 Q A revolver?

15 A Or a bolt action rifle.

16 This type of handgun will
17 expend it; cock it and get it ready for the next shot, which
18 would require only a pull back of the trigger and it will be
19 ready for another shot.

20 Q So if this weapon were to be fired in a
21 particular area, it would leave or litter the cartridge
22 case?

23 A The cartridge cases, yes.

24 MR. COUNOU: Judge, I'll pass the witness.

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THE COURT: Okay. Mr. Santacroce.

MR. SANTACROCE: Thank you.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Mr. McPhail, perhaps you could tell the jury how it is that you get from a search warrant -- how a search warrant gets to you through the process of going and conducting a search warrant?

A It's a little bit out of my field. What happens is we get a dispatch over the radio even, often saying that homicide re- -- requests our assistance on a search warrant and they will give us the address.

I'm not sure if I got it over the radio or whether dispatch actually called in the lab and asked us to assist homicide there. But I don't know what happened before that. All I know is I was asked to assist on that search warrant by dispatch.

Q Okay. And you went to the address and you met someone out there?

A Yes. The homicide detectives --

Q Who?

A -- were there.

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A That's correct.

Q Did you have any idea what you were looking for or facts of the case or anything of that nature?

A No, I really didn't.

I -- when I got there, I got a little information from the homicide detectives, stating that they were looking for guns, and that footwear might be important, as well as cigarette butts. So those were things I was looking for when I entered the scene.

Q Did they tell you what type of cigarette they were looking for?

A I don't recall them saying anything specifically, no.

Q What type of shoe?

A No.

Q But in the -- I assume you prepared an inventory of the items that you collected; is that correct?

A Yes, sir.

Q Let me talk to you about that for a second. When you take an item, you mark it -- do you mark it?

A Yes, I do.

Q And does that marking stay with that item throughout the investigatory process?

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Q And the homicide detective accompanied you in the search?

A Yes, sir.

Q Did the homicide detective stay with you the whole time?

A They were there for some time before I was there. I came in afterwards and they had already seen some of the items there and they pointed them out to me.

Q Would they have gathered any of the evidence themselves --

A No.

Q -- or would that have been left strictly to you.

A Yes, that would have been my job.

Q So you went into the house and they directed you to certain areas?

A Yes, sir.

Q They directed you to certain items?

A Yes.

Q Did you pick up any items on your own?

A No.

Q No, so all of the items that you picked up were items that homicide detectives instructed you to pick up?

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A Yeah. It's permanently marked, yes.

Q So if you said item one and then item one, for example, went to the firearms examiner --

A Uh-huh.

Q -- he would keep it as item one.

A I'm not sure what he would do on it --

MR. COUNTOU: Judge, I would object. That would be speculation then.

MR. SANTACROCE: Well, I'm trying to find out what the process is so we can identify these various items through other witnesses.

THE COURT: Okay. Overruled.

You may answer it if you know.

THE WITNESS: I'm sorry. I'm not trying to be hard or anything. I just don't know for sure whether they would have their own little way of marking them that they would refer to later or whether they would be mine specifically. It certainly should be cross-referenced. They should know by cross reference what it is.

BY MR. SANTACROCE:

Q How did you mark the nine millimeter?

A This is the bag that I had it in.

We typically do not mark weapons on the weapon. We believe that the serial number is

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1 good enough to identify the weapon. And I went ahead and
2 marked the bag that it was in here, (indicating), and that's
3 how --

4 Q What is the marking?

5 A The marking has the event number, the date
6 that I went to the scene, the time, my nu- -- my number here
7 and initialed and the item number.

8 Q Item number being the item number that you
9 picked up; is that --

10 A The item number on my evidence impound
11 report. So that would be like item number 11 in this case.

12 Q Would that be the eleventh item that you
13 picked up in that scene, at that scene?

14 A Not necessarily, because I might package
15 them differently at the lab so that the firearms are
16 together versus clothing.

17 We have to -- the evidence
18 vault has to hold things differently, jewelry, money,
19 specifically; and so I might pick them up in a different
20 order, but the importance is how they're packaged so the
21 evidence vault can safely and correctly store them.

22 Q Do you mark -- do you put this in the bag at
23 the scene and then mark it there?

24 A No. I'll mark it back at the lab.

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1 they've already stipulated to the evidence, the chain of
2 custody. It's been admitted. I really don't see the logic
3 where we're headed to.

4 THE COURT: Mr. Santacroce.

5 MR. SANTACROCE: Well, we stipulated to the
6 chain of custody as far as admitting the -- for example, the
7 weapon.

8 But we would like to know what
9 happened to that weapon from the time he picked it up to the
10 time the next person got it, because that next person is
11 going to do some testing on it.

12 THE COURT: Okay. And? What -- what's
13 the --

14 MR. SANTACROCE: Well, that's the purpose of
15 finding out what happened to it, what he did with it.

16 THE COURT: Okay. Let's just get to the
17 point then.

18 BY MR. SANTACROCE:

19 Q So you would put it in the evidence locker.

20 Did you give that weapon, for
21 example, to the homicide detective that was on scene?

22 A No.

23 Q And you could tell, by the bag, who next
24 took that -- that weapon, for example?

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1 Q How do you -- what do you carry it in back
2 to the lab?

3 A Evidence bags.

4 Q Can you describe those for me?

5 A That's one that I brought in. They're --
6 they range in different sizes according to the items we're
7 picking up. They'll go from small envelopes, that you'd see
8 in the mail, to large bags that you could put a -- a
9 comforter in or several comforters in. They're brown in
10 color generally.

11 Q And you get that and take it back to the
12 evidence vault and you mark it.

13 A I'll take it back to the lab and that's
14 where I'll document it, I'll photograph it, if it needs
15 further photos, and these were photo'd back at the lab as
16 well; and do any kind of testing that we might do on it,
17 meaning fingerprint processing or there is other tests we do
18 that sometimes is pertinent.

19 And then we would mark it and
20 then put in in the bag.

21 Q And what would happen to it then?

22 MR. COUNOU: Judge, I'm going to have to
23 object to this line of questioning as to relevance.

24 It's my understanding that

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1 A Right.

2 Q Now, going back to the scene and the items
3 that you picked up, I believe you said that you picked up
4 some footwear.

5 Did you photograph the
6 footwear?

7 A I didn't go to the scene at all.

8 It's --

9 Q I'm sorry. The -- the search warrant scene.

10 A Okay. Yeah, I did photograph the footwear
11 at the -- at the residence or at the lab. I'm not sure
12 which.

13 Q And the same with the cigarettes that you
14 picked up, you photographed those?

15 A Probably not.

16 Q What did you do with those?

17 A I impounded them in probably paper
18 containers and sent them to the evidence vault.

19 Q And as far as your notes go, there were no
20 Winston cigarette butts that you retrieved?

21 A I don't think I ever saw any Winston
22 cigarette butts.

23 Q Or cigarettes for that matter --

24 A I don't think I did, no.

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1 Q -- Winston cigarettes?

2 Did you ever -- are you

3 responsible to ask for or request any testing be done on

4 these items?

5 A We went through a period of time where on a

6 suspected homicide weapon, we would request the latent print

7 section to actually fingerprint the weapon.

8 And the reason for this is they

9 felt like it would -- they could afford it more time than we

10 could. They could spend the necessary time taking the

11 necessary steps.

12 This was right during that time

13 where they were experimenting with that system, so it was

14 customary at that time for us, on a homicide or potential

15 homicide weapon, to ask the latent print section to

16 fingerprint it; and I did make that request at that time.

17 Q You did? And who did you make that to?

18 A We just make -- fill out a request and turn

19 it into the latent print section. The latent print section

20 picks them up on a daily basis. And I'm not sure what's

21 done after that.

22 Q So would that have been done on a request

23 form?

24 A Yes.

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1 A Yes, I do.

2 Q And if you would just confine your answers

3 to my question?

4 A Yes --

5 Q I'd appreciate that.

6 A Yes, sir.

7 Q I'd appreciate that. Thank you.

8 A Yeah, it was listed on item two, fingerprint

9 the two cartridges, yes -- or the two magazine. That's

10 right.

11 Q So, so far, we have the nine millimeter --

12 A Uh-huh.

13 Q -- and the two -- two magazine, correct?

14 A That's correct.

15 Q And would you also request DNA testing?

16 A No.

17 Q That would be out of your purview?

18 A Right.

19 Q After you impounded the items that the

20 homicide detective requested, did you do anything else in

21 this case?

22 A No.

23 Q No other investigation?

24 Did you ever see any reports of

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1 Q And would that have been titled a Forensic

2 Laboratory Examination Request?

3 A That sounds correct.

4 Q What other items did you do that on in this

5 particular case?

6 I believe your testimony was

7 that you requested that for the weapon?

8 A Yeah. We also recovered some cartridges

9 that -- at the scene. They were 7.62 by 39 in size. And

10 there was other weapons involved also that we requested.

11 Q I want you to just focus, if you will -- let

12 me direct your question -- let me direct this question more

13 specifically:

14 Did you request any

15 fingerprints -- first of all, you found no nine millimeter

16 casings, correct?

17 A That's correct.

18 Q No nine millimeter ammunition at all?

19 A That's correct.

20 Q Did you request the fingerprints be done on

21 the magazines?

22 A Um, I would have to look at the request

23 again. I can't recall.

24 Q Do you have that in front of you?

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1 any forensic examination regarding any of these items?

2 A When I was preparing to go to -- when I

3 prepared for this subpoena that I received, I did see some

4 of the documentation on, um, firearms examination --

5 actually, it was latent print examination on the firearm and

6 the footwear examination. So I have seen two reports.

7 Q And in those reports there, they came up

8 negative; isn't that correct?

9 A That's correct.

10 Q Negative being what?

11 A For the latent print exam, negative would

12 mean that they didn't have enough characteristics to

13 positively identify a fingerprint. They may have -- they

14 may have pulled some off, but they weren't complete enough

15 for identification.

16 The footwear, I believe the

17 report said that the type -- the whole type was different.

18 Q Different than the one they found at the

19 scene?

20 A Yeah.

21 MR. SANTACROCE: Thank you. I have no

22 further questions.

23 THE COURT: Mr. Coumou.

24

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REDIRECT EXAMINATION

BY MR. COUMOU:

Q Just to clear up, you impounded these shoes, but only the shoes that you found in this one bedroom?

A That's correct.

Q And it would have been cumbersome to bring all these shoes in here to court?

A I wasn't asked to bring them.

Q Okay. But it would have been a lot to bring?

A Sure.

Q And now, you also documented that there were some cigarette butts, but did you actually state what brands types of cigarettes did you find?

A Yes, I did.

Q Do you know out of memory or --

A Yeah, they were Kool, Benson & Hedges and a no name brand.

Q Okay. But no Winston cigarettes?

A I didn't see any Winston.

MR. COUMOU: Okay. I don't think I have anything further.

THE COURT: Mr. Santacrocce.

MR. SANTACROCE: Nothing further. Thank

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Okay. Ladies and gentlemen, we're going to take our afternoon recess.

During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial;

Or to read, watch or listen to any report of or commentary on the trial or any person connected with the trial, by any medium of information, including, without limitation, to newspapers, television, the Internet and radio;

Or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

It's about three o'clock. What I'd ask you to do is meet Ike right outside the door at 3:15. We'll go ahead and get started at that time.

(The following proceedings were had in open court outside the presence of the jury:)

THE COURT: Okay. Let the record reflect the jury has left the courtroom.

Are there any matters to put on the record before we take our afternoon recess?

MR. SCISCENTO: No.

MR. COUMOU: No, nothing, other than if we

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you.

THE COURT: Do any of the ladies and gentlemen of the jury have any questions then for Mr. McPhail?

(Negative response.)

THE COURT: Okay. Mr. McPhail, thank you very much for coming to court.

We need to take the evidence back. Perhaps you could give all those items to our clerk on your way out.

THE WITNESS: Sure.

THE COURT: Mr. Coumou, how long would your next witness be?

MR. COUMOU: Good question. I don't even know if he is here yet.

THE COURT: Do you want to go check and see?

MR. COUMOU: Sure.

THE COURT: And we'll decide if we're going to take a break now or not.

MR. COUMOU: Judge, the witness is here, but I think out of safety, if we could just take a 15 minute break.

THE COURT: Okay. We will do so.

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could maybe surrender this assault rifle back to the I.O. tech for safekeeping.

THE COURT: Okay.

MR. SCISCENTO: Oh, we have no objections to that.

THE COURT: Okay.

THE CLERK: Would you like the evidence bag it came in?

THE WITNESS: Yeah, it would be easier for him to hide the assault rifle in the evidence bag and so -- the only problem is we've marked that one as 52, in order to identify 52-A.

THE COURT: Can we withdraw 52, Mr. Sciscento?

Do you need that bag itself then as an exhibit or does the State need it?

MR. SCISCENTO: The State may need it. I don't.

MR. COUMOU: No, it's just strictly the -- actually, thinking about it, Judge, we don't maybe want that bag to go back because it lists an SKS firearm on there.

THE COURT: Okay. Will the parties stipulate to withdraw Exhibit Number 52?

MR. COUMOU: The State does.

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MR. SCISCENTO: Yes.

THE COURT: And will they further stipulate that the Exhibit 52 not only can be withdrawn, but can be released back to Mr. McPhail, together with the other contents thereon which have not been admitted into evidence?

MR. COUMOU: Just Number 50, because 52-A is the nine millimeter pistol.

THE COURT: Okay. Thank you.

Is that so stipulated, Mr.

Sciscento?

MR. SCISCENTO: Yes, Your Honor.

THE COURT: Thank you.

Do we have anything else to put on the record before we take our afternoon recess?

MR. SCISCENTO: I don't believe so.

THE COURT: Okay. We'll be in recess until 3:15.

(Recess in proceedings.)

(The following proceedings were had in open court in the presence of the jury:)

THE COURT: Okay. This is the continuation of Case Number C154293, the State of Nevada versus Brendan J. Nasby.

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THE CLERK: Thank you. Please be seated.

THE COURT: Sir, the attorneys will be asking you some questions here this afternoon. Please answer them the best you can without arguing with any of the attorneys.

Also, if there is an objection to any question asked to you, please don't answer it unless I tell you it's permissible to do so.

And could you state your name and spell your last name for the court reporter, please.

THE WITNESS: My name is Fred Boyd; B-o-y-d.

THE COURT: Thank you.

Mr. Coumou, you may proceed.

MR. COUMOU: Thank you.

DIRECT EXAMINATION

BY MR. COUMOU:

Q Mr. Boyd, how are you employed, sir?

A I'm employ- -- I'm employed as a latent print examiner with the Las Vegas Metropolitan Police Department, assigned to the crime laboratory, latent print detail.

Q How long have you been doing this line of work, sir?

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Let the record reflect the presence of Mr. Bradley, together with his attorneys Mr. Sciscento and Mr. Santacroce; Mr. Coumou, deputy District Attorney, representing the State of Nevada.

Mr. Coumou, will you stipulate to the presence of the jury?

MR. COUMOU: Yes, Judge.

THE COURT: Mr. Sciscento?

MR. SCISCENTO: Yes, Your Honor.

THE COURT: Okay. The State may call its next witness.

MR. COUMOU: The State will be calling Fred Boyd.

THE COURT: Sir, if you could just step around to your right, please, here.

If you could face me and raise your right hand.

Whereupon,

FRED BOYD

having been called as a witness by the State and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

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A All total, about 30 years.

Q And do you have -- are you required to have any specialized training to be a latent print examiner?

A Yes, sir.

Q What kind of training do you need?

A Well, the -- the bulk of my training was obtained while I was a member of the United States Army. I was a CID agent, which is the Criminal Investigations Division of the United States Army.

If I may continue with my --

Q Yes.

A -- my full history of my experience.

Q -- please do.

A Prior to joining the Army, I obtained my degree in police science, and through that degree, during various phases of the criminal justice system, to include the evidence processing procedures and what not.

Then I joined the United States Army; became a chief warrant officer and was assigned to the military police and then to the Army CID command.

I was a field agent, working felony cases with the Army CID for my first ten years in the Army; and this involved going out to crime scenes, processing crime scenes.

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1 We were more or less a chief
2 cook and bottle washer out there. We would gather up
3 evidence, process for latent prints, take footwear and tire
4 impressions, if they were there, and then we would submit
5 those to the crime laboratory.

6 After about ten years as a CID
7 agent working the field cases, I remained with the Army CID
8 and went in to their career field, one of them being the
9 crime laboratory.

10 And I chose the latent print
11 division at the crime laboratory as my career field because
12 I was more interested in that type of discipline.

13 Q Have you had then specialized training in
14 this particular latent print comparison field?

15 A Well, not prior to the laboratory, other
16 than in experience processing crime scenes for latent
17 prints, becoming familiar with footwear attire and latent
18 prints at crime scenes and knowing what to look for at the
19 scene.

20 Upon my acceptance at the crime
21 laboratory, I went through a two year, full-time duty
22 training program, with the United States Army crime lab; and
23 the latent print division, we dealt in fingerprints,
24 footwear attire examinations.

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1 And the first two years, like I
2 mentioned, was involved in working cases, coming into the
3 crime laboratory, working with certified latent print
4 examiners, doing academic work, a lot of reading, studying,
5 taking examinations, going to the various F.B.I. schools,
6 and other seminars associated with the discipline.

7 Q Now, have you ever been asked to be
8 recognized as an expert in the field of criminal -- or in
9 latent print comparisons?

10 A Yes, sir, I have.

11 Q And have you -- specifically, here in the
12 Eighth Judicial District Court, have you ever been
13 recognized as an expert in those particular fields?

14 A Yes, sir, I have.

15 Q And on how many occasions, sir?

16 A About eight times here in Nevada since I've
17 been here.

18 Q Okay. And prior to Nevada, have you been
19 recognized as an expert in other states then?

20 A Yes. In the state of Florida -- in latent
21 print identification, the state of Florida, the state of New
22 York, the state of North Carolina, and within the Department
23 of Defense at military court martials through my career as
24 an Army CID agent assigned to the crime laboratory, which I

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1 retired from that discipline in 1988.

2 And then from there, if I may
3 continue --

4 Q Go ahead.

5 A -- to Briar County, Florida, eight and a
6 half years working for the crime laboratory there as a
7 latent print examiner, doing both latent print and footwear
8 identification.

9 And then I left there, and
10 three years ago, I came here to Las Vegas.

11 Q Okay. And so you've been already recognized
12 as an expert in the courts here in the state of Nevada then?

13 A Yes, in latent fingerprint identification.
14 I have not for footwear here in the state of Nevada.

15 Q Okay.

16 MR. COUNOU: Judge, at this time, I'll move
17 to ask the Court to recognize Mr. Boyd as an expert in the
18 field of criminal or -- excuse me -- latent fingerprint and
19 footwear comparison.

20 THE COURT: Any objection?

21 MR. SCISCENTO: As to the fingerprints, no,
22 Your Honor.

23 May I have the Court's
24 indulgence for one moment?

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1 THE COURT: Yes.

2 MR. SCISCENTO: Can we approach for a
3 moment?

4 THE COURT: Sure.

5 (Unreported discussion at the bench.)

6 THE COURT: Okay. Any objection, Mr.
7 Sciscento?

8 MR. SCISCENTO: We have no objection, Your
9 Honor.

10 THE COURT: Okay. Mr. Boyd may publish
11 opinions to the jury in the area of latent fingerprints and
12 footwear expertise.

13 MR. COUNOU: Thank you.

14 BY MR. COUNOU:

15 Q Now, Mr. Boyd, I'm going to direct your
16 attention to an event number that is part of this particular
17 case, 980717 -- and I'll get you the last numbers here once
18 I get your folder -- 0541.

19 Are you familiar with that
20 event number, sir?

21 A Yes, sir, I am.

22 Q Why -- what is that -- what is it about that

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1 event number that sticks out to your mind?

2 A This event number was a case that came in
3 through the laboratory here in Las Vegas, and it was
4 assigned to me to process the evidence that may have been
5 submitted on this case.

6 Q Were there two specific things that were
7 requested of you?

8 A Ah, yes, sir, there was.

9 Q And what -- what are those two things that
10 was asked of you?

11 A Um, one was to process a gun and a magazine;
12 and the other was to examine some photographs of some
13 footwear impressions.

14 Q Okay. Let's first talk about the gun, sir.

15 I'm going to direct your
16 attention to 52-A and 52-B, the nine millimeter weapon and
17 two -- were there two clips that you were asked to look at?

18 A Yes.

19 MR. COUNOU: May I approach the witness,
20 Judge?

21 THE COURT: Yes, you may.

22 BY MR. COUNOU:

23 Q Look at these two things, sir, and see if
24 you recognize them.

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1 Q Please do.

2 A A latent print is a print of unknown origin
3 that is usually found on a piece of piece of evidence.

4 And by this, I mean it is a
5 print that is found as a result of the raised strips of skin
6 that you have on your fingers, which is called friction
7 skin.

8 The skin is composed of
9 different patterns and minute features, which we call
10 characteristics; and it's these little characteristics that
11 we look for both in the known print and the latent print
12 that we later may be making an identification on.

13 But we look for these on the
14 weapons. We look for them visibly, initially, under strong
15 light; and then if we can't find any, then we may have to
16 use some chemical technique or some powder process to find
17 these particular latent prints that may be on there if, in
18 fact, there are any on there.

19 Q Now, surfaces, does -- does surface have
20 anything to do as to finding or being able to retain a
21 fingerprint, a latent fingerprint?

22 A Yes, sir. Surfaces are very important.

23 A -- a very good example would
24 be you have a rug and you have a hard surface. Now, if I

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1 A Yes, sir, I do.

2 Q Okay. How is it that you recognize those
3 two items?

4 A I recognize these as items that I processed,
5 Exhibit 52-A, which bears the plastic bag that it is in. It
6 bears my mark FNB-1, which indicates these items came in.

7 And this type of bag, the
8 magazines are in a bag that's marked Exhibit 52-B; and
9 that's also marked FNB-1. That FNB-1 means that there was
10 one package that contained both of these items inside of it.

11 Q Okay. And did you -- so these are the two
12 items that were given to you under this event number as I
13 asked you to examine, correct?

14 A Yes, sir, they were.

15 Q Now, you were asked to process it for latent
16 fingerprints?

17 A Yes, sir.

18 Q Now, could you explain to the jury what --
19 what is all involved or just generally how do you go about
20 looking for fingerprints in the first place?

21 A Well, fingerprints are -- first of all, we
22 look for latent prints that may be on the weapons.

23 And if I may define a latent
24 print?

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1 touched the rug, probably not going to get any fingerprints.
2 That surface is not conducive to fingerprint residue being,
3 um, placed on it where you can maybe recover that latent
4 print from it.

5 A flat surface here would be a
6 little bit more conducive to a fingerprint being placed on
7 the surface, although even though you have a surface, such
8 as this wood here, that may appear to be conducive to that
9 fingerprint, the surface itself could have a factor as far
10 as that print being left on there.

11 The absorption factor of the
12 material; maybe if you placed that down, there may be some
13 movement; it may be smudged. You may not be able to see any
14 print on this. But you could see that there is a smudge
15 mark, but you may not be able to see those ridge
16 characteristics and features that we looked for.

17 Q What about the surface of a firearm?

18 A Well, a firearm, the -- firearms, you find a
19 variation of type of surfaces. Example, you have a grip
20 right here, which is a corrugated grip. This is a plastic
21 grip here. (Indicating) You may find a metal grip.

22 But either way, it's a
23 corrugated surface; very difficult to get prints off this
24 corrugated surface.

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1 If you have a weapon that is
2 very smooth, real shiny, very clean weapon, then you may
3 find a visible print.

4 This weapon here, you find that
5 the surface is very dull and one of the reasons why you find
6 a dull surface on a weapon, a lot of times, is that it
7 eliminates the glare. And -- and in the military, most of
8 the weapons in the military, you don't find shiny surfaces;
9 you find a dull type of a finish. This eliminates glare.

10 Well, the surface itself is very -- it's
11 considered a very poor surface in getting the routine
12 fingerprint that may be caused from perspiration that's
13 excreted from the pores, which flows over the ridges that
14 touches the -- the item.

15 Q What about the clip; is that a different
16 type of surface than the normal weapon that is made out of?

17 A The -- the clip is the same type of dull
18 type finish surface. However, sometimes, you find -- at the
19 base of the clip, you might find a little bit maybe shinier,
20 or maybe a different maybe type of material than, um, the --
21 than the rest of the clip.

22 And we all -- and the bottom of
23 the clip, we all -- as latent print examiners, it's always
24 something that I'm more cautious of to -- to look for,

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1 concentrate on that particular area.

2 In this case, I was unable to
3 initially find anything like that.

4 So then the next process, we
5 process it with a technique which we call super glue. And
6 super glue is basically the same super glue that you buy at
7 the supermarket, that is advertised sometimes that can tow
8 cars off the bridges and stuff like that.

9 But the fumes from the super
10 glue, it reacts with the moisture buildup in the
11 perspiration; and when there is a reaction, you get a white
12 type of a reaction; and if there is a sufficient amount of,
13 ah, water residue still left on the surface, then this is
14 what we look for where there may be a print. And this is
15 what we did.

16 And then, after that, if there
17 is an area, then that area is crystallized. It crystallizes
18 a little bit and it remains on there and you can take
19 fingerprint powder and go over that and the fingerprint
20 powder will enhance that area where you might be able to
21 lift it, um, where you can get a workable piece of, ah,
22 print.

23 On this particular case, ah,
24 there was nothing on the magazine. Okay? Processed the

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1 because usually when that's put in, you might find maybe
2 part of the palm or something like that in there if, in
3 fact, it may contain a print.

4 And, ah, to -- and, again,
5 the -- the dull surface, whether it's new or old, all these
6 things are factors as to why a print may or may not be
7 placed on or may be found on the item.

8 Q Now, beginning your testimony, when we talk
9 about latent fingerprints, you explained the process of
10 trying to extract or look for fingerprints.

11 Did you, in fact, do that type
12 of process on this firearm that's in front of you?

13 A Yes, I did.

14 Q And the clip?

15 A Yes, I did.

16 Q Now, tell the jury, if you were able to find
17 any type of fingerprints on that weapon.

18 A I chemically processed, after visually
19 looking at these under our ALS -- it stands for alternate
20 light source. It's not a laser, but it has the capability
21 of maybe a mini-laser. It has various wavelengths and we
22 use this to examine weapons initially.

23 And if we do maybe detect that
24 there might be an area on there, then we can kind of

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1 magazine and there was nothing.

2 On -- on the weapon itself,
3 there was a very minute area, in this area right in here.
4 (Indicating) However, it was -- closer examination,
5 determined to be of no value for identification; that there
6 was an insufficient amount of ridge detail that was present
7 at that location.

8 Q Did you say that that means the size and the
9 quality of the print that you -- that you were somewhat able
10 to identify it's not good enough to compare with a known
11 print of a suspect; is that what you are saying?

12 A That -- that is correct.

13 Q Okay. Finally, as to the fingerprints,
14 would you agree that it is the exception rather than the
15 rule that you are going to be able to find a fingerprint on
16 a weapon such as this -- this type of weapon with this type
17 of surface?

18 A Well, it's been our experience that this
19 type of a weapon, with this fairly dull type of a surface,
20 the recovery rate is very small in the recovery rate of
21 obtaining a workable latent print compared to maybe a weapon
22 that may have a smoother type of a finish on it where a
23 print may adhere a little bit better to it.

24 Q Okay. Thank you, sir.

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1 Now, let's focus the attention
2 on the footwear comparison that you did.

3 You were asked to examine some
4 footwear that was given to you?

5 A Yes, sir.

6 Q And how was that done?

7 Explain to the jury what
8 exactly are you doing for footwear comparison.

9 A The examination and identification of
10 footwear impressions is basically like latent print
11 fingerprint comparisons except for one major difference:

12 In fingerprints, you have ridge
13 structure. It forms before you are born and it remains then
14 after you die, and these ridge formation characteristics,
15 they don't change, only through maybe a disease or maybe
16 some serious injury or something like that.

17 But, normally, the fingerprint
18 patterns and the structure that you have, the friction skin
19 on your fingers and also palms and on the bottom of your
20 feet, your soles, this friction skin pattern, they don't
21 change.

22 In footwear identification, you
23 have shoes which are -- which have the basic structure when
24 you initially buy them, but as you are wear these shoes,

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1 wear characteristics that we see associated with the class
2 characteristics in size and width and all this and other
3 features. But it's basically these individual wear
4 characteristics on footwear.

5 MR. COUMOU: Your Honor, if the record could
6 reflect that I have already shown what has been now marked
7 as proposed State's Exhibits 62 through 65.

8 THE COURT: The record will so reflect.

9 MR. COUMOU: And if I may approach the
10 witness?

11 MR. COUMOU: Yes, you may.

12 BY MR. COUMOU:

13 Q First, sir, look at 64 and 65.

14 Tell me if you recognize that.

15 A Yes, sir, I do. These bear my mark on the
16 back, FNB-1 or -- correction. FB-1 and FB-2 on the back are
17 my initials.

18 Q And what's depicted in those in those two?

19 A The photographs depict -- the photographs
20 depict an impression in soil that is, um, of value for
21 comparative examination; not necessarily a value for
22 identification, but there is sufficient amount of detail
23 here that I feel, based on my experience, that if I had a
24 pair of shoes, I could basically determine that those shoes

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1 they have what we call wear characteristics.

2 And the more you wear a pair of
3 shoes, you are going to get these little nicks, scrapes,
4 scratches; you may get a smooth area over a period of time,
5 kind of related to a tire of a car. You see some tires of
6 cars going on the road with bald tires on them.

7 Well, this is -- this is a lot
8 of wear. And you may have an impression initially from a
9 crime scene that looks good and maybe it's unknown. At that
10 time, if those shoes were seized, then you could maybe make
11 an I.D. or some time of evaluation.

12 But if these shoes are not
13 seized and maybe three years later, and with maybe a
14 considerable amount of wear on those, you may have the right
15 shoe, but it may not have this design on it.

16 So on a situation like that,
17 you can't come up with a good conclusion unless there is
18 some other factors that may be there.

19 So these wear characteristics,
20 they interplay with the footwear identification and it's
21 these individual wear features that we look for to make
22 identifications in footwear.

23 And so that's the basic -- that
24 is how footwear identification is made, basically on the

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1 did have this particular design on them and I could give
2 a -- an opinion that these shoes could or maybe could not
3 have made this impression or that those shoes does have this
4 design on them.

5 Q Do those two photographs accurately and
6 fairly depict the photographs of the prints that you wanted
7 to -- that you were asked to compare with other shoes?

8 A Yes. These -- these are the photographs
9 that I received, that I did receive to ask --

10 MR. COUMOU: Judge, at this time, I move to
11 admit 64 and 65.

12 MR. SCISCENTO: No objection.

13 THE COURT: Proposed 64 and 65 are received.

14
15 (State's Exhibits 64 and 65
16 admitted into evidence.)

17 BY MR. COUMOU:

18 Q If I may approach with 62 and 63, State's
19 proposed exhibits, do you recognize that, sir?

20 A Yes, sir, I do.

21 Q What is that?

22 A These are photographs of seven pairs of
23 shoes, which I was asked to compare these shoes with the two
24 crime scene photographs to determine whether or not these

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1 shoes made this impression; and I did that.

2 Q Do you know where those shoes came from,
3 sir?

4 A Ah, no, sir, I don't.

5 Q Okay. If those shoes were impounded by
6 Randy McPhail with the Las Vegas Metropolitan Police
7 Department, could that have been the source where those
8 shoes may have come from?

9 A Yes. The photographs -- well, yes, I --
10 he -- he has a report that came later on, that he did have
11 some shoes, that he did photograph some.

12 Q Did -- did you look at each individual shoe
13 or did you look at individual pictures of each shoe in order
14 to make this type -- to see if you could make a comparison
15 on the -- on the prints that were left behind at the scene?

16 A I had -- I did not have the actual shoe. I
17 had -- this photograph depicts seven pairs of shoes.
18 (Indicating) And I had close up photographs of these seven
19 individual -- I had seven photographs that bore one each
20 pair of shoes on there. And then I made that visual
21 examination with the out soles of each one with the
22 impressions.

23 Q And, in your opinion, after examining all
24 seven shoes, were those shoes -- even though the quality is

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1 of the front side of the victim's shoes. (Indicating) I
2 did not have the -- the out sole portion of the shoe.

3 Q You did not compare -- so you were unable to
4 see if perhaps those prints were left by that victim?

5 A No, I did not.

6 Q And if there were three other individuals at
7 the night of the killing, you would not be able to say if
8 those were their shoes, since no other shoes were given to
9 you?

10 A If those shoes were not included in these,
11 (indicating), then, no.

12 MR. COUNTOU: I'll pass the witness, Judge.

13 THE COURT: Mr. Sciscento.

14 CROSS-EXAMINATION

15 BY MR. SCISCENTO:

16 Q Mr. Boyd -- Mr. Boyd?

17 A Yes, sir.

18 Q Let me go through there slowly.

19 All right. Let me see if I
20 understand this:

21 We're talking about the
22 fingerprints. What is the timeline for fingerprints?

23 A Can you be more specific, sir, in your
24

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1 not very great of State's 64 and 65, were they left by any
2 of those seven shoes?

3 A Ah, no. I -- I determined that these seven
4 pair of shoes could be eliminated from making these two
5 impressions based on I found no similar class
6 characteristics; and class characteristics are those
7 features on the shoes that are common to all shoes of that
8 particular style and brand.

9 If you buy two pair of shoes,
10 the same identical type, you turn them over, then those --
11 you are going to have the same general class characteristics
12 on each one.

13 Q No other shoes were submitted to you for
14 comparison, correct?

15 A No. These were the only ones that were.

16 Q Okay. Show you what's already marked as
17 State's Exhibit 9.

18 Look and see if you recognize
19 those shoes on the young man over there?

20 A I recognize these shoes as being sandals, in
21 addition to the photographs of what I have here,
22 (indicating), and also the photographs of the -- the close
23 up photographs of these here

24 I had one close up photograph

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1 question?

2 Q Well, if I was to leave fingerprints on an
3 object and nothing disturbed that object, how long would the
4 fingerprints stay there?

5 A Well, it would depend on the object itself.
6 It would depend on various factors.

7 Basically, there --

8 Q Let me cut to the chase here: What if I
9 gave you a shiny metal object and I touched and left a
10 fingerprint on it and placed it under a glass and nothing
11 else coming inside that glass, how long would the
12 fingerprint stay on that shiny metal object?

13 A Well, it would depend on the -- the touch
14 itself, the perspiration, how much pers- -- perspiration
15 might be there, evaporation content.

16 Theoretically, if a fingerprint
17 is left on a surface or is preserved properly, that print
18 could last indefinitely; but in reality, there really is no,
19 ah, basic time --

20 Q Okay.

21 A -- factor as far as -- if you are asking the
22 age of a print, that cannot be determined unless you have
23 a -- somebody there -- you actually have somebody touch
24 something and then it's processed. But, in reality, the age

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1 of prints cannot be determined.

2 Q Okay. You'd mentioned -- if I may
3 approach -- you mentioned something about a recovery rate of
4 the mag of the gun; recovery rate of the fingerprint of the
5 magazine.

6 What were you talking about,
7 the recovery rate of the gun.

8 A Well, what we're talking about is that
9 the -- the recovery rate on -- well, first of all, the
10 recovery rate on obtaining prints from weapons is, ah,
11 fairly small, maybe less than 10 percent.

12 Q Okay. Let me stop you there, because you
13 mention that the recovery rate for the gun was low because
14 of the type of metal it was: That it wasn't shiny; that
15 there was ridges; it wasn't smooth.

16 A Now, if -- if I may --

17 Q Well, let me get to the next one: What is
18 the recovery rate for the cartridges, the magazines, that
19 you had, do you know? Is it higher than for the gun?

20 A Are you --

21 Q In this case?

22 A Are you talking -- you mentioned two
23 separate items here.

24 Q Yeah. I'm talking about the magazine.

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1 going to use to compare against prints that you may have
2 found at the scene or on any pieces of evidence?

3 A No, I did not.

4 Q Okay. Were you ever provided with any
5 prints of any witnesses -- I'm sorry -- provided with any
6 prints of any suspects in this case?

7 A No. The reason that we did -- we did not
8 develop any latent prints -- once we develop a workable
9 latent print, then we obtain prints of individuals; and then
10 we -- at the lab, we usually obtain those ourselves through
11 our filing system if the prints are on file.

12 But if we don't develop any
13 latent prints, then we don't develop any -- we have no need
14 to go out and pull known prints of suspects.

15 You mentioned AFIS and if I may
16 mention this, if we do get a print that is, um, of value for
17 identification -- we're not talking about little partial
18 prints that we can't identify; we're talking about a print
19 that we can identify -- we compare that to any known
20 suspects that we may have.

21 If we determine -- once we do
22 that, and if we don't identify that print, and if that print
23 is of value for AFIS entry, you may have some prints that
24 are identifiable, but they're not suitable for AFIS entry --

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1 A Okay. Not cartridges, magazines?

2 Q The magazine that you are looking at.

3 A The recovery rate on magazine -- on this
4 particular type of magazine is slim.

5 Q Less than the gun or greater than the gun?

6 A It's about the same.

7 Q Okay.

8 A And that's a result of the -- it being a
9 very dull type of a finish and dull type of a surface.

10 Q Okay. You were asked to bring up -- were
11 you ever asked to bring up any fingerprints of any suspects
12 in this case, through AFIS or anything like that?

13 A Bring up prints through AFIS?

14 Q Through AFIS.

15 A Bring up prints through AFIS?

16 Q You understand what AFIS is, AFIS?

17 A Well, certainly I do, but I don't believe --

18 MR. COUNTOU: Judge, I think that question is
19 confusion even to us.

20 THE WITNESS: If I -- if I may explain what
21 I think you are asking --

22 BY MR. SCISCENTO:

23 Q What I'm asking you: Did you ever get any
24 prints of any suspects in this case that you were later

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1 Q Okay. Let me stop you there.

2 THE COURT: Let me just stop you.

3 Mr. Boyd, again, I mean for the
4 jury and my edification here, what is AFIS anyway?

5 THE WITNESS: AFIS is the Automated
6 Fingerprint Identification System. This is a computer,
7 which you put a print into the system from the crime scene,
8 such as this weapon that I mentioned, that if we did get a
9 suitable, workable latent print that was AFIS quality, we
10 would put that into the computer; and then run it through
11 the data base, and, hopefully, come up with a list of
12 possible candidates that we would have to search through to
13 see if we do have a match.

14 BY MR. SCISCENTO:

15 Q All right. Did you ever receive a Forensic
16 Laboratory Examination Request in this case?

17 A Yes, I did.

18 Q Did they ever say latent print comparisons
19 and have names next to it?

20 You can refer --

21 A May I refer to my notes?

22 THE COURT: Yes. And please advise Mr.
23 Sciscento what you are referring to, please.

24 MR. SCISCENTO: Mr. Countou.

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1 MR. COUNOU: Uh-huh.
 2 MR. SCISCENTO: I'm assuming it's the same
 3 one. (Indicating)
 4 THE WITNESS: I did receive an examination
 5 request and --
 6 BY MR. SCISCENTO:
 7 Q Next to it, it has two names?
 8 A There was no -- in the heading, the
 9 administrative portion of the report, it has the -- in the
 10 suspect block, it has the name. In the victim's block, it
 11 has a name. And then the next section of the report, it
 12 pertains to latent print comparison.
 13 Q Okay.
 14 A And if the request --
 15 Q Let me stop -- let me stop you there.
 16 Do you have the one that has
 17 the two names on it?
 18 A Yes.
 19 Q Those two names are what?
 20 A In the suspect block, Brendan Nasby; and
 21 victim, Michael Beasley.
 22 MR. SCISCENTO: Let me go down further,
 23 where it says "Prints, latent print comparison."
 24 If I may approach to see if we

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1 (Indicating) I don't have the original of that.
 2 (Indicating)
 3 MR. SCISCENTO: Okay. Court's indulgence
 4 for one moment.
 5 THE COURT: Yes.
 6 BY MR. SCISCENTO:
 7 Q Now, you examined -- Mr. Boyd, you examined
 8 six sneakers or six shoes -- I'm sorry -- seven shoes that
 9 were given to you and that's State's Exhibits 63 and 62.
 10 (Indicating)
 11 You compared those to State's
 12 Exhibits 64 and 65, which were impressions left at the crime
 13 scene; is that correct?
 14 A That is correct.
 15 Q And these seven shoes, you don't know where
 16 they came from?
 17 A No, I don't. I only worked with the
 18 photographs of the shoes.
 19 Q And I think the D.A. alluded to the fact
 20 that they came from Mr. Nasoy's bedroom.
 21 Do you have any knowledge of
 22 that?
 23 A No, I don't.
 24 Q Okay. But they came from Mr. Mc --

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1 have the same document?
 2 THE COURT: Yes.
 3 BY MR. SCISCENTO:
 4 Q Have you ever seen -- I just want to you
 5 review that before -- I'm handing you a document which says
 6 Forensic Laboratory Request -- Forensic Laboratory
 7 Examination Request.
 8 Have you ever seen this
 9 document before?
 10 A Let me just refer -- review here to make
 11 sure, to see if I do have -- that I usually keep copies of
 12 everything that I receive.
 13 No, the only request -- and
 14 this is the original request that I received and it contains
 15 no names on it, as you can see. (Indicating)
 16 Q There is no other ones that have names on
 17 them?
 18 A Not --
 19 Q Do you have --
 20 A -- not that I received, no, sir.
 21 Q Do you have the original?
 22 A Of --
 23 Q Of the request?
 24 A Of this particular sheet right here.

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1 McPhail -- McPhail.
 2 MR. COUNOU: McPhail.
 3 BY MR. SCISCENTO:
 4 Q McPhail. He gave them to you. He's a crime
 5 scene analysis -- analyst?
 6 A No, he did not give me any.
 7 Q Okay. Where did you get these photographs?
 8 A The -- the photographs were ones that I had,
 9 um, blown up from our photo lab that retains the -- the
 10 negatives of the cases.
 11 Normally, footwear
 12 examinations, we get photographs, such as these,
 13 (indicating), of the crime scene impression; and then, when
 14 we're asked to do a comparison, if -- if the photographs of
 15 the shoes are not attached to that, then we will go down to
 16 our photo section, obtain photographs of the -- of the shoes
 17 or whatever they may have and that's what we did here.
 18 Q All right. Let me ask you this then: These
 19 seven shoes, are they in the custody of the Las Vegas
 20 Metropolitan Police Department?
 21 A I would assume.
 22 Q Okay.
 23 A I don't -- I see --
 24 Q Did you ever physically go down and review

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1 these shoes personally?

2 A No, I did not.

3 Q And compare them to these prints?

4 A No, I did not.

5 Q The prints -- the State's exhibit that they
6 provided to you, which would be State's Exhibit 9 -- they
7 show you a person -- a decedent with shoes on the bottom of
8 his feet?

9 A Yes.

10 Q Do you know where those shoes are right now,
11 those which you called slippers? What did you call them?

12 A I believe these are listed as sandals on the
13 report.

14 Q Sandals. All right.

15 Do you know where those sandals
16 are right now?

17 A I would assume that they're -- that they're,
18 ah, within the property section of the Metro. I did not see
19 these.

20 Q Okay. Did you compare those to -- did you
21 physically go down and review those shoes, those sandals?

22 A I believe I just said I never saw these
23 shoes.

24 Q Okay. Well, I want to make sure.

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1 rephrase it, Mr. Sciscento.

2 BY MR. SCISCENTO:

3 Q This case happened over a year and a half
4 ago, but you haven't taken the time to compare the
5 footprints from the decedent to the footprints found in
6 State's Exhibits 64 and 65; you just visually looked at them
7 and concluded they didn't match?"

8 A That is correct.

9 Q Did you -- and of these other seven, did you
10 compare any other shoes in this case to the footprint
11 impressions that you -- that were found at the scene --

12 A No, sir.

13 Q -- other than the seven shoes we're talking
14 about in photographs State's Exhibit 62 and 63?

15 A No, sir.

16 Q Okay. So there were no other shoes provided
17 to you?

18 A There were no others requested or provided.

19 Q No shoes -- no shoes from Jeremiah Deskin?

20 MR. COUMOU: Objection.

21 THE WITNESS: I have no knowledge of it.

22 MR. SCISCENTO: Okay. Let me rephrase that.
23 I'll clean it up.

24 THE COURT: Well, let me instruct everybody

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1 A Okay

2 Q So you never then took the --

3 A No, I did not.

4 Q -- and compared them to these?

5 A No, I did not.

6 Q So just by visual sight, you looked at these
7 and decided these did not compare to this footprint?

8 A I did not say that. I never saw these, so I
9 could not make a comparison with shoes with the photographs.

10 Q How long have you been working on this case?
11 This is a murder case, correct?

12 A Yes, it is.

13 Q It is imperative that we find out who
14 committed this crime, correct?

15 A Yes.

16 Q Your job is to gather up this evidence to
17 provide the District Attorney or the police or whoever with
18 some clues as to where this -- who may have committed this
19 crime.

20 MR. COUMOU: Objection, Judge.

21 That misstates the evidence.

22 This gentleman is not in a -- he's not in a position to
23 gather up evidence.

24 THE COURT: Okay. Sustained as to -- just

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1 as follows: Number one, everybody is talking over each
2 other. The court reporter can't take it down.

3 Mr. Sciscento, you are cutting
4 into his answer.

5 On the things, Mr. Boyd, if you
6 hear an objection, just stop talking. You are talking over
7 Mr. Coumou. I'm sure he would like to get his objection is.

8 THE WITNESS: I'm sorry.

9 MR. COUMOU: Judge, I just want to object.
10 I think the point has been made, and the witness has stated,
11 he's only examined the seven shoes.

12 And counsel keeps on asking,
13 well, nobody else submitted these shoes and these shoes.

14 Well, now we're hypothetical,
15 asked and answered. I ask that we move on to a different
16 line of questioning.

17 THE COURT: Well, I mean, Mr. Sciscento, you
18 can certainly clarify that he only compared one person's
19 shoes.

20 BY MR. SCISCENTO:

21 Q You only compared the seven that you show in
22 this photograph, 63 and 64 -- 62 and 63. Those are the only
23 shoes that you compared to State's Exhibit 64 and 65, the
24 impressions left at the crime scene?

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1 A That is correct.
 2 Q Okay. How long did your total investigation
 3 or determination between the different shoes take and the
 4 impressions? How long did that take you to come up with a
 5 determination that this was not -- these were not the shoes?
 6 A That would prob- -- probably less than 30
 7 minutes.
 8 Q How long did it take you to come up with the
 9 impression or the determination that the victim's shoes --
 10 strike that.
 11 There were no fingerprints of
 12 Brendan Nasby found on the gun; is that correct?
 13 A That is correct.
 14 Q There were no fingerprints of Brendan Nasby
 15 found on the magazine; is that correct?
 16 A That is correct.
 17 Q There were no shoes of Brendan Nasby found
 18 to match the impressions left at the murder scene?
 19 A That is correct.
 20 Q There were no --
 21 MR. COUNOU: Objection, and ask to strike
 22 that last question. There is no indication that this
 23 witness can say that these shoes belonged to Brendan Nasby.
 24 He just compared these shoes.

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1 MR. SCISCENTO: I think the State alluded to
 2 that and we didn't object to it.
 3 THE COURT: I'm going to allow it. That's
 4 cross-examination on the shoe question. I think your answer
 5 was it's correct.
 6 THE WITNESS: That is correct: There was no
 7 identification made.
 8 MR. SCISCENTO: No further questions, Your
 9 Honor.
 10 THE COURT: Mr. Counou.
 11 MR. COUNOU: Nothing by the State, Judge.
 12 THE COURT: Do any of the ladies and
 13 gentlemen of the jury have any questions for Mr. Boyd?
 14 (Negative response.)
 15
 16 THE COURT: Mr. Boyd, thank you very much
 17 for coming to court and testifying this afternoon. You are
 18 excused.
 19 (Witness excused.)
 20
 21 THE COURT: I'd ask the parties if you
 22 haven't done so to return any exhibits to the court clerk.
 23 Do you have them back there?
 24 Okay. The State may call its

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1 next witness.
 2 MR. COUNOU: Thank you.
 3 Detective Jim Buczek.
 4 THE COURT: Okay. Detective, if you could
 5 just step around to your right, please, here.
 6 And if you could face me and
 7 raise your right hand.
 8
 9 Whereupon,
 10 JAMES BUCZEK
 11 having been called as a witness by the State and
 12 having been first duly sworn to tell the truth, the
 13 whole truth and nothing but the truth, was examined
 14 and testified as follows:
 15
 16 THE CLERK: Thank you. You may be seated.
 17 THE COURT: Detective, the attorneys are
 18 going to ask you some questions here this afternoon. Please
 19 answer them the best you can without arguing with any of the
 20 attorneys.
 21 Also, if there is an objection
 22 to any question asked to you, please don't answer it unless
 23 I tell you it's permissible to do so.
 24 And could you state and spell

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1 your last name for our court reporter, please.
 2 THE WITNESS: My name is Jim Buczek; it's
 3 B-u-c-z-e-k.
 4 THE COURT: Thank you. Mr. Counou.
 5
 6 DIRECT EXAMINATION
 7 BY MR. COUNOU:
 8 Q Sir, could you please tell the jury how you
 9 are employed.
 10 A I'm a homicide detective with the Las Vegas
 11 Metropolitan Police Department.
 12 Q Could you explain to the jury what exactly
 13 are your duties as a homicide detective.
 14 A I may get called by my sergeant to go out
 15 and investigate a murder or a suspicious death or maybe even
 16 a suicide, so we -- we go out and we investigate the deaths.
 17 Q How long have you been working for the Las
 18 Vegas Metropolitan Police Department?
 19 A Ten and a half years now.
 20 Q And with the homicide -- excuse me --
 21 homicide division?
 22 A Three years.
 23 Q Now, do you work with partners?
 24 A Yes, I do.

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1 Q And who is your partner in this case?
2 A My partner is Detective Tom Thowsen.
3 Q Detective Buczek, I'm going to draw your
4 attention now to the early morning hours of July 17th, 1998.

5 Were you and your partner
6 requested to respond to a crime scene that was out in the
7 desert west of the Summerlin area, northwest of the
8 Summerlin area.

9 A Yes, we were.

10 Q And when you got to the scene, could you
11 explain what is actually the process that you two and your
12 sergeant go through.

13 A When we arrived, we determined that -- on
14 this particular homicide, that I was going to be responsible
15 for interviewing all the witnesses, and that my partner,
16 Detective Tom Thowsen, was going to be responsible for the
17 crime scene investigation.

18 We rotate this on a -- every
19 time we get called out. The next time, I would -- I would
20 handle the crime scene investigation and he would handle the
21 witnesses.

22 Q So, Detective Thompson -- Thowsen went on
23 and looked at the crime scene?

24 A Detective Thowsen.

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1 that he was Michael Beasley -- we were notified by the
2 coroner's office as to Michael's identity -- we then went
3 and we -- we went over and spoke to Michael Beasley's aunt.
4 I believe her name was Jomeka Beavers.

5 And Mrs. Beavers explained to
6 me that there was -- that Michael, the previous -- the night
7 before he was found, was at the house and also had his baby
8 with him; and that at approximately 10:30 at night, he had
9 received a telephone call; went over and asked his sister --
10 his aunt if she would watch the baby.

11 At that point, he left with --
12 with some individuals. And she also told us that -- that
13 the mother of the baby was Tanesha Banks.

14 Q Did you eventually go to this Tanesha Banks?

15 A Yes. Yes, I went over and spoke to Tanesha
16 Banks.

17 Tanesha Banks -- excuse me --
18 Tanesha Banks had told me of a telephone call that she was
19 having with an individual by the name of Crystal Bradley.
20 She said that she was talking -- she was having a three way
21 conversation with Crystal Bradley and Brendan Nasby, who
22 also goes by the name of Blue.

23 She said that -- that -- that
24 during the conversation, she had said that Michael had been

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1 Q Detective Thowsen. Excuse me.

2 A That's correct.

3 Q And were there any witnesses at the crime
4 scene itself that you talked to?

5 A There were two witnesses. They were -- they
6 were two gentlemen that were out in the desert riding their
7 all terrain vehicles, and they had located the body.

8 Q Now, at that time, did you -- or did you
9 have any suspects in your mind?

10 A At that time, no, none; none at all.

11 Q Now, did you actually see the body itself at
12 the crime scene?

13 A Yes, I did.

14 Q And explain to the jury exactly the
15 condition that the body was in.

16 A He had not been out there for a long time.
17 It was -- it was a warm day and he was just starting to get
18 some skin slippage from the sun. He also had some visible
19 gunshot wounds, one to the head and one to the back.

20 Q Now, Detective Buczek, did you eventually --
21 or were you contacted somehow with leads in to trying to
22 solve this crime, as to who was the man who killed this
23 young man?

24 A Yes. Once -- once we were able to identify

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1 by that morning to pick up the baby. She then said that
2 Brendan got very nervous.

3 MR. SCISCENTO: Your Honor, I'm going to
4 object to this. We've already had witnesses on and
5 witnesses coming forward. I believe this is possible
6 hearsay, Your Honor.

7 THE COURT: Well, again, these witnesses
8 have testified and they have been under subject of
9 cross-examination. So I'll overrule it under N.R.S. --

10 MR. SCISCENTO: I don't know if they said
11 specifically what he's going to be --

12 THE COURT: Well, I will overrule it under
13 N.R.S. 51.075.

14 Go ahead, Detective, finish
15 your statement.

16 THE WITNESS: Thank you.

17 So she said that -- she said
18 that Michael had been by to pick up the baby that morning;
19 and she said that Brendan got very nervous and said: Well,
20 what do you mean he was by to pick up the baby?

21 And she said: Oh, I'm sorry.
22 I'm sorry. It was last night. He was -- he came by last
23 night and picked up the baby.

24 So then, ah, Brendan had said

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1 that he wanted to talk to Crystal Bradley in private, so
2 Tanesha Banks got off the telephone at that point.

3 She said that she then received
4 a -- a telephone call later from -- from Crystal Bradley and
5 that Crystal had told her that -- that Brendan had told her
6 that there was going to be a funeral.

7 And she says: A funeral? For
8 who? And she said for Michael.

9 MR. SCISCENTO: Your Honor, I'm going to
10 object now as being cumulative, basically restating the
11 subject before.

12 I don't see any new evidence
13 coming out of this statement. It's just rehashing what was
14 already said by two other witnesses.

15 THE COURT: I'm going to overrule it. This
16 had to do with the detective's investigation and why he did
17 what he did; and, again, it's overruled under N.R.S. 51.075.

18 MR. COUNOU: Thanks, Judge.

19 THE COURT: Mr. Counou.

20 BY MR. COUNOU:

21 Q So explain -- you also then eventually spoke
22 to this Crystal Bradley, correct?

23 A That's correct.

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1 into the car and, ah, went back out to shoot him again and
2 fired another round.

3 Q Now that you got this information,
4 Detective, did you do anything in particular with your
5 investigation in order to start honing in on your suspects?
6 Or what was the next -- let me
7 just put it this way: What was your next step that did you
8 then?

9 A The next step was to -- I believe was to
10 draw up the search warrant.

11 We -- we prepared a search
12 warrant for Mr. Nasby's residence in an effort to see if we
13 could -- if we could find any evidence of the crime.

14 We had the search warrant
15 signed by a judge, and on August 4th, I believe it was, we
16 went over there and made -- made contact with Mr. Nasby;
17 knocked on the door, spoke to his mother. His mother let us
18 in.

19 We executed the search warrant.
20 We took Mr. Nasby into custody at that time and arrested him
21 for probable cause.

22 Q Who -- who actually took -- took him into
23 custody?

24 A I did.

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1 Q And then did you confirm the story that she
2 relayed to you in speaking with the defendant -- or your
3 now -- your suspect in this case?

4 A I'm sorry. I'm confused by the question.

5 Q Okay. Did you continue -- why don't you
6 continue on as to your investigation in -- in contacting
7 witness Crystal Bradley.

8 A Went over and spoke to Crystal Bradley and
9 she told me about the conversation that she had with -- with
10 Brendan Nasby.

11 Brendan Nasby had told her that
12 they had taken -- that he, Woodpecker, who is Jeremiah
13 Deskin, little Wee G, who is Jottee Burnside, T-Bone, who is
14 Tommie Burnside, and himself and Michael Beasley went out in
15 Deskin's car out into the desert, out past -- past -- at the
16 end of Alexander.

17 He said that they went out; he
18 was going to show him his new nine millimeter and that they
19 were going to shoot it.

20 And that they had all got out
21 of the car and that he had walked -- walked up behind --
22 behind Michael Beasley and then shot him in the back and
23 then again shot him in the head.

24 He said that he then got back

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1 Q And you said "we."

2 Were you -- apparently you
3 weren't by yourself.

4 Who else was with you?

5 A No. There was myself, Sergeant Ken Hefner,
6 Detective Tom Thowson. There was also Detective Dwayne
7 Morgan and Detective Tom Rohn, who were also on my squad;
8 and they were there just to assist us with the search.
9 There was also two uniformed police officers, so we didn't
10 confuse the family as to who we were.

11 Q Did you -- did you actually conduct the
12 search yourself?

13 A No, I did not.

14 Q Okay, you indicated to the jury just now
15 that you actually physically took custody of the defendant?

16 A That's correct.

17 Q Where -- did he come -- did he come to you
18 through the front door or what --

19 A I believe it was in the living room is where
20 we took custody at that point.

21 Q And what -- what time in the day was this?

22 A Ah, it was in the early morning hours,
23 around -- approximately seven, 7:30.

24 Q Now, when you took the defendant into

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1 custody, you said he was under arrest for probable cause.

2 Is there anything that you
3 informed the defendant of at that time?

4 A Yes. As I walked him out to my vehicle,
5 prior to getting him in to my car, I advised him of his
6 rights per Miranda.

7 Q What is that?

8 A It's different rights that the court has
9 given to all of us -- or I should say the United States has
10 given to all of us, and it's the rights that protect you
11 when you are arrested.

12 Q Would you read those rights to the jury so
13 they know what you are talking about?

14 A Yes, I can.

15 Okay. It's a Rights of Persons
16 Arrested card.

17 You have the right to remain
18 silent. If you give up the right to remain silent, anything
19 you say can and will be used against you in a court of law.

20 You have the right to speak to
21 an attorney before answering any questions and to have an
22 attorney present with you while you answer any questions.

23 If you cannot afford an
24 attorney, an attorney will be appointed for you by the court

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1 that the gun was over at his cousin's Tormie's. And we were
2 talking about the gun and he said it was a .25.

3 And he said -- at that point,
4 he said: The nine is not there and that --

5 Q Let me stop right there. Did you even
6 mention to him that you were looking for a nine millimeter?

7 A No, I did not.

8 Q Now, before we get ahead, the defendant that
9 you arrested, that you are talking to, do you see him here
10 in court?

11 A Yes, I do.

12 Q Can you please point to him and tell me what
13 he's wearing today?

14 A He's wearing a blue suit, blue tie, glasses.
15 He's seated between defense counsel.

16 MR. COUMOU: Judge, if the record could
17 reflect the witness has identified the defendant?

18 THE COURT: The record will so reflect.

19 BY MR. COUMOU:

20 Q So he suddenly -- he suddenly alerts you to
21 the knowledge that you are looking for a nine millimeter?

22 A That's correct.

23 Q What -- what transpires next?

24 A At that point, I get him into the car. I'm

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1 at no cost to you; and you need not answer any questions
2 until that attorney has been appointed for you.

3 If you decide to answer
4 questions now, you may stop at any time and ask to talk to
5 an attorney before any questioning continues. If you decide
6 to stop answering questions once you have begun, all
7 questioning will stop.

8 Q After reading those rights to him -- did you
9 read that from the card to him?

10 A Yes, I did.

11 Q And after reading those rights to him, did
12 he indicate to you if he understood them or not?

13 A Yes, he did.

14 Q Did he indicate to you if he wanted to talk
15 to you?

16 A He did for a while.

17 Q What -- what transpired in the initial
18 conversation with -- with the defendant?

19 A Um, at -- I explained to him why we were
20 there; that we were arresting him for Michael Beasley's
21 death, the murder.

22 And at that point, I told him
23 that we were there -- we were looking for the gun.

24 And he said that -- he said

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1 preparing to transport him down to the jail. We're driving
2 down the street, and we don't get too far away from the
3 residence, and I'm talking to him and basically telling him
4 that, you know, all we want to do is get the gun and that
5 has -- his mom was visibly upset and it would make things
6 easier on her if he told us where the gun was.

7 So he told me to turn around
8 and he'd take me back.

9 So I turned around. We went
10 back to the residence and he led us up to where the gun was
11 located. The gun was located underneath his bed in a bag.

12 Q Did he lead you to a particular room?

13 A Yes. It was his bedroom.

14 Q Now, the weapon that you were looking for
15 was, in fact, a nine millimeter, correct?

16 A That's correct.

17 Q How did you know that you were looking for a
18 nine millimeter?

19 A Ah, there was nine millimeter shell casings
20 recovered at the scene that we thought were probably
21 related; and we also believed that the projectiles that were
22 recovered from the body were nine millimeter.

23 Q Did -- did the defendant say -- well, what
24 was his attitude like when you were first in contact with

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1 him, up to the point where he pointed out where the weapon
2 was in his bedroom?

3 A He wasn't -- he wasn't disruptive in any
4 means. He was cooperative with us. I -- he wasn't -- he
5 wasn't violent in any way.

6 Q Would you say nonchalant would be a way to
7 describe it?

8 A Sure.

9 MR. SCISCENTO: I'll object to that, Your
10 Honor.

11 THE COURT: Okay. The objection is
12 sustained. The jury will disregard the last answer.
13 Rephrase the question.

14 BY MR. COUNOU:

15 Q Did you continue talking to the defendant on
16 the way to the police station?

17 A Yes, I did.

18 Q And what exactly were you two talking about?

19 A Um, he had told me that he had purchased the
20 gun after Michael Beasley's death from an individual by the
21 name of Sugar Bear.

22 And I was also driving and
23 paying attention to my driving. We weren't having a lot of
24 conversation, but a little.

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1 this case, would that help refresh your memory, sir?

2 A Yes, I'm sure it would.

3 MR. COUNOU: Okay. Court's indulgence.
4 Okay. Counsel, Detective

5 Buczek's report, page two.

6 If I may approach, Judge?

7 THE COURT: Yes, you may.

8 BY MR. COUNOU:

9 Q Detective, I'm showing you a copy of your
10 report.

11 First, look at it and see if
12 you recognize it; and then I ask you to review the last
13 paragraph on page two.

14 A I do recognize this.

15 Q Read that last paragraph on page two to
16 yourself, please.

17 A (Complies.)

18 Q Now, after reading that last paragraph,
19 focusing your attention on the portion only about Tanesha
20 Banks, because you mentioned in your testimony that he was
21 blaming Tanesha Banks, that she was going around blaming
22 this murder on him; is that correct?

23 A That's correct.

24 Q What did he say about Tanesha Banks to you?

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1 Q And did he say anything about him having
2 touched that weapon?

3 A Yes, he did.

4 Q What was that?

5 A He -- he said that prior to Michael
6 Beasley's death that he had touched the weapon. He had
7 handled the weapon; he had handled the magazine that goes
8 into the weapon.

9 And he also told me that he had
10 handled each and every -- each individual round of
11 ammunition that was in the magazine.

12 Q And he -- he specifically pointed out that
13 he handled the -- all those things of the weapon prior to
14 the killing?

15 A That's correct.

16 Q Now, Detective, did he make any accusations
17 as to who may be blaming this on him?

18 A Yes, he did. He said that Tanesha -- that
19 Tanesha Banks was the one that was trying to put the murder
20 on him.

21 Q Was he saying anything as to his feelings
22 or -- or if he had done anything towards Tanesha?

23 A No, I don't recall.

24 Q If I show you a report that you prepared in

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1 A He said that his home girl went over to
2 Tanesha Banks' house the other night and "knocked her ass
3 out," is the way he put it.

4 Q Okay. Did he indicate to you if he put up
5 his home girl to it?

6 A No, he did not.

7 Q Okay. If I could have that again.

8 Now, you mentioned -- or the
9 defendant mentioned to you that he purchased this weapon
10 after the murder of Michael Beasley from an individual by
11 the name of Sugar Bear.

12 This individual Sugar Bear, did
13 you ever -- were you ever able to identify him by an actual
14 name, not this street name business?

15 A Yes, I was. His name is Charles Damion Von
16 Lewis.

17 Q And during your investigation, prior to the
18 defendant's arrest, was he ever a suspect in this case?

19 A No, he was not.

20 Q Did you ever try to locate Damion Charles
21 Von Lewis?

22 A Yes, I did.

23 Q Were you ever able to locate him?

24 A No. Actually, what I had done -- what I did

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1 was I put a locator in our SCOPE, which is our local police
2 computer system, and had it -- if he was -- if he was
3 located or contacted by any officers to contact myself
4 and/or Detective Thowson 24 hours a day, reference a
5 questioning on a murder case.

6 And I had put that in the
7 SCOPE, I believe it was September 24th.

8 Q Now, Detective Buczek, you -- you've
9 arrested the defendant.

10 Were there any other arrests in
11 this case where you certainly focus your -- your
12 investigation on?

13 A Yes, there were.

14 Q And who were -- who were the other
15 individuals that were arrested?

16 A I also -- I also had warrants drawn up
17 for -- for Deskin, who is also known as Woodpecker; Tommie
18 and Jottee Burnside, who is T-Bone and Little Wee G.

19 Q When you say warrants, you mean arrest
20 warrants?

21 A That's correct.

22 Q No other search warrants were executed?

23 A No, there were not.

24 Q Okay. Did you -- since the arrest then and

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1 Tom A. Wahl with P Number 5019, a criminalist with the Las
2 Vegas Metropolitan Police Department.

3 It has been, by stipulation,
4 that these two items will be entered into evidence and the
5 detective can talk as to the results of the findings of this
6 chemist Mr. Wahl.

7 MR. SCISCENTO: That is correct, Judge.

8 THE COURT: Okay.

9 MR. SCISCENTO: I will stipulate to that.

10 THE COURT: Very well. The Court will
11 accept that stipulation and the jury may consider that as a
12 proven fact.

13 Go ahead. You may proceed, Mr.

14 COUNOU.

15 MR. COUNOU: Thank you.

16 BY MR. COUNOU:

17 Q Looking at those two exhibit now, State's
18 Exhibits 66 and 67, do you recognize those, sir?

19 A Yes, I do.

20 Q And those are Tom Wahl's findings, correct?

21 A That's correct.

22 Q As to those three Winston cigarette butts,
23 what was the exact request that you had made and what are
24 the results of the findings?

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1 eventual changing of these individuals, did you make any
2 further request to the Metro crime lab in this case?

3 A Yes, I had.

4 Q And what were those requests?

5 A I had made requests to have the -- the
6 firearm that we recovered at -- at Mr. Nasby's house
7 examined and tested to determine whether or not that was the
8 murder weapon.

9 I also had -- there were some
10 footwear patterns discovered out in the desert that -- that
11 were photographed. I had those compared to -- I believe
12 there were seven pairs of athletic shoes that were recovered
13 at Mr. Nasby's house. I had those compared.

14 I also -- there was -- there
15 were three, ah, cigarette butts. I believe they were
16 Winston cigarette butts that were -- appeared to be somewhat
17 fresh and we also impounded those and had those tested for
18 DNA.

19 MR. COUNOU: Why -- okay. Focus first on
20 the DNA portion on the Winston cigarette butts.

21 May the record reflect I'm
22 showing defense counsel State's proposed 66 and 67.

23 For the record, Judge, these
24 are two Forensic Laboratory Report of Examinations signed by

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1 A The requests I had made was to see if he
2 could determine if there was any DNA to be extracted from
3 the cigarette butts; and to have them compared to Tommie
4 Burnside, Jottee Burnside, Brandon Nasby and Michael
5 Beasley.

6 Mr. Wahl was able to find one
7 cigarette butt that did have DNA that he was able to
8 compare, and it did not come back to any of the four.

9 Also, on the other sheet, we
10 later received a buckle swab kit from Mr. Deskin and had Mr.
11 Deskin DNA compared to the cigarette butt and that also
12 turned out negative.

13 Q And so those -- those cigarettes, even
14 though they were impounded, they were eliminated as being of
15 any crime scene evidence, correct?

16 A That's correct.

17 Q Now, the footprint -- it seems that a lot of
18 requests were made.

19 Do you normally get positive
20 results on everything that you try to request?

21 A No, not at all.

22 Q What is the purpose then for you making all
23 these requests on -- on potential evidence?

24 A I want to make sure that we touch all bases;

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1 that the -- that the evidence is -- is looked at; and to see
2 if that can assist us in any way.

3 There are a lot of times when
4 the evidence does not assist us; it does not help us; it has
5 no evidentiary value for us.

6 Q Now, Detective, this individual by the name
7 of Sugar Bear, you indicated that he was never a suspect,
8 correct?

9 A That's correct.

10 Q He was totally eliminated as -- as a
11 suspect?

12 A That's correct.

13 Q Was he ever really truly a suspect in your
14 mind?

15 A Um, after talking to Jottee Burnside and
16 Tommie Burnside, I then started to wonder a little bit that
17 possibly he could have been involved; and that was after the
18 first time we spoke to them.

19 Q The first time you spoke to Tommie and
20 Jottee Burnside?

21 A That's correct.

22 Q They gave you a version of Sugar Bear being
23 involved?

24 A That's correct.

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1 Q And is there any reason why you never asked
2 for DNA or shoes to be compared with the footprints left at
3 the crime scene or with any of those Winston cigarettes?

4 A In order to get DNA in shoes, there was a
5 possibility I would have to get a search warrant. I did not
6 have probable cause to get a search warrant for those items.

7 And also to go and have DNA
8 tests done, after I've already eliminated somebody as a
9 suspect, it's just -- it's not very cost effective. It's
10 very expensive for the DNA testing, so I chose not to have
11 it done.

12 MR. COUNOU: Judge, can we approach just
13 briefly on another issue?

14 THE COURT: Yes.

15 (Unreported discussion at the bench.)

16 BY MR. COUNOU:

17 Q Subsequent to the defendant's arrest and the
18 Burnside brothers' arrest, and then this Jeremiah Deskin's
19 arrest, were you also contacted by an individual by the name
20 of John Holmes?

21 A Well, actually, I was contacted by an
22 officer who told me that he would probably be worthwhile for
23
24

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1 Q And subsequent to that, what was your
2 finding as to Tommie and Jottee Burnside's version, the
3 initial version?

4 A I then spoke to -- to Jeremiah Deskin.
5 Jeremiah Deskin said no, that he was not there.

6 And I then, after arresting
7 Jottee Burnside and Tommie Burnside, Jottee chose to
8 spoke -- to speak to us; and Jottee told me, no, Sugar Bear
9 wasn't there.

10 MR. SCISCENTO: Your Honor, I'm going to
11 object to this now as hearsay.

12 THE COURT: Approach.

13 (Unreported discussion at the bench.)

14 THE COURT: Okay. Mr. Counou, why don't you
15 rephrase the question.

16 MR. COUNOU: Okay.

17 BY MR. COUNOU:

18 Q And so you were talking about speaking to
19 the Burnside brothers -- or Jottee Burnside the second time;
20 and after that, in your opinion, was -- this Sugar Bear,
21 Charles Damion Charles Von Lewis, was he eliminated totally?
22

23 A Yes, I think he was.
24

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1 me to talk to.

2 Q And did you, in fact, go and talk to this
3 John Holmes?

4 A I sure did.

5 Q And without saying what he told you, did he
6 give you information?

7 A Yes, he did.

8 Q Valuable information for your -- subsequent
9 valuable information, even though the case had been solved,
10 in your opinion?

11 A Yes.

12 MR. COUNOU: Judge, at this time, I believe
13 I'll pass the witness.

14 THE COURT: Okay. Mr. Sciscento.

15 MR. SCISCENTO: Yes, Your Honor.

16 (Whereupon, a sotto voce at this time.)

17 MR. COUNOU: Judge, I have one more question
18 if I could.

19 THE COURT: Yeah, go ahead.

20 BY MR. COUNOU:

21 Q Did you instruct Mr. Holmes on how to get
22 information or anything like that?
23
24

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A No, not at all.
 MR. COUNDOU: Thank you.
 THE COURT: Mr. Sciscento.
 MR. SCISCENTO: Thank you.

CROSS-EXAMINATION

BY MR. SCISCENTO:

Q Detective Buczek, right?

A Yes.

Q Detective Buczek, you were saying that, at one point, somebody mentioned a Damion Von Lewis, aka Sugar Bear, as a possible perpetrator of this crime?

A Charles Damion Von Lewis.

Q He's also known as Sugar Bear?

A Yes.

Q Also known as Shugg?

A Yes.

Q And you were informed by somebody at some point that he may have been a perpetrator of this crime?

A That's correct.

Q You were informed by Tommie Burnside?

A Tommie Burnside and Jottee Burnside.

Q And Jottee Burnside?

A That's correct.

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A Yes, I do.

Q Okay. And in that statement, what did she say about the murder of Michael Beasley?

A She said that Charles Von Lewis had called her and told her that Michael was dead.

Q And as a matter of fact, she said Charles Von Lewis had three way'd her and Tanesha Banks; do you recall that?

A Yes; yes.

Q I want to make sure you recall. I can show you the --

A Oh, please, please.

If I could just spend a little bit more time with that.

Q No problem.

A Thank you.

Q I think it says in there that Tanesha and Crystal three way'd.

A Yes.

Q Okay?

A Yes.

Q And so in here, it does say that Tanesha and Crys- -- I'm sorry -- and Brittney -- Tanesha then three way'd Crystal Bradley and they were conversing on the phone,

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Q And how about Brittney Adams?

A I -- I would have to review that. I don't recall.

MR. SCISCENTO: If I may approach, Your Honor?

THE COURT: Yes.

MR. SCISCENTO: I'm showing you --

(Whereupon, a sotto voce at this time.)

MR. COUNDOU: Okay.

BY MR. SCISCENTO:

Q You took an interview of Brittney Adams on August 4th, 1998?

A Okay. Yes.

Q You reviewed this report dated August 4th, 1998?

A That's correct.

Q You were present at that time?

A Yes.

Q And you were taking the statement of Brittney Adams?

A Yes.

Q Do you recall that statement?

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correct?

A Correct.

Q And that's at the time that they said that Charles Von -- Brittney Adams told you Charles Von Lewis had committed this crime?

A That's correct.

Q And you heard that also from Jottee Burnside; is that correct?

A Yes, I did.

Q Okay. And you interviewed him -- do you recall when?

A I interviewed him two different times. The first time, I would have to refer to my -- to my book here to tell you when it was --

Q If you could, please.

A -- and I could tell you the second time also.

Yes, the first time I spoke to him was on August 4th, '98.

Q Okay. That was the same time that you spoke with Brittney Adams?

A That's correct.

Q And Tommie Burnside, you also spoke to him on August 4th, 1998?

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1 A That's correct.
 2 Q Okay.
 3 A Ah, actually -- actually, my partner spoke
 4 to Jottee and I spoke to Tommie.
 5 Q Okay. Did you review any statements made by
 6 Jottee --
 7 A Yes, I did.
 8 Q -- made on August 4th?
 9 A Yes, I did.
 10 Q And those statements, did it say that, in
 11 fact, Sugar Bear was, in fact, the killer?
 12 A Yes, it did.
 13 Q Okay. Now, you said, subsequently, you
 14 determined that Sugar Bear was not the killer because you
 15 talked to Jerimiah Deskin?
 16 A No, it's not necessarily that way.
 17 Jer- -- I did speak to Jerimiah
 18 Deskin and Jerimiah Deskin said that: No, Sugar Bear was
 19 not there.
 20 Q Okay.
 21 A However, I also spoke to Jottee.
 22 Q When did you speak to Jottee?
 23 A I spoke to Jottee again when he was arrested
 24 on October 27th, 1998.

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1 this, but was it that Brendan Nasby wanted Sugar Bear?
 2 MR. SCISCENTO: Oh, I object to this as --
 3 THE COURT: Sustained. Why don't you wait
 4 for redirect?
 5 MR. COUNTOU: Okay.
 6 THE COURT: Go ahead, Mr. Sciscento.
 7 BY MR. SCISCENTO:
 8 Q Okay. Let me see if I understand then:
 9 So on October 27th, Jottee
 10 tells you this, the statement that you just made?
 11 A That's correct.
 12 Q That's the second time you interviewed him?
 13 A That's correct.
 14 Q Okay. What else did you do to determine
 15 that Charles Von Lewis, aka Sugar Bear, was not the killer
 16 in this case?
 17 A I also spoke to -- to Mr. Holmes.
 18 Q Okay. And what date was that?
 19 A Let's see --
 20 Q Was it around November 5th?
 21 A Nope. I spoke to John Holmes on December
 22 17th --
 23 Q December --
 24 A -- 1998.

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1 Q October 22nd?
 2 A 27th.
 3 Q 27th?
 4 A Yes, sir.
 5 Q Okay. And Jottee was in custody at that
 6 point?
 7 A That is correct.
 8 Q And that's Jottee Burnside?
 9 A That's correct.
 10 Q Okay. What else -- what else made you
 11 believe that this Charles Von Lewis aka Sugar Bear was not
 12 the killer in this case?
 13 A That Jottee Burnside, that day, told me he
 14 was not --
 15 Q Okay.
 16 A -- that he was not involved.
 17 Jottee went on to tell me
 18 that -- that Sugar Bear had threatened him and his brother,
 19 and he looked at this as an opportunity to get Sugar Bear
 20 out of his life. He thought he could get him locked up, and
 21 then he wouldn't have to worry about being killed or killing
 22 Sugar Bear.
 23 MR. COUNTOU: Judge, can I have a
 24 clarification? The witness says that Sugar Bear told him

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1 Q December 17th?
 2 A That's correct.
 3 Q Okay. What else did you do other than
 4 talking to Jottee, talking to Mr. Holmes, to determine that
 5 Sugar Bear, Mr. Von Lewis, was, in fact, not the killer?
 6 A I also spoke to Crystal Bradley.
 7 Q Okay. When did you talk -- talk to Crystal
 8 Bradley?
 9 A Spoke to Crystal Bradley on July 23rd, 1998.
 10 Q On August 4th, 1998, you had the information
 11 from Crystal Bradley and from Tommie Burnside, Jottee
 12 Burnside and Brittney Adams? By August 5th, we'll say. By
 13 August 5th, you had this information from the four people?
 14 A That's correct.
 15 Q Okay. What other information did you have
 16 that Camion Von Lewis was not the killer in this case, aka
 17 Sugar Bear?
 18 A None that I recall.
 19 Q None that you recall.
 20 Was Jottee Burnside or Tommie
 21 Burnside under arrest on August 4th, 1998, do you recall?
 22 A Um, August 4th?
 23 Q August 4th, that was the time of the --
 24 A No, they were not.

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1 Q -- interview?
 2 They had admitted that they
 3 were present at the time of the killing of Michael Beasley,
 4 though, in the report?
 5 A That's correct.
 6 Q After that -- subsequent to that, were they
 7 arrested?
 8 A After --
 9 Q After they gave the -- the confession of
 10 such?
 11 A Not that day --
 12 Q Okay.
 13 A -- but at a later point, yes, they were.
 14 Q How much later?
 15 A October 27th, 1998.
 16 Q And that's when Jottee then gave a second
 17 subsequent statement?
 18 A That's correct.
 19 Q Okay. Now, the D.A., Mr. Courou, asked you
 20 if you ran any DNA tests or requested any DNA tests for John
 21 Holmes -- I'm sorry -- for Charles Von Lewis. You said you
 22 did not.
 23 A That's correct.
 24 Q And why not?

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1 Q But there was no request for Jeremiah
 2 Deskin?
 3 A There was a subsequent request made for
 4 Jeremiah Deskin, the second one.
 5 Q But I'm talking specifically on State's
 6 Exhibit 66.
 7 A No. Because I did not have DNA from Mr.
 8 Deskin. Mr. Deskin was -- was nowhere to be found at that
 9 point. I can't request DNA to be compared if I don't have
 10 DNA.
 11 Q Okay. But also, there was not a request
 12 done for a Charles Von Lewis, aka Sugar Bear?
 13 A No, that's correct.
 14 Q Okay. Now, there was not a search warrant
 15 for Charles Von Lewis, aka Sugar Bear, drawn up by you or
 16 Detective Thowsen?
 17 A I didn't have -- I didn't have probable
 18 cause for that, no.
 19 Q Was there any other investigation to
 20 determine whether or not that Sugar Bear, Charles Von Lewis,
 21 committed this murder, other than the three statements by
 22 Jottee, Mr. Holmes and Crystal Bradley?
 23 A Our investigation, we looked at everyone
 24 possible, everyone's name that came up.

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1 A First of all, it's an expensive process to
 2 go through and have that done, especially after I had
 3 eliminated him as being a possible suspect.
 4 And, secondly, to go and -- I
 5 did not have probable cause to go and get a search warrant
 6 to search his home for -- for shoes that could possibly
 7 leave that type of paper or possibly to get the DNA from
 8 him.
 9 Q Did you request DNA done on the cigarettes
 10 on September 1st?
 11 A I -- is that the --
 12 Q Well, that was requested -- I'm sorry. That
 13 was requested by Officer -- Detective Thowsen, correct?
 14 A I would have to review the form.
 15 Q State's Exhibit 66?
 16 A This isn't the request. This is the actual
 17 form completed by Mr. Wahl.
 18 Q Okay. And this was completed then on what
 19 date?
 20 A His form was completed on September 1st,
 21 1998.
 22 Q And the request for DNA was against Brendan
 23 Nasby, Tommie Burnside, Jottee Burnside and Michael Beasley?
 24 A That's correct.

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1 Q Detective, I'm sorry. Let me stop you there
 2 though. I want to ask specifically what was done to include
 3 or exclude Mr. Von Lewis, other than the statements that you
 4 received from Jottee Burnside, John Holmes, and Crystal
 5 Bradley?
 6 A Now, I'm not understanding your question
 7 now.
 8 Q Okay. Well, during this time, you are
 9 trying to include Brendan Nasby in the murder by running DNA
 10 tests, serving search warrants on his house, getting the
 11 shoes, getting fingerprints, getting cigarette butts; you
 12 are trying to do everything to include Mr. Nasby in this,
 13 correct?
 14 A That's correct.
 15 Q Now, what are you doing to include or
 16 exclude Mr. Charles Von Lewis, aka Sugar Bear, from being
 17 the murderer?
 18 A At the moment, I didn't have enough probable
 19 cause to arrest Mr. -- Mr. Von Lewis. So what I did was I
 20 had his name placed in SCOPE, a locator; if he was located,
 21 to contact Detective Thowsen and/or myself 24 hours a day,
 22 so we could go in and talk to him about Michael Beasley's
 23 murder.
 24 Q August 4th, 1998, Brittney Adams says Sugar

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1 Bear, aka Charles Von Lewis, kills Michael Beasley. August
2 4th, 1998, Tommie Burnside says Sugar Bear, aka Charles Von
3 Lewis, kills Michael Beasley. August 4th, 1998, Jottee
4 Burnside says: I was there. I saw Sugar Bear kill Michael
5 Beasley.

6 But, at that time, you
7 determined you did not have probable cause to get a search
8 warrant?

9 A That -- first of all, we couldn't locate
10 him.

11 Q Okay.

12 A I don't -- did not know where to search.

13 If I received a search warrant,
14 had it signed by a judge, I have ten days to go and search.
15 I didn't even know where to search. I -- I have to have a
16 description of a -- of a residence to search. I did not
17 know where -- where he was.

18 Q August 4th, you serve a search warrant on
19 Brendan Nasby's house, correct?

20 A That's correct.

21 Q Based on the statement of Tanesha Banks?

22 A No.

23 Q What was it based on?

24 A It was based on a combination of statements

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1 A That's correct.

2 Q Okay. But there were no Winston cigarettes
3 found in Mr. Nasby's house?

4 A No, there weren't.

5 Q Okay. So, basically, we have four inanimate
6 objects which have no evidentiary value without being
7 compared to something else. In other words --

8 MR. COUNOU: Judge, I'm going to object.
9 It's argumentative.

10 MR. SCISCENTO: Let me restate it then.

11 THE COURT: Will counsel approach?

12 (Unreported discussion at the bench.)

13 BY MR. SCISCENTO:

14 Q All right. Let me -- let me re- -- let me
15 rephrase it and go back.

16 You had four items, which were
17 the footprint impression, the body, the shells and the
18 cigarettes?

19 A Uh-huh.

20 Q Okay. That's yes?

21 A Yes.

22 Q Okay.

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1 of Tanesha Banks and Crystal Bradley.

2 Q And that's it, those two?

3 A Um, I would have to go back and review the
4 search warrant; however --

5 Q Did you bring it with you?

6 A Yes.

7 Q Do you want to review it?

8 A Yes, sir.

9 No, we also included the
10 evidence that was recovered at the scene.

11 Q Okay. But the evidence at the scene did not
12 have the prints of Brendan Nasby?

13 A No.

14 Q And didn't have the footprints of Brendan
15 Nasby?

16 A Not that I -- I know of, no.

17 Q And didn't have the DNA of Brendan Nasby?

18 A That's correct.

19 Q So, really, the search warrant basically is
20 based on the statement of an interview of Crystal Bradley?

21 A No, also the evidence recovered at the
22 scene.

23 Q Which was the body, the shells, the foot
24 impression and the Winston cigarettes?

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1 A And also -- I mean -- I'm sorry. Did you
2 say the body also?

3 Q And I -- yeah.

4 A Okay.

5 Q And the statement of Crystal Bradley?

6 A That's correct.

7 Q And that was sufficient for you to get
8 probable cause to get the search warrant?

9 A If I could explain?

10 Q Okay.

11 A There was three shell casings recovered at
12 the scene. According to -- according to Crystal Bradley,
13 Brendan Nasby had told her that he had fired his gun three
14 times.

15 She was told that he shot him
16 in the back; he shot him in the head; and then went back to
17 shoot him again.

18 There was a gunshot wound
19 directly in the back between the shoulder blades; there was
20 a gunshot wound in the head; and then there was another,
21 what we believed was a -- another shot that missed, but was
22 fired right next to the victim.

23 So what she told us that Mr.
24 Nasby had told her was supported by what we saw at the

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1 scene.

2 Q Okay. Detective, let me stop you there.

3 Isn't it true that Jottee

4 Burnside told you the same exact things: That there was
5 three shots; told you exactly where they went, how they got
6 there? Didn't he tell you the exact same thing?

7 A That's correct.

8 Q With more detail?

9 A That's correct.

10 Q Including the fact he said --

11 MR. COUMOU: Judge, can I object? Which --
12 which --

13 MR. SCISCENTO: Jottee Burnside.

14 MR. COUMOU: What date?

15 MR. SCISCENTO: The August 4th, 1998.

16 MR. COUMOU: August 4th.

17 BY SCISCENTO:

18 Q -- with more detail, including the fact
19 basically: I, Jottee Burnside was there at the time of this
20 killing?

21 A That's correct. and he also included
22 Brendan Nasby being there and Mr. Burn- -- the Burnside
23 brothers and Mr. Deskin were also arrested for murder.

24 Q And he said though Sugar Bear, aka Damion

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1 BY MR. SCISCENTO:

2 Q Did you find out if Mr. Von Lewis had any
3 connection with Compton, California?

4 MR. COUMOU: Objection; relevance.

5 THE COURT: Sustained.

6 BY MR. SCISCENTO:

7 Q Did you see if Mr. Von Lewis was from
8 California?

9 MR. COUMOU: Objection; relevance.

10 MR. SCISCENTO: Well, Your Honor, he's
11 trying to tell me that the work that he did and the
12 investigation he did. We want to see how much investigation
13 he actually did.

14 THE COURT: Okay. Well, let's see -- did
15 you determine if he was from California, Detective?

16 THE WITNESS: I learned that, yes, he had
17 California ties.

18 BY MR. SCISCENTO:

19 Q Did he have Compton ties?

20 A I don't really know.

21 Q Did you send anybody out there to L.A.
22 looking for Mr. Von Lewis?

23 A I didn't have a reason to arrest him, so,
24 no.

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1 Von Lewis, he killed Michael Beasley, that being Jottee
2 Burnside?

3 A Until at a later time, then he retracted
4 that statement, apologized, and said that he looked at it as
5 an opportunity to get Sugar Bear off the streets.

6 Q All right.

7 A Tommie Burnside said the same thing: That
8 Sugar Bear did it, in his statement; but you felt there was
9 not enough probable cause for you to get a search warrant?

10 A I can't get a search warrant for a house I
11 don't know where it is. I had no idea where he was.

12 Q So you -- you didn't focus on Mr. Von Lewis
13 as a suspect anymore?

14 A I had attempted, by placing him -- a locator
15 in SCOPE to locate him. If he was located or stopped by our
16 police department or any other police departments in the
17 valley, I would have been notified. At that point, there
18 was nothing more that I could do.

19 Q Did you run a SCOPE of Mr. Damion Von Lewis?

20 A Yes; just said it.

21 Q Was it an extensive SCOPE?

22 MR. COUMOU: Judge, objection.

23 THE COURT: Sustained.

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1 Q On August 4th, 1998, you went out to arrest
2 Brendan Nasby, correct?

3 A That's correct.

4 MR. SCISCENTO: I have no further questions.

5 THE COURT: Mr. Coumou.

6 MR. COUMOU: Just real briefly.

REDIRECT EXAMINATION

9 BY MR. COUMOU:

10 Q And specifically on the date of arrest --
11 which is August the 4th, 1998, correct, sir?

12 A Yes.

13 Q -- you arrested the defendant with the
14 execution of the search warrant; it was early in the morning
15 hours, correct?

16 A That's correct.

17 Q Subsequent to the defendant's arrest, you've
18 had -- you had three witnesses come forward with versions of
19 a story: That is, Brittney Adams, Jottee Burnside and
20 Tommie Burnside?

21 A That's correct.

22 Q Isn't it true that Tommie Burnside and
23 Jottee Burnside refer to -- or state that the defendant was
24 there, but in their first August 4th version, they said that

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1 Sugar Bear was the one who did the killing?

2 A That's correct.

3 Q But the defendant was present?

4 A That's correct.

5 Q Now, what about Brittney Adams; did -- when
6 you contacted her, what happened to her after the August 4th
7 interview? Wasn't she arrested?

8 A Yes, she was.

9 Q And what was she arrested for?

10 MR. SCISCENTO: I object, Your Honor. I
11 think it's leading.

12 THE COURT: Well, that last question isn't.
13 Overruled. Go ahead.

14 BY MR. COUNOU:

15 Q What was she arrested for, Detective?

16 A I would have to refer back and see -- get
17 exact charges.

18 Q Okay. If that would -- do you have that
19 with you?

20 A Yes, I do.

21 Q Would that help refresh your memory?

22 A Yes, it would.

23 Q Then please refer to your notes.

24 A She was arrested for attempt kidnap, first

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RE-CROSS-EXAMINATION

1 BY MR. SCISCENTO:

2 Q Brittney Adams gave a story that it was
3 Sugar Bear that did it. She was subsequently arrested for
4 first degree kidnapping, battery with intent --

5 A To commit bodily harm.

6 Q -- with intent to commit bodily harm and
7 something else. I think there was a felony.

8 A Let me go back here.

9 Intimidating a witness.

10 Q Okay. And those are felonies?

11 A That's correct.

12 Q And after that, she changed her story?

13 A Eventually, yes.

14 Q Jottee Burnside, was out of custody and told
15 you that Charles Von Lewis killed him, killed Michael
16 Beasley?

17 A That's correct.

18 Q When he was arrested, he changed his story?

19 A That's correct.

20 Q Jerimiah Deskin is not in custody, has given
21 you the story, and he's not going to go in custody, is he?

22 A Oh, he --

23 MR. COUNOU: Objection.

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1 degree, intimidating a witness, battery with in- -- I'm
2 sorry -- battery with intent to commit bodily harm, felony,
3 and speeding --

4 Q And who was --

5 A -- which was a warrant.

6 Q Who was the victim -- who was the victim of
7 that -- those charges that you just read out?

8 A Tanesha Banks.

9 Q Is this the same Tanesha Banks that the
10 defendant, when you spoke to him early that morning, said
11 that he sent a home girl to beat up on her?

12 A That's correct.

13 MR. COUNOU: Nothing further.

14 THE COURT: Again, Detective, in your
15 experience, what does "home girl" mean?

16 THE WITNESS: They're -- his associate, his
17 friend.

18 THE COURT: Okay. Gang member type thing.
19 Mr. Sciscento.

20 MR. SCISCENTO: I'll try to be brief, Your
21 Honor.

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1 THE WITNESS: He was arrested.

2 MR. COUNOU: The witness can't tell whether
3 or not Jerimiah Deskin is going to be in custody. That's
4 strictly up to the Court to decide.

5 THE COURT: Sustained.

6 BY MR. SCISCENTO:

7 Q Did you cut a deal with Jerimiah Deskin to
8 testify?

9 A No, I didn't. No, I did not.

10 Q Did Detective Thowson do it?

11 A No, he did not.

12 Q So when Jerimiah Deskin gave you his
13 statement, on October 14th, I think it was, October, his
14 lawyer just happened to be there and happened to say,
15 pursuant to an agreement with the District Attorney's Office
16 and the Metropolitan Police Department --

17 A That's correct.

18 Q -- that's why you are testifying today?

19 A I did not cut a deal with him. That's not
20 my job. I do not cut deals with people who are arrested.
21 That's up to the District Attorney.

22 If the District Attorney makes
23 a deal, then -- and calls me in to talk to somebody, then I
24 do.

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1 MR. SCISCENTO: Okay. I have no further
2 questions, Your Honor.

3 MR. COUNOU: Nothing further by the State,
4 Judge.

5 THE COURT: Okay. Do any of the ladies and
6 gentlemen of the jury have any questions here for Detective
7 Buczek?

8 (Negative response.)

9
10 THE COURT: Okay. Detective, thank you very
11 much for coming to court and testifying this afternoon.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14
15 THE COURT: Will counsel approach, please.

16
17 (Unreported discussion at the bench.)

18
19 MR. COUNOU: Judge, the witness says if we
20 start tomorrow at eleven o'clock he'll --

21 THE COURT: Is he okay?

22 MR. COUNOU: Yeah.

23 THE COURT: We'll go through and finish it
24 before lunch then.

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1 eleven a.m. We'll get started right at that time then.

2 Again, if you will leave your
3 badges and tablets on your chairs. You can leave them on
4 top your chairs this evening.

5
6 (The following proceedings were had in open
7 court outside the presence of the jury:)

8 THE COURT: Okay. The record will reflect
9 that the jury has left the courtroom.

10 Mr. Sciscento, have you had an
11 opportunity to talk to your client about that potential
12 penalty phase issue?

13 MR. SCISCENTO: No, Your Honor, we really
14 haven't discussed that at length. I will do that tonight.

15 THE COURT: Okay.

16 MR. SCISCENTO: I still have -- I don't know
17 if the District Attorney -- what the District Attorney's
18 feelings --

19 THE COURT: The District Attorney, I
20 believe, indicated to me that the State would waive it if
21 the defense is willing to waive it.

22 MR. SCISCENTO: Okay.

23 THE COURT: Okay. So it's your choice then.
24 Okay. We'll be in recess until

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1 MR. COUNOU: Because he's planning on
2 leaving town --

3 THE COURT: Okay.

4 MR. COUNOU: -- is the problem.

5 THE COURT: Very well.

6 Ladies and gentlemen, it might
7 be a little bit later for lunch tomorrow morning, then like
8 that, but we will finish up with this next witness at that
9 time.

10 Okay. Ladies and gentlemen,
11 we're going to take our overnight recess.

12 During this recess, you are
13 admonished not to talk or converse among yourselves or with
14 anyone else on any subject connected with this trial;

15 Or to read, watch or listen to
16 any report of or commentary on the trial by any person
17 connected with this case or by any medium of information,
18 including, without limitation, newspapers, television, the
19 Internet or radio.

20 You are further admonished not
21 to form or express any opinion on any subject connected with
22 this trial until the case is finally submitted to you.

23 And you are directed to return
24 to the hallway outside the courtroom tomorrow morning at

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1 eleven a.m. tomorrow morning.

2
3 (Proceedings recessed until Friday,
4 October 15, 1999, at eleven a.m.)

5 * * * * *

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

7
8 *Renée Silvaggio*
9 RENEE SILVAGGIO, C.C.R. NO. 72
OFFICIAL COURT REPORTER

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JINA HURD

DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

BRENDAN JAMES NASBY,)

Defendant.)

Case No. C154293

Dept. No. VII

Docket No. P

VOLUME V

Before the Honorable Mark Gibbons

Friday, October 15, 1999, 11:15 a.m.

Reporter's Transcript of Proceedings

JURY TRIAL

CONDENSED TRANSCRIPT

CE12

APPEARANCES:

(See separate page)

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Las Vegas, Nevada, Friday, October 15, 1999, 11:15 a.m.

(The following proceedings were had in open court outside the presence of the jury.)

THE COURT: This is the continuation of Case Number 154293, the State of Nevada versus Brendan J. Nasby.

Let the record reflect the presence of the attorneys for the parties; also present is Mr. Cohen, deputy District Attorney.

We've had a conference in chambers. The defense has served a subpoena upon the custodian of records of the Clark County Detention Center for all records pertaining to John Holmes.

Pursuant to a conversation we had between defense counsel and the State and Mr. Cohen, representing the civil division of the District Attorney's Office, the parties agreed that the Court, in camera, would review the records of Mr. Holmes pertaining to his jail files; is that correct, Mr. Sciscento?

MR. SCISCENTO: That's correct.

THE COURT: Mr. Coumou?

MR. COUMOU: Yes, Judge.

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1 THE COURT: And, Mr. Cohen?
 2 MR. COHEN: Yes.
 3 THE COURT: Okay. The Court has reviewed
 4 the records with Mr. Cohen. The Court found that there were
 5 two documents in those records that -- or pages -- that
 6 perhaps pertain to this case.
 7 There was one indicating an
 8 interview with Detective Buczek; and there was another one
 9 indicating a visit to Holmes by a correction officer -- and
 10 I believe the correct -- it was in April of '99.
 11 So, again, I don't know if that
 12 has anything to do with this case or not, but what I've done
 13 is -- if the parties will agree, I've asked Mr. Cohen to
 14 make copies of those two pages for the State and for the
 15 defense, to give you those two particular pages out of the
 16 report then.
 17 So is that agreeable to the
 18 parties?
 19 MR. SCISCENTO: My only problem I have is
 20 the visitation they have, every time someone appeared, I
 21 specifically asked for that in the subpoena: Any time
 22 somebody from the outside, not just an officer.
 23 THE COURT: Okay. Let's go off the record.
 24 (Whereupon, a sotto voce at this time.)

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1 right here.
 2
 3 (Recess in proceedings.)
 4
 5 THE COURT: Okay. We'll go back on the
 6 record now in the presence of the same parties.
 7 The Court, again at the request
 8 of Mr. Sciscento, has looked at the visitors' log for anyone
 9 that's visited Mr. Holmes. The Court has not seen any name
 10 of anybody that has anything to do with this case on the
 11 visitors' log.
 12 MR. COUNOU: Okay.
 13 THE COURT: Okay.
 14 MR. SCISCENTO: So I'm assuming then, in
 15 other cases we have, where the State subpoenas these
 16 records, the same objections can be made.
 17 THE COURT: Well, I don't know.
 18 MR. SCISCENTO: Just wondered -- wondered
 19 about that.
 20 THE COURT: Okay. We'll go off the record.
 21
 22 (Recess in proceedings.)
 23 (The following proceedings were had in open
 24 court in the presence of the jury:)

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1 THE COURT: Okay. Back on the record.
 2 MR. SCISCENTO: But -- well, let me go back
 3 then. I haven't seen copies of -- whenever I visit a
 4 client, we sign in; put name, the date, and sign in and then
 5 go visit.
 6 THE COURT: Right.
 7 MR. SCISCENTO: Any time a witness -- I'm
 8 sorry.
 9 Any time somebody else, who is
 10 not a police officer or D.A., visits, they write it down.
 11 Now, this person may have been
 12 visited by Tanesha Banks, maybe Crystal Bradley or, you
 13 know, somebody who testified in this case.
 14 THE COURT: Okay. Mr. Sciscento, I can tell
 15 you from my examination of the records, I -- I did not see
 16 any names of anybody involved with this case that I've been
 17 advised of by the parties, that I'm aware of, with the
 18 exception of Detective Buczek and, as I said, this unnamed
 19 corrections officer. Okay.
 20 MR. COHEN: If you wanted to look, I can
 21 show you the civilian list, but --
 22 MR. SCISCENTO: Well, thanks.
 23 THE COURT: Let me take a quick look in case
 24 I missed anything. We'll just walk in here. Okay. Stay

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1 THE COURT: Okay. Good morning, ladies and
 2 gentlemen.
 3 This is the continuation of
 4 Case Number C154293, State of Nevada versus Brendan J.
 5 Nasby.
 6 Let the record reflect the
 7 presence of Mr. Bradley, together with his attorneys Joe
 8 Sciscento and Frederick Santacroce; the State of Nevada
 9 represented by Frank Counou, deputy District Attorney.
 10 Mr. Counou, will you stipulate
 11 to the presence of the jury?
 12 MR. COUNOU: The State does.
 13 THE COURT: And, Mr. Sciscento?
 14 MR. SCISCENTO: Yes, Your Honor.
 15 THE COURT: Thank you very much.
 16 Ladies and gentlemen, again, I
 17 apologize for the little tardy start this morning. We had
 18 some legal matters that just came up we needed to deal with
 19 and it's kind of beyond our control in getting that done.
 20 Okay. The State may call its
 21 next witness.
 22 MR. COUNOU: The State calls Torrey Johnson.
 23 THE COURT: Mr. Johnson, if you would come
 24 on up here, please, and just step around to your right here.

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1 Okay. You can go ahead and put
2 your file down on the table, if you'd like; and face me and
3 raise your right hand.

4
5 Whereupon,

6 TORREY JOHNSON

7 having been called as a witness by the State and
8 having been first duly sworn to tell the truth, the
9 whole truth and nothing but the truth, was examined
10 and testified as follows:

11
12 THE CLERK: Thank you. You may be seated.

13 THE COURT: Okay. Mr. Johnson, the
14 attorneys are going to ask you some questions here this
15 morning. Please answer them the best you can without
16 arguing with any of the attorneys.

17 Also, if there is an objection
18 to any question asked to you, please don't answer it unless
19 I tell you it's permissible to do so.

20 Could you state your name and
21 spell your first and last name for the court reporter,
22 please.

23 THE WITNESS: My name is Torrey Johnson;
24 last name is J-o-h-n-s-o-n; first name is T-o-r-r-e-y.

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1 Q And how long was that for, sir?

2 A I worked for California about 20 -- about 20
3 years.

4 Q So, in order to have this type of line of
5 work, do you need any specialized training?

6 A You do, yes.

7 Q Could you explain to the jury what kind of
8 training is required of you.

9 A Well, initially, to qualify as a
10 criminalist, to qualify to be hired as a criminalist, you
11 have to have a degree in a physical science.

12 I have a Bachelor's degree in
13 chemistry from San Diego State University; also a Master's
14 degree in chemistry from the same university.

15 After hiring on as a
16 criminalist, I undertook training in various areas,
17 including firearm and tool mark examination. That training
18 consisted of both basic and advanced classes given by the
19 agency I worked for, California Department of Justice; also
20 classes by the F.B.I. laboratory; also joined an association
21 of firearm and tool mark examiners, which has regular
22 training seminars; undertook research on my own.

23 I've published, presented
24 papers; and in my last five years in California, I actually

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1 THE COURT: Thank you.

2 Mr. Coumou, you may proceed.

3 MR. COUMOU: Thank you.

4
5 DIRECT EXAMINATION

6 BY MR. COUMOU:

7 Q Good morning, Mr. Johnson.

8 Could you please inform the
9 jury as to your profession.

10 A Yes. I work as a criminalist for the Las
11 Vegas Metropolitan Police Department. That's a person in
12 the forensic laboratory.

13 Q What are your specific duties?

14 A I'm assigned in the firearm detail. I
15 examine firearm and what are called tool mark evidence.

16 Q How long have you been doing that for the
17 Las Vegas Metropolitan Police Department?

18 A Almost five years here now.

19 Q Prior to that, have you been a firearms and
20 tool examiner?

21 A I was, yes.

22 Q Where at?

23 A That was in California for the California
24 Department of Justice.

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1 worked in something called the California Criminalistics
2 Institute, which was a teaching institute. So before I left
3 California, I was actually teaching the classes on firearms
4 and tool mark examination.

5 Q Do you still find yourself teaching in the
6 areas of firearms and tool marks?

7 A I do, yes.

8 Q Have you ever been asked to be recognized as
9 an expert in this particular field?

10 A I have.

11 Q Where?

12 A In the courts of Clark County, as well as
13 courts throughout California.

14 MR. COUMOU: Okay. Judge, at this time, I
15 would ask the Court also to recognize Mr. Johnson as an
16 expert in the field of firearms and tool marks examination.

17 THE COURT: Any objection.

18 MR. SANTACROCE: No objection.

19 THE COURT: Okay. Mr. Johnson can publish
20 opinions to the jury in the field of firearms and tool mark
21 examinations.

22 MR. COUMOU: Thank you.

23 BY MR. COUMOU:

24 Q Mr. Johnson, could you explain exactly to

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1 inquiry what -- what is all involved in firearms and tool
2 mark examinations?

3 A Well, we examine evidence, any sort of
4 evidence, that relates to firearms and ammunition.

5 Our primary type of effort is
6 directed at comparison of a firearm with recovered bullets
7 and cartridge cases to see if there can be shown if there is
8 an association between the -- the fire components and the
9 gun.

10 Q And how is that done?

11 A Well, when a firearm is fired, it leaves
12 microscopic marks on the bullets and on the cartridge cases.

13 So we examine the firearm; we
14 test fire it; recover the bullets that we fired; recover the
15 cartridge cases that we fire; and then those are compared
16 microscopically, with special microscopes, to the evidence
17 items. Correspondence in those marks then is -- shows
18 association.

19 Q Why do you go to the level of
20 microscopically? Could you explain that?

21 A Well, we go mic- -- we go to the microscopic
22 level because that is where we -- we find that there is a
23 uniqueness there. There are marks that are microscopic that
24 you can just observe; those tend to be somewhat more

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1 recover the bullets by firing them into a water tank, which
2 stops them without damaging them too much. And then we
3 would take those fired components that we fired and compare
4 them to the recovered evidence components.

5 Q Under this process of looking under
6 microscopes?

7 A Yes. And the microscope we use is called a
8 comparison microscope. It's really two microscopes hooked
9 together, so I can put, for instance, a test fired cartridge
10 case under one side and an evidence cartridge case under the
11 other side; and when I look in the eye pieces, I see both
12 images superimposed next to each other at exactly the same
13 magnification. So I can compare the marks on them visually
14 at that magnification.

15 Q And this can be done as to expended
16 cartridge cases as well as actual projectiles, correct?

17 A Fired bullets, yes.

18 Q Mr. Johnson, are you familiar with Event
19 Number 980717-0541?

20 A I am.

21 Q What is it about that number that you are
22 familiar with?

23 A I examined some firearm related evidence
24 booked under that event number.

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1 general, and we couldn't link those marks to a specific
2 single firearm.

3 At the microscopic level,
4 however, the marks vary from gun to gun and we can
5 distinguish one barrel from all other barrels or one breech
6 face, for instance, for all other breech faces.

7 Q Now, how do you do -- if -- if you are
8 provided a firearm that's questionable, whether or not it's
9 a murder weapon, with evidence that it was shot, for
10 example, bullets, fragments, expended cartridge cases, how
11 do you go about examining to see if these particular
12 expended cartridge cases, bullets, fragments, were shot or
13 fired by this weapon?

14 A Well, usually, it's a -- sort of a several
15 step process. We look at the fired components, the
16 recovered bullets and cartridge cases and try to determine
17 what type of ammunition that was. And the goal there is to
18 match that kind of ammunition when we test fire the weapon.

19 After that's done, the weapon
20 is examined to make sure that it's safe for us to fire and
21 that it's functional and functioning in a normal way. And
22 then we would acquire some ammunition that was similar to
23 the ammunition that was fired in the event.

24 We would test fire that. We

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1 MR. COUNOU: Okay. Court's indulgence, if I
2 could have some evidence.

3 So the record is clear, I'm
4 showing defense counsel State's Exhibit 52-A.

5 May I approach, Judge?

6 THE COURT: Yes.

7 BY MR. COUNOU:

8 Q Mr. Johnson, this is already admitted as
9 State's Exhibit -- 52-A, I believe?

10 A Yes, it's 52-A.

11 Q Look at that thing in your hand and tell me
12 if you recognize it.

13 A I do.

14 Q How -- how can you recognize it?

15 A Well, the packaging has numbers and my
16 initials and a date that I placed on it. The firearm itself
17 also has my markings on the side that I placed there after I
18 was finished examining it.

19 Q Is this the firearm that you examined under
20 the event number I brought to your attention?

21 A Yes, it is.

22 Q Tell the jury as to what you have in your
23 hand and describe it for them.

24 A Well, it's -- it's obviously a firearm.

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1 It's what we would sort of loosely call a Browning high
2 powered type firearm. This one happens to be made in Canada
3 by a company named Inglis, I-n-g-l-i-s, and it is a
4 semi-automatic firearm; that is to say, you pull the trigger
5 and it fires and then loads another cartridge in preparation
6 for firing again; does that in an automatic sort of fashion.

7 Q What does it do with the expended case?

8 A At the time of firing, of course, the bullet
9 leaves the barrel and the expended case is kicked out of the
10 side of the gun and basically is removed, clearing the
11 chamber for another cartridge to be loaded.

12 Q And did you actually examine that weapon to
13 see if it was in working order?

14 A I did.

15 Q And what was your conclusion?

16 A Well, it was in working order.

17 Q So you were able to then use this weapon and
18 do test firing for comparisons.

19 A I did.

20 Q Okay. Now, I'm going to draw your attention
21 to, first, State's Exhibit 40 -- no, I take that back --
22 State's Exhibits 5-B, -A, -C and -D.

23 (Whereupon, a sotto voce at this time.)

24 MR. COUNOU: May I prompt the witness?

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1 Q Could that have been fired by that nine
2 millimeter?

3 A No.

4 Q So it is eliminated from being possibly
5 fired from that weapon, correct?

6 A That's correct.

7 Q Now, examining 5-A through -C then, do you
8 rec- -- what were your findings as to those three pieces of
9 evidence?

10 A The -- these three items, these three
11 cartridges are the correct caliber to be fired in this
12 firearm. They also bore marks that were consistent with the
13 types of marks that this gun produces; but there were not
14 sufficient marks transferred to these cartridge cases for me
15 to form a -- a positive statement that they came from this
16 gun, what we call a positive identification.

17 They're consistent; certainly
18 nothing there that would say they weren't fired from this
19 gun, but I couldn't say for sure that they were fired in
20 this specific firearm.

21 Q Is that -- is that a common finding when it
22 comes to expended casings?

23 A Um, moderately common, yes.

24 Q Okay. So your answer then is they could

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1 THE COURT: Yes.

2 BY MR. COUNOU:

3 Q I ask you to examine these four items and
4 see if you recognize them, sir.

5 A I do.

6 Q How is it that you recognize those four
7 items that have been marked as -- as the State's evidence A
8 through D on 5-A through -D?

9 A Again, each of the containers has my item
10 number markings, my initials and the date on it; as well as
11 the item itself has markings, which I placed on it during my
12 examination.

13 Q Did you examine these four specific expended
14 cartridge cases?

15 A I did.

16 Q Are they of all the same caliber?

17 A No, they're not.

18 Q What's the difference?

19 A Well, three of them are what we would call
20 nine millimeter Lugar or nine millimeter Parabellum, which
21 is the name of a particular cartridge.

22 And the -- the last one, which
23 is 5-D, Exhibit 5-D, is a larger revolver type cartridge
24 called a .44 Magnum.

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1 have been fired, but you are not positive?

2 A I can't say for sure; that's correct.

3 Q Now, I'm going to draw your attention then
4 to State's Exhibit 41, and I think it's -A through -G.

5 If I may approach?

6 THE COURT: Yes, you may.

7 BY MR. COUNOU:

8 Q Look at that envelope and what's inside it
9 and ask -- I'll ask if you recognize that, sir.

10 A Okay. I'm going to --

11 THE COURT: Do you need scissors?

12 THE WITNESS: No, it's open.

13 I'm going to remove the
14 contents of the envelope.

15 It's a series of plastic
16 baggies containing various items.

17 They have exhibit stickers on
18 them 41-A, -B, -C, -D, -E, -F and -G. And I do recognize
19 them.

20 BY MR. COUNOU:

21 Q Okay. How is it that you recognize those
22 items?

23 A In the same fashion as I mentioned before,
24 they have my markings on the -- on the packages. There is

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1 als any markings on the exterior package, Exhibit 41.
 2 Additionally, on the larger items, I have actually marked
 3 the items as well as before.
 4 Q Now, did you examine all of those items that
 5 are marked -A through -G?
 6 A In -- in one degree or another, yes.
 7 Q How so?
 8 A Some of them were just basically a
 9 preliminary look to inventory them. I could determine,
 10 through a visual examination, that they did not bear
 11 characteristics that would allow me to compare them
 12 specifically to the firearm. So those were just basically
 13 inventory and noted.
 14 Q Okay. And which ones were those that you
 15 did that to?
 16 A That would be Exhibits -- let's see if I
 17 can get these in order here -- -A, -B, -D, -E and -G.
 18 Q Okay. And they were not of any ability for
 19 you -- are these the ones right here?
 20 A Yes, this group here. (Indicating)
 21 Q And they were not of any significance to you
 22 in order to be able to identify; is that correct?
 23 A Well, no significance related to this
 24 particular firearm.

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1 A In general, it's what I call a silver tip
 2 bullet, which is basically a trademark for a silver colored
 3 nickel bullet, nickel plated jacket on the bullet, a jacket
 4 being sort of the metal cap that's on the outside of the
 5 lead.
 6 So, in general, it was a silver
 7 tip bullet. It bore rifling marks that were of the type
 8 that this firearm makes; and then, upon microscopic
 9 comparison, I determined that this bullet was fired from the
 10 barrel in this gun. (Indicating.)
 11 Q Okay. Now, what -- what exactly are you
 12 looking for that -- that you could say that that -- that
 13 bullet was fired by that barrel?
 14 A Well, back up just a little bit.
 15 When a bullet is fired down a
 16 barrel, it fits extremely tight. It squeezes through the
 17 barrel.
 18 In that barrel, there is
 19 usually some mechanism there to cause the bullet to spin so
 20 that it will be stabilized. That's typically grooves that
 21 are cut in the barrel.
 22 And when the bullet squeezes
 23 past -- squeezes down that barrel, those grooves and the
 24 parts between them, which we call lands, make impressions on

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1 Q Okay. Will you explain what you mean by no
 2 significance then.
 3 A For example, in Exhibit 41-A, which was my
 4 item 11, there is a very corroded 762 by 39 cartridge case,
 5 which is a completely different caliber than the firearm;
 6 and there is a number of .22 rim fire cartridge cases, which
 7 again, are a different caliber, so those would not have any
 8 association with this firearm.
 9 B, 41-B and 41-D and 41-E are
 10 just lead from the interiors of the bullets, and because
 11 it's from inside the bullet, that never contacted the
 12 barrel, so they wouldn't have markings that I could compare.
 13 So I -- I say they have no comparison value, meaning I can't
 14 compare them directly to the firearm.
 15 And then, um, -G is a very,
 16 very small fragment of aluminum jacket. It has no -- not
 17 sufficient information for any comparisons.
 18 Q Okay. Now, you still have two items
 19 remaining that are of some significance in comparison,
 20 correct?
 21 A That's correct. That's 41-C and -F.
 22 Q Okay. Let's take the first one, -C.
 23 What did you find out about
 24 that projectile you had?

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1 the bullet.
 2 Picture the bullet just sliding
 3 through there, so it's getting a lot of fine microscopic
 4 scratches. Those are the scratches that I would look at.
 5 We call them stria.
 6 Those are the stria that would
 7 be present on the bullet jacket and I would compare the
 8 stria -- I did compare the stria -- on, for example,
 9 People's 41-C with the test fired bullets, which I
 10 personally had fired through the firearm, and those did
 11 match.
 12 Q And then, again, on a microscopic level,
 13 every weapon is unique? Is that what you are saying to this
 14 jury?
 15 A Yes.
 16 Q And that's how you can say that that bullet,
 17 that's marked with letter -C, was fired by that weapon in
 18 front of you?
 19 A That's correct.
 20 Q Now, what about the other weapon -- excuse
 21 me -- projectile, the item 16?
 22 A That's 41 -- Exhibit 41-F.
 23 Q Yes.
 24 A Basically, the same comments would apply.

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1 It was the silver tip type bullet; has the -- the general
2 rifling characteristics that are the same as this firearm;
3 and then the microscopic characteristics were also found to
4 have matching or corresponding stria that allowed me to
5 determine it was fired from this firearm.

6 Q You said silver tip again.

7 Is that the same brand as the
8 one that's marked as 41-C?

9 A Yes. They both appear to be the same brand
10 of ammo.

11 Q Okay. Now -- and, again, was that fired
12 from the weapon?

13 A Yes, it was.

14 Q If a bullet is -- is fired, what exactly
15 comes out? Is it just a piece of metal or is there
16 components to the core or -- could you explain that to the
17 jury?

18 A Well, it depends. In this case, the bullet
19 is actually, um, composed of two main parts: One we call
20 the core, which is a lead projectile shaped center that
21 gives the bullet mass; and then on the outside of that,
22 there is a jacket placed -- and in this case, the jacket is
23 brass that's plated with nickel to give it a silver look;
24 and that is much harder and engages that rifling so that

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1 A Yes, that's correct.

2 Q Now, what about those two items that you
3 have, 41-C and 41 F, are those jackets?

4 A They're -- they -- those items both contain
5 jackets and core material. 41-C contains a very flattened
6 lead core.

7 If you examine it closely, you
8 can see that it has a cylindrical portion that fits down
9 into the jac- -- that would fit down into the jacket.

10 41-F is predominantly just
11 jacket.

12 Q And if -- if the jacket gets bent or
13 twisted, would that destroy your capability of making an
14 identification?

15 A It doesn't destroy the capability. It
16 doesn't help. It can make more -- it would make it more
17 difficult for us. And, typically, that jacket is bent and
18 we -- in this case, they were bent substantially, and I had
19 to even straighten them out to where I could see the
20 markings.

21 Q The microscopic markings?

22 A That's correct.

23 Q Now, as to the silver tip type hollow point
24 bullets that you have in front <-FP> of, would those

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1 when it goes down the barrel, it actually is spun -- the
2 bullet is spun rather than slipping down past it.

3 So this bullet is actually two
4 pieces of metal coming out there together or they're
5 supposed to be together when they come out of the barrel --
6 they typically are -- and then those, of course, could
7 separate on striking something.

8 Q Okay. And what if they do separate? Would
9 that destroy your findings?

10 A No, not at all.

11 It just means that we have to
12 recover the outside jacket portion because that's the part
13 that has the barrel markings on it.

14 The inside lead is only of
15 passing interest when it comes to the actual comparison.

16 Q So it's the jacket that you are looking for,
17 that really gives you the definitive microscopic points that
18 you are looking for?

19 A Yes.

20 MR. SANTACROCE: Objection; leading.

21 THE COURT: Sustained. Rephrase it, please.

22 BY MR. COUNOU:

23 Q It's the jacket that you are looking for for
24 your comparison?

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1 normally have gone in the cartridge cases that are marked
2 Winchester that you've examined earlier?

3 A Yeah, that would be a common source for this
4 type of bullet. There is at least one other manufacturer
5 that I know of that uses a similar bullet, but Winchester is
6 very common and the Winchester cartridge cases is what this
7 type of bullet could easily come in.

8 Q Mr. Johnson, if I gave -- if I tell you, for
9 an expert opinion, that a coroner came in here, that stated
10 that the cause of death was gunshot wounds and those
11 projectiles came from the body and the matter of death was
12 homicide, what is your opinion as to the weapon that is in
13 front of you?

14 A Well, there would be one other step that I
15 would presume that the bullets came from the gunshot wounds
16 that caused the death, as opposed to some other part of the
17 body, and in that case, then this would have been the
18 firearm, the murder weapon.

19 MR. COUNOU: The murder weapon.

20 Pass the witness, Judge.

21 THE COURT: Mr. Santacroce.

22 MR. SANTACROCE: Thank you.

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CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Mr. Johnson, you said that you have been in the firearm detail here in Clark County for the last five years; is that correct?

A That's correct. Actually, it's been about four and a half. I sort of did split duty right at first.

Q And about how many of these inspections would you conduct, let's say, in an average month?

A It depend; could be hundreds, depending on the particular cases.

Q Let's say with a Browning, this particular type of firearm, how many inspections have you done on that type of firearm, the Inglis -- Inglis version?

A The Inglis manufacturer, I think this is the first one I've seen.

Q First one?

You testified that you have published some papers in the field of firearm forensics.

What papers have you published?

A Ah, papers on various types of ammunition; one on Puncsung, PMC ammunition; another one on Starline Brass.

I'm in the process of working

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A I'm not sure specifically.

Q Do you who Professor Imwinkelred is?

A I know the name; sounds familiar is all.

Q Are you familiar with this treatise, "Scientific Evidence in Criminal Cases"?

A Who is the author on that?

Q Moenssens and Inbau.

Would you like to see it?

A Yes. Let me take a look at that, if you don't mind. I think I've seen xerox portions of this.

Well, I couldn't say specifically I've seen this. Do you know who wrote the chapter on firearms?

Q Sure. I think it's marked -- there is two chapters actually.

A Yeah, I'm not sure if I've seen this specific one or not.

Q Now, when a bullet leaves a barrel -- let's talk about the barrel construction, first of all.

Perhaps you could tell the jury how a barrel of a firearm is constructed.

A Okay. Basically, a -- a barrel of a firearm is just a straight tube that the barrel (sic) is expelled from. I mentioned the features inside that are used to spin

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on a paper now on the criteria for the matching of bullets. We just did a study at a meeting. I could give you specific titles if you needed them.

Q No, I was just curious to get an overview of -- where were those published? Do you know of any of the journal names?

A Primarily the -- the articles I published are in the Association of Firearm and Tool Mark Examiners Journal.

I have co-authored one that was in the Journal of American Medical Association, an article on exploding ammunition.

Q In your studies, are you familiar with treatises on the subject of ballistics investigation and firearms investigation and identification?

A Certainly and generally, yeah.

Q Can you tell the jury what a treatise is?

A A treatise?

Q Yes.

A Just an article or a -- a -- a writing that would concern that subject.

Q I have two of them here today.

Are you familiar with the scientific and expert evidence by Professor Imwinkelred?

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the bullet. Those can take several forms. Most commonly is a groove -- or a series of grooves that are cut in the barrel that spin the bullet. Those can be cut with a number of different processes.

The alternative type of barrel uses sort of flat surfaces so we have a rotating hexagon or octagon that the bullet is forced through and that causes the bullet to spin. And, again, those can be placed in the barrel in a number of different ways.

Q And is there a name given to the kinds of marks that are found in a bullet that come from a barrel?

A Well, the -- these features that are put in the barrel are called rifling, and so we tend to call them rifling marks or barrel markings.

Q Have you ever heard the term "class characteristics"?

A I have heard the term "class characteristics," sure.

Q Can you describe to the jury what class characteristics is?

A Class characteristics is a term we use to describe the general rifling characteristics. In a gun like this, we would say the class characteristics are that it's a nine millimeter caliber and that it has six lands and

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1 grooves, and I believe this has a right-hand twist.

2 So we would describe that as
3 having nine millimeter, six right, six lands, six grooves
4 with a right-hand twist; and then further, we would measure
5 how wide the land and groove impressions are, and those
6 would be considered class characteristics.

7 And they're called that because
8 a whole host of firearms may have those same
9 characteristics, so there is a class of objects that have
10 it.

11 Q Now would all Browning Englis nine
12 millimeter weapons like that have the same class
13 characteristics?

14 A Well, presumably, they would have come from
15 the factory that way, but, of course, this type of weapon
16 allows interchange of barrels and so forth, so you can't say
17 definitively they all still do. But, typically, a
18 manufacturer picks a set of class characteristics and sticks
19 with them.

20 Q Okay. So we would find basically the same
21 class characteristics on all weapons of that manufacturer?

22 A Sure, sure; and perhaps other Brownings as
23 well, since they were probably drawn or built from the same
24 specifications.

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1 any other kinds of markings that you can identify?

2 A Well, I'm -- I'm not quite sure where you
3 are --

4 Q How about crimp and burn impressions? Can
5 you tell the jury what those are?

6 A Well, I'm not exactly -- it's not terms I
7 would normally use, but there are impressions that result
8 from the crimp of the cartridge case on the bullet, if
9 that's what you are referring to.

10 Q Well, you tell me.

11 A Well, I --

12 Q You are the expert.

13 A Okay. I will have to answer that those are
14 terms that I don't use. I'm not familiar with how --

15 Q So you are not familiar with that?

16 A Not in that sense.

17 Q You are not are familiar with fugitive marks
18 or --

19 A That's correct.

20 Q -- or crimp and burn marks; is that correct?

21 A That's correct.

22 Q Now, when you -- strike that.

23 How is it that you got a
24 referral -- or how is it that you came to have these bullets

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1 Q Okay. And can you identify for the jury
2 what accidental characteristics are?

3 A Accidental characteristics -- or individual
4 characteristics is the more current term -- are what has
5 been used to describe the -- those features or those
6 characteristics that are unique.

7 Those are when we're getting
8 down now to a very microscopic level. They're -- they tend
9 to not be marks that were intended by the manufacturer.
10 They're just in- -- incidental to the manufacturing process.
11 They're just random variations in the way the middle is cut,
12 the way it's finished.

13 And then on top of that, we
14 have random changes due to wear, corrosion, use or misuse of
15 the firearm and so forth. Those -- those characteristics
16 were originally called accidental because we didn't intend
17 them to be there. They're just accidentally there; they're
18 unique.

19 Q And what are fugitive factors?

20 A That's a term I'm not familiar with.

21 Q You are not familiar with that?

22 A No.

23 Q How about some other factors that may cause
24 markings on the -- on the bullets and casings; do you have

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1 to examine?

2 A Um, basically, I get a request from a
3 detective, which consists of a -- it's a Metropolitan Police
4 Department form, which gives me some information about the
5 event number and the -- what evidence is -- has been booked.

6 I then prepare a request, which
7 I submit to the evidence vault with the specifics on it.
8 They then deliver the items -- in this case, you asked about
9 the cartridge case and the bullets -- they deliver those in
10 the usual course of business and I perform my examinations.

11 Q And in this particular case, who made the
12 request?

13 A Um, that was a Detective Tommy Thowson.

14 Q Do you have the request form with you?

15 A I do.

16 MR. SANTACROCE: May I see that?

17 THE COURT: Mr. Counou.

18 MR. COUNOU: I have no objection, but I will
19 object as to relevance. I don't see what relevance it has.

20 THE COURT: Mr. Santacroce.

21 MR. SANTACROCE: Well, there is important
22 information on that that may have colored the expert's
23 opinion when he looked at those documents --

24 THE COURT: Okay.

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1 MR. SANTACROCE: -- or when he looked at
2 those documents.
3 THE COURT: Okay. Mr. Johnson, go ahead and
4 show it to Mr. Santacroce, please.
5 THE WITNESS: In fact, I have two -- two
6 different versions of it.
7 BY MR. SANTACROCE:
8 Q Why would you have two different versions?
9 A Well, sometimes they just -- they do it
10 twice. One is from his partner, Jim Buczek; and then Tommie
11 Thowsen submitted one.
12 Would you like to see them
13 both?
14 MR. SANTACROCE: Yes, please.
15 THE COURT: Yes. Go ahead.
16 THE WITNESS: This is -- I'm handing you the
17 first one from Tommie -- Detective Tom Thowsen; and this is
18 the second one that was submitted by Detective Jim Buczek.
19 MR. SANTACROCE: May we have these marked or
20 made copies.
21 THE COURT: We need to get copies made.
22 MR. SANTACROCE: I may have copies, but I
23 don't know if I have both of them.
24 Court's indulgence.

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1 A Well, certainly. That was the -- that was
2 their interest, whether they did, yes.
3 Q After you get that assignment or referral
4 from the detectives, what do you do from that point?
5 A Well, as I mentioned, I request a -- the
6 evidence from the vault or procure it in other ways. In
7 this case, I've got the firearm directly from the latent
8 print examiner Fred Boyd after he had completed his work and
9 resealed it.
10 And then, I proceed to go
11 through the -- the basic procedures that we've already
12 talked about about, of examining the items in general and
13 then test firing the firearm and comparing the evidence with
14 the test firing microscopically.
15 Q Okay. Let's talk about the microscope. You
16 said it was what kind of a microscope?
17 A Comparison microscope.
18 Q And that's two microscopes hooked together?
19 A Basically. It's a single microscope, but it
20 functions as two microscopes.
21 Q And what procedure did you use to calibrate
22 that microscope?
23 A Basically, we put a standard on either side
24 to make sure that the magnification is the same; wouldn't do

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1
2 THE COURT: Mr. Santacroce, I will have the
3 court clerk go copy this for you right now, if you want.
4 MR. SANTACROCE: May we approach, Your
5 Honor?
6 THE COURT: Yes.
7 (Unreported discussion at the bench.)
8
9 THE COURT: Okay. Mr. Santacroce, you may
10 proceed.
11 BY MR. SANTACROCE:
12 Q Your instructions from the two homicide
13 detectives were what?
14 A Well, you've handicapped me by taking my
15 copies, so I can't tell you specifically.
16 Q So you don't have an independent
17 recollection of that?
18 A Basically just perform comparisons between
19 the recovered bullets, cartridge cases, whatever they were,
20 and the firearms.
21 Q Were you specifically asked to identify
22 whether or not those cartridges or the cartridges that you
23 were presented here today came from that particular weapon?
24

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1 to be comparing two identical marks and have one magnified
2 more than the other.
3 Q So you calibrated the microscope before you
4 performed the examination?
5 A Yes.
6 Q And would you typically record that in your
7 notes or report that you would make on this -- on this case?
8 A No.
9 Q No. So that would not be found in your
10 report; is that correct?
11 A That's correct.
12 Q But you are telling the jury that you did
13 that?
14 A Yeah; certainly.
15 Q Now, you make -- you make some notes as you
16 go along in your examination; is that correct?
17 A I do.
18 Q And those are handwritten notes; is that
19 also correct?
20 A For the most part, yes; handwriting filled
21 out on forms on some of it.
22 MR. SANTACROCE: I need the clerk's --
23 THE COURT: She will be back in a minute.
24 (Whereupon, a sotto voce at this time.)

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1 MR. SANTACROCE: I don't want to show the
2 witness something I haven't marked, so I don't know if the
3 Court wants me to do that.

4 THE COURT: Would you show to it Mr. Courou;
5 see if he has an objection to it.

6 (Whereupon, a sotto voce at this time.)

7
8
9 THE COURT: Okay. You may approach, Mr.
10 Santacroce.

11 MR. SANTACROCE: Thank you.

12 BY MR. SANTACROCE:

13 Q I'm going to show you parts of what I
14 believe are your report.

15 Would you look at those and
16 identify those for me if you can?

17 A Well, they're not part of my report.
18 They're part of my bench notes, which I generate my report
19 from. But they are -- they are parts of my hand -- or
20 copies of my handwritten work notes.

21 Q And those are notes that you -- that you
22 made?

23 A That's correct.

24 MR. SANTACROCE: May I have those back?

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1 A I have just written down measurements which
2 I took, which were about .356 to .358 inches.

3 Q And what does that tell you as to the
4 caliber of the bullet?

5 A It's what we call nominal .38, which
6 includes -- nominal meaning in name only, not necessarily
7 really .38 caliber. But it includes nine millimeter, .38
8 special, .357 Magnum, 380 auto, nine millimeter McCauliffe,
9 a whole number of -- of cartridges that have bullets of that
10 same basic diameter.

11 Q Now, on TJ-3/13, which is one of the bullets
12 that you said came from that gun, what is the caliber that
13 you have in that?

14 A The measurement I took was about .350
15 inches.

16 Q How does that translate in caliber?

17 A Um, well, if -- if you were to take that
18 as -- as an accurate determination, it would be .35 caliber
19 in -- in general.

20 Q .35 caliber?

21 A Yeah.

22 Q A nine millimeter is an English measurement,
23 correct?

24 A It's European, yes.

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1 BY MR. SANTACROCE:

2 Q Now, you tested several items, but I think
3 the relevant items were State's Exhibit 41-C and -F?

4 A Correct. That's --

5 Q What does that correspond to on your report?

6 A That corresponds to items 13 and 16, which I
7 called TJ-3/13 and TJ-3/16.

8 Q Okay. So the two bullets in question,
9 TJ-3/13 and TJ-3/16.

10 Now, on the top part of this
11 form, it has a heading called "Bullet Case Cartridge," and
12 then down the side of it, it has "Caliber." Is that
13 correct?

14 A Right.

15 Q Do you have a copy of that?

16 A I have a copy, yes.

17 Q Okay.

18 A I'm looking at the one in the lower right
19 that says 5/13 at the bottom.

20 Q I'm looking -- directing your attention to
21 4/13.

22 A Okay.

23 Q Now, with regard to TJ-3/12, under
24 "Caliber," what do you have there?

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1 Q And that translates -- translates into our
2 measurements as a what?

3 A About .357, .358.

4 Q So a .38 in layman's nomenclature; is that
5 correct?

6 A Ah, yeah -- a nominal .38, because it's not
7 .38, it's .358.

8 Q Well, you designate some of these as a nine
9 millimeter and you designate some of them as a .38, and you
10 designate some of them has a .35, and you designate some of
11 them has a .356 --

12 A No, no. You are misstating me. I didn't
13 designate it at .35. That was the measurement I took off of
14 it. That's not a caliber designation.

15 Q Well, it's listed in the caliber section of
16 the report, is it not?

17 A That's a blank that I use for my notes. I
18 use it for measurements or caliber there.

19 Q Is there a way to specifically identify the
20 caliber of TJ-3/13?

21 A Absolutely.

22 Q What is it?

23 A It's a nine millimeter Lugar.

24 Q It's a nine millimeter Lugar.

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1 A And I know that because it was fired in this
2 gun which is nine millimeter.

3 Q Well, isn't it true that other ammunition,
4 other types of caliber can be fired in that?

5 A Um, I can't -- I can't say no because there
6 is -- sometimes there are what we call mix and matches,
7 things that aren't supposed to work. But, generally, this
8 is chambered for a nine millimeter Luger, and other
9 ammunition will not either fit or will not fire in it.

10 Q Is there a reason, if you were so sure that
11 this was a nine millimeter, that you didn't write nine
12 millimeter in the caliber portion of TJ-3/13?

13 A Well, at the time I was doing this, I didn't
14 know that it was nine millimeter. That was simply my
15 recording of a -- of a measurement on a very mangled,
16 heavily damaged bullet, and I'm just recording the -- the
17 facts.

18 The interpolation and
19 interpretation of those facts later indicated that it was a
20 nine millimeter. And the difference there is just due to
21 damage.

22 Q And with regard to TJ-3/16, the caliber you
23 have on that is a nominal .38; is that correct?

24 A Right. And when -- when I write something

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1 only objection is although not -- I don't see the relevance.
2 I -- I think the proper objection is just cumulative. There
3 is nothing that this witness has disagreed with.

4 THE COURT: Okay. Well, it's cumulative.
5 That objection is overruled and received.

6 Okay. Mr. Coumou, these next
7 two pages, are you going to have any objection to them?

8 MR. COUMO: I don't care. I mean --

9 THE COURT: Okay.

10 (Whereupon, a sotto voce at this time.)

11 THE COURT: Those will be received as
12 Defense D and E.

13 MR. COUMO: Judge, just that they're his
14 notes anyway.

15 THE COURT: Okay.

16 (Defendant's Exhibits D and E
17 marked for identification;
18 Defendant's B through E
19 admitted into evidence.)

20 BY MR. SANTACROCE:

21 Q I'm going to show you what's been marked as
22 Defendant's Exhibits D and E and ask you to identify those
23 if you would, please.
24

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1 like that, that means I've just -- I've looked at it, and
2 based on my experience and training, I've made a
3 determination that I believe that it's in that group of
4 cartridges.

5 Frequently, I do that when the
6 damage is so severe that a measurement would be inaccurate
7 or meaningless.

8 Q Now, you also did some handwritten notes, I
9 presume. I'm directing your attention to 2/13 and 3/13.
10 Specifically look at 3/13, if you would.

11 A Yes.

12 MR. SANTACROCE: Actually before we do that,
13 can I have these two documents marked as Defense -- I don't
14 know what it is -- A and B --

15 (Whereupon, a sotto voce at this time.)

16 THE COURT: Okay. We'll mark the next two
17 as proposed B and C.

18 (Defendant's Exhibits B and C
19 marked for identification.)

20 MR. SANTACROCE: I'd move to admit B and C
21 also.

22 MR. COUMO: Those last documents, Judge, my
23
24

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1 A Again, these are part of my bench notes,
2 pages two -- two of 13 and three of 13 of my notes,
3 basically, these are a listing of evidence as I'm initially
4 examining the packages.

5 Q And you have a copy of those so I can refer
6 you to those?

7 A I do.

8 MR. SANTACROCE: Thank you.

9 Frank, do you want to approach?
10 Same problem we had with the other exhibits.

11 THE COURT: Okay. You can proceed, Mr.
12 Santacrocce.

13 MR. SANTACROCE: Thank you.

14 BY MR. SANTACROCE:

15 Q Now, are these -- these notes made
16 contemporaneous with your examination of the items?

17 A Well, not really. These are my first
18 exposure to the items as I'm -- as I'm opening the packages
19 and the listing was there.

20 So -- and a lot of these are
21 quoted from the cartridge case head stamps or from
22 information that's on the packaging.

23 Q Now, specifically, if you look at 2/13 of
24 your notes -- do you see that?

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1 A Yes.
 2 Q -- and regarding item 13, do you also see
 3 that?
 4 A Yes.
 5 Q And what was your description of that item?
 6 A A heavily damaged silver tip type jacket
 7 with hollow bullet.
 8 Q Did you make a drawing of that?
 9 A I may have later on, yes.
 10 Q Now, what -- what effect does the damaging
 11 of the casing have on identification?
 12 A Um, as I mentioned before, it -- it may make
 13 it a little more difficult.
 14 In this case, it actually
 15 serves to preserve some of the markings, since the jacket
 16 sort of turns itself inside out and the markings I'm
 17 interested in are in the parts that are protected as the
 18 jacket folds out and over itself.
 19 Q Well, I believe you testified that you had
 20 to straighten it out before you could examine it, correct?
 21 A Yes. That's to expose those inside areas.
 22 Q And how do you straighten it out? Do you
 23 use any tools?
 24 A Not particularly, if I can avoid it.

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1 A Sometimes I do, yes.
 2 Q Did you do in this case?
 3 A I believe I did. Yes, I did.
 4 I, basically, should say I
 5 photographed a representative portion. I don't photograph
 6 everything I see, but --
 7 Q Well, you would have photographed those
 8 portions that identified this particular cartridge coming
 9 from that weapon, wouldn't you?
 10 A Some of them, yes.
 11 Q And, again, my question is: Did you do that
 12 in this case?
 13 A I did.
 14 Q Do you have the original photographs?
 15 A Yes. And I'm using the term "photograph."
 16 Some of these are video prints, but these are the originals,
 17 yes. (Indicating)
 18 MR. SANTACROCE: May we have these marked in
 19 evidence?
 20 THE WITNESS: Those are my originals. I've
 21 already provided you copies.
 22 MR. SANTACROCE: I have copies, but I don't
 23 know if the detail on the copies --
 24 THE COURT: Well, Mr. Santacroce, you can't

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1 Sometimes, a small pliers applied to an area that isn't
 2 marked. I try to do it by hand if I can.
 3 Q And that's to preserve the markings on it;
 4 is that correct?
 5 A That's correct.
 6 Q Because if you use tools, that could affect
 7 the markings on it?
 8 A It sure could. It could obliterate them,
 9 yes.
 10 Q And that's the same premise with removing
 11 those items from -- from a body, too; isn't that correct?
 12 A Well, yeah, I suppose that would apply. You
 13 wouldn't want to damage anything that's there.
 14 Q So would it be important for you to know how
 15 these -- how the bullet was removed from the body?
 16 A No.
 17 Q Now, looking at two -- or 3/13, item 16,
 18 what was your description of that?
 19 A A heavily damaged silver tip type jacketed
 20 hollow point type bullet.
 21 Q Did you also have to straighten that out?
 22 A I did.
 23 Q Now, when you compare these through the
 24 microscope, do you photograph that comparison?

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1 take the originals from the witness here.
 2 MR. SANTACROCE: Okay.
 3 THE COURT: If we need to get them
 4 reproduced or something to a better quality, I will be happy
 5 to see if we can make those arrangements to get that done.
 6 MR. SANTACROCE: Let's mark these
 7 individually as defense next, whatever is next.
 8 THE COURT: Mr. Coumou, are you going to
 9 have any objection to these photocopies of those --
 10 MR. COUMOU: I just don't see the relevance
 11 in having to introduce all the expert's notes, but it
 12 doesn't change his opinion, so, no.
 13 THE COURT: Okay. So you don't object?
 14 MR. COUMOU: No, I won't have any objection.
 15 THE COURT: So those will be received as
 16 next in order for the defense.
 17 (Defendant's Exhibits F through
 18 I marked for identification
 19 and admitted into evidence.)
 20 BY MR. SANTACROCE:
 21 Q Mr. Johnson, I'm going to show you what's
 22 been marked as Defense Exhibits F through I; and ask you if
 23 you can identify these documents.
 24 A Yes. These are -- I don't want to call them
 xerox copies, but some sort of copies made of my video

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1 prints, which are prints I took in the course of my
2 examination.

3 F and G are just documentation
4 of the condition of the bullets, the bullet jackets, before
5 I bent them. And that would be on bullets 13 and 16.

6 And then I and H -- or, I
7 should say, H and I are copies of the photographs I took
8 through the comparison microscope during the course of my
9 examination and documenting samples of the markings that I
10 was -- that I was seeing.

11 MR. SANTACROCE: Have these been admitted?
12 If not, I move to admit them.

13 THE COURT: They've been admitted.

14 MR. SANTACROCE: May I publish them to the
15 jury?

16 THE COURT: Yes.

17 BY MR. SANTACROCE:

18 Q The documents that the jury is viewing right
19 now are the items 13 and 16 prior to you bending them. That
20 was the condition -- the condition that you found items 13
21 and 16 in; is that correct?

22 A That's how they came to me, yes.

23 Q Now, H and I, can you tell me what those
24 are.

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1 Q And these are the comparisons that you base
2 your opinion on that items 13 and 16 were fired from this
3 particular weapon; is that correct?

4 A If you are saying these, when you hold up
5 the photographs --

6 Q I'm talking about H and I of the defense
7 exhibit.

8 A Nope.

9 Q They're not?

10 A No.

11 Q How did you base your opinion on that?

12 A I made observations. I compared the marks
13 through the microscope in a very dynamic process. I base my
14 conclusion on criteria that I have developed over the years.
15 And then took some photographs, just basically to document
16 samples of what I was seeing to refresh my memory sometime
17 later.

18 These are not proof of
19 identification basically.

20 Q They are not proof of identification?

21 A I don't view them that way, no.

22 Q Can you rely on these as part of your
23 analysis?

24 A No, no. My conclusions had been made when

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1 A Again, those are copies of the video prints
2 that I made of the image that I was seeing through my
3 comparison microscope, as I compared test fires to the
4 evidence items.

5 Each of those little square
6 photographs is divided down the middle by a line, which is
7 obvious, I think, in all of them. That dividing line
8 separates the image of the item on the right hand of the
9 scope from the item on the left hand.

10 Above the -- above or below the
11 right-hand items, I have a T listed there, T-1, T-2 or -3,
12 as the case may be, and that's stands for the test that I
13 did, test one, test two, test three.

14 And above, on the other side,
15 is the item number, and I have some designations to help me
16 know where on the bullet I was, just for my own references.

17 Q What does L-2 refer to?

18 A Land two, land impression two.

19 Q L-4?

20 A Land impression four.

21 Q So the right side of the -- each picture
22 would be the test and the left side would be the bullet that
23 you were examining; is that correct?

24 A That's correct, the evidence one.

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1 I -- when I took these pictures.

2 Q Are you telling me that you don't rely on a
3 comparison of class characteristics and accidental
4 characteristics to reach a conclusion as to whether the --

5 A Well, I rely on the characteristics, but not
6 on the pictures. The pictures are just simply to -- to
7 document a sample of what I saw.

8 Q Is it normal for you not to photograph those
9 comparisons that would substantiate bolster your testimony
10 in court?

11 A There is no requirement that I photograph.
12 I do for my own purposes, just to refresh my memory, but I
13 don't offer them as proof.

14 Basically, you need specialized
15 training and experience to be able to interpret this kind of
16 photograph. So to somebody -- for somebody just to look at
17 this, to hand it to somebody in a court, would be
18 relatively -- it would be meaningless.

19 Q Would be meaningless?

20 A I would think -- I would think so.

21 Q Can you tell me, on Defense Exhibit I,
22 what -- on the left side, what are these white portions that
23 we see in the photograph?

24 A Um, that's on the bullet 3/13, I believe. I

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1 don't have -- mine aren't labeled -- but I think that's the
2 same one. Yes.

3 Those are just reflections in
4 the silver colored jacket, reflections of the light. This
5 is taken with a video camera through the microscope, so it
6 tends to wash out certain areas --

7 Q And there is no stria on those white
8 blotches, are there?

9 A Well, there may be. It doesn't show on the
10 photograph.

11 Q I see.

12 These were part of your report,
13 were they not?

14 A No, they're not. They're part of my bench
15 notes.

16 Q They're part of your bench notes?

17 A My report is a two-page document dated 8/25,
18 that summarizes my conclusions.

19 Q Okay. Let me rephrase it then.

20 These were part of your bench
21 notes?

22 A Yes, they were.

23 MR. SANTACROCE: Were these already
24 admitted?

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1 certainly not mandatory.

2 Q I'd like to read to you from this treatise,
3 "Scientific and Expert Evidence" --

4 MR. COUMOU: Judge, I'm going to object.
5 That's not a treatise.

6 THE COURT: He has to -- under N.R.S.
7 51.255, Mr. Santacroce, the -- you must establish that the
8 book is a reliable authority by the testimony or admission
9 of the witness or by other expert testimony.

10 MR. SANTACROCE: Well, the Court could also
11 take judicial notice of it, I believe, under the same
12 statute.

13 And this is from Professor
14 Imwinkelred, who I'm sure the Court is aware of is a
15 professor at UC-Davis. Also the article is written by
16 George C. Sederbom.

17 BY MR. SANTACROCE:

18 Q Are you familiar with him, sir?

19 A No, I'm not.

20 MR. COUMOU: I'm not either, Judge.

21 MR. SANTACROCE: In any event -- well, I
22 still have a right to read from the -- from the treatise to
23 impeach him on his -- on his statement.

24 THE COURT: No, you don't.

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1 THE COURT: Yes.

2 MR. SANTACROCE: May I publish these to the
3 jury?

4 THE COURT: Yes.

5 BY MR. SANTACROCE:

6 Q Now, you testified that you would fire some
7 test bullets from this weapon, is that correct --

8 A Yes.

9 Q -- in order to make a comparison?

10 A Yes.

11 Q And I believe you said you used similar
12 ammunition; is that correct?

13 A That's correct.

14 Q Now, isn't it important, not only important,
15 but mandatory that you don't use similar ammunition, but you
16 use the exact type of ammunition?

17 A No, it's definitely not mandatory. In fact,
18 very often, we don't use even similar ammo.

19 It just eliminates some of the
20 variables. It tends to make it a little easier to work
21 with.

22 There are times when different
23 ammunition would confuse us and we might get a negative
24 result, when we really should have a positive, but it's

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1 MR. SCISCENTO: Your Honor, could we
2 approach a moment on this?

3
4 (Unreported discussion at the bench.)
5

6 THE COURT: Okay.

7 BY MR. SANTACROCE:

8 Q Are you aware that other forensic examiners
9 believe that you must use the same exact type of ammunition
10 in making a test comparison; that you cannot use similar
11 type?

12 A I don't -- I know of no legitimate examiner
13 who would make a claim like that.

14 Q Did you perform any chemical testing on
15 these bullets --

16 A No, I did not.

17 Q -- or casings?

18 A No.

19 Q You identified the casings as brass; is that
20 correct?

21 A That's correct.

22 Q Is brass the same as copper?

23 A No. It's an alloy of copper.

24 And I used the term sort of

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1 generically to describe what we call a brass cartridge case.

2 MR. SANTACROCE: Court's indulgence.

3 BY MR. SANTACROCE:

4 Q When you performed a test, you would record
5 a diary of that; is that correct?

6 A I have my bench notes, which you have copies
7 of. Yeah, I guess you would call that a diary.

8 Q Well, on those bench notes, you would put
9 the date and you would put what you did; would that be
10 accurate?

11 A Yes.

12 MR. SANTACROCE: May we have these marked?

13 THE COURT: Mr. Coumou, are you going to
14 have any objection to these?

15 MR. COUMOU: No, no objection.

16 THE COURT: Okay. Those will be received.
17 (Defendant's Exhibits J and K
18 marked for identification and
admitted into evidence.)

19 BY MR. SANTACROCE:

20 Q I'm going to show you what's been marked as
21 Defense Exhibit J and K and ask you if you can identify
22 those, please.

23 A Yeah. These are pages nine and ten of the
24 13 pages in my bench notes; or I should say copies of those

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1 bending it.

2 And the jacket does the same
3 thing; and sometimes, when you try to bend it out, it gets
4 brittle and it separates off.

5 Q And you broke one; is that correct?

6 A That's right. It came off.

7 Q And that was before you made your
8 comparison; is that correct?

9 A Yes, it is.

10 Q Now, looking at 10/13 of your notes -- and I
11 believe -- can you tell me which -- which item this had
12 reference to, your 8/24/98 note?

13 A Oh, that's referring to the cartridge cases.

14 Q That's the cartridge cases that you ruled
15 out?

16 A No, no, no, no. They're the ones that I
17 couldn't identify, but I couldn't rule out.

18 Q But you couldn't connect them to this
19 weapon?

20 A Not specifically to this gun, that's
21 correct, but I couldn't rule them out either.

22 Q And those casings, what kind of condition
23 were those casings in?

24 A They're in fine condition; okay. I don't

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1 pages.

2 Q Okay. And you have copies of those so that
3 I can refer you to those?

4 A I do.

5 Q If you would look at 9/13, the entry that
6 you have on 9/13, regarding TJ-3/13, do you see that?

7 A I do. I have several entries, but --

8 Q Well, the first entry was that it was very
9 wrapped around itself, but the language I'm concerned about
10 is where you say you lost one -- what is that next word?

11 A I'm not tracking with where you are.

12 Are you in the middle of the
13 page or --

14 Q I'm sorry. Perhaps I can show you.

15 A Oh, okay. I see. "Lost one petal; core
16 separated from the main jacket; large amount of blood behind
17 core."

18 Q And what does that mean?

19 A I -- it came -- it separated from the
20 bullet. This is during that process of trying to unbend it.

21 Q Uh-huh.

22 A There is something called work hardening
23 that goes on. It's when you bend a piece of metal, it gets
24 brittle. It's like when you break a piece of wire by

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1 know how to describe them.

2 Q Better than what -- that 13 and 16 were in;
3 is that correct?

4 A Yeah, the casings don't experience nearly
5 the damage that the bullet does.

6 Q The question was: The condition of those
7 casings were in far better shape than the condition of items
8 13 and 16; isn't that true?

9 A You're comparing apples and oranges.

10 The cartridge cases were not
11 damaged; the bullets were, if that will answer your
12 question.

13 Q No, it doesn't answer my question.

14 My question was: The casings
15 were in better condition than items 13 and 16?

16 A In terms of the marks that I looked at on the
17 bullets, the bullets were in better condition than the
18 cartridge cases.

19 In terms of just an overall
20 appearance, the bullets were more damaged than the cartridge
21 cases.

22 Q And, again, can you describe the connection
23 between the bullets and the casings?

24 A Yeah. They're originally assembled

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1 together, something we call a cartridge. The cartridge
2 case, or the casings, as you are calling them, is the -- is
3 the -- sort of a cup shaped affair; has a primer on the
4 bottom, that's going to be the spark plug that's going to
5 set the whole thing off; that contains the powder; and then
6 the bullet is set in the mouth of that casing and that whole
7 unit is a cartridge.

8 When you fire it, the bullet is
9 separated out of the barrel and the cartridge case is
10 rejected from the firing.

11 Q And, typically, you can find comparisons on
12 those casings, can't you?

13 A Frequently, yeah.

14 Q But in this case, you couldn't?

15 A That's correct.

16 Q On items 13 and 16, were there any blood or
17 tissue on those?

18 A Yeah. In fact, I believe on the one which I
19 read to you there, I said that it had blood behind the core,
20 in between that and the jacket.

21 Q In fact, those were the only two that had
22 any blood or tissue on them, wasn't it?

23 A Let me check and see if I have any other
24 indications.

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1 doing experiments. And when I look at those marks, I have
2 certain criteria I look for. There is certain things that I
3 see that are very significant to me.

4 And I reach a point where I
5 say, the only way that those marks could have got there is
6 if they came from this gun. (Indicating) And that point is
7 somewhat -- well, it's subjective. That's something that
8 I've developed in my own mind. It's not the type of test
9 where I could say that there is 13.3 percent of something in
10 the mixture or something like that.

11 Q There is no mathematical formula; there is
12 no mathematical equation, is there?

13 A Well, there are some mathematical models,
14 which tend to describe what we're doing, and some
15 statistical studies that have been done, but, basically, you
16 are right, I don't do any math when I'm doing the
17 comparison.

18 MR. SANTACROCE: Court's indulgence.

19 (Whereupon, a sotto voce at this time.)

22 BY MR. SANTACROCE:

23 Q Do you know how many nine millimeter weapons
24 are sold in Clark County?

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1 I have indications of blood and
2 tissue on 13, on 16 -- yes, that would be the only ones that
3 I -- that I noticed any. And, again, I didn't test to
4 confirm that it was blood. It appeared to be blood.

5 Q So when you were presented with these
6 various cartridges and casings, you gave a quick overview;
7 you looked at the condition of each one of those, and those
8 two, you saw blood and tissue perhaps; is that correct?

9 A In general, yeah.

10 Q And your request from the officer, the
11 detective, was to see if those bullets came from this gun?

12 A That's correct.

13 Q Now, isn't it true, Mr. Johnson, that your
14 field is -- and your opinion is largely subjective?

15 A There is a subjective side to it, certainly.

16 Q Could you tell the jury what that is, what
17 it means to be a subjective?

18 A Basically, when we use the term "subjective,"
19 I presume you are talking about the matching of striated
20 marks, marks on the bullets. I can't give you a percentage
21 of how -- how accurate this is. I can't give you a degree
22 of certainty.

23 It's based on training and
24 experience, which I have developed over the years through

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1 A In Clark County, no. Many, I presume.

2 Q Many?

3 A Many.

4 Q When you did this particular test, back in
5 August, how many other cases were you working on at the
6 time?

7 A Just -- I would just work on one at a time.

8 Q For the whole month?

9 A Well, no, it didn't take me a month to do
10 this case.

11 Q How long did it take?

12 A Well, I opened it on the 21st; wrote my
13 report on the 25th. So, basically, in that period of four
14 or five days.

15 Q And you didn't work on it every day either,
16 did you?

17 MR. COUNOU: Judge, I'm going to object as
18 to relevance.

19 THE COURT: Overruled.

20 THE WITNESS: I don't -- I don't know. I
21 mean, I may have had meetings, training, other things to do
22 in there.

23 I would say that's true: I
24 didn't work 40 hours -- or eight hours a day on it for those

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1 days.

2 BY MR. SANTACROCE:

3 Q But are there more entries -- you had 8/21,
4 8/22, and 8/24. So you worked periods of those days on this
5 assignment?

6 A Yes.

7 MR. SANTACROCE: I have no further
8 questions.

9 THE COURT: Mr. Coumou.

10 MR. COUMOU: Judge, I have two questions.

11 REDIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q Mr. Johnson, as to those casings again,
14 you -- you have not ruled them out as being fired -- by not
15 having been fired by that weapon, correct?

16 A No, no, no. In fact, I do see markings that
17 are similar to what this particular gun does. It's just
18 that I haven't reached that -- the subjective point where I
19 see enough individual or unique characteristics from this
20 gun that I can say comfortably that they were fired from
21 this gun.

22 Q In fact, your operative words in your
23 report, your final report, is that they could have been
24

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1 that this is the murder weapon because these bullets were
2 fired from this gun.

3 MR. COUMOU: Thank you.

4 RECROSS-EXAMINATION

5 BY MR. SANTACROCE:

6 Q And if I were to tell you that the casings
7 came from the murder scene, you would not be able to connect
8 those casings to that murder weapon, would you?

9 A Not conclusively, no.

10 THE COURT: Do any of the ladies and
11 gentlemen of the jury have any questions for Mr. Johnson?
12 (Affirmative response.)

13 THE COURT: Okay. We do have a question
14 from Jurors -- let's say Jurors 9 and 11.

15 Okay. I'll step outside with
16 counsel. The court reporter doesn't have to come.

17 (Recess in proceedings.)

18 THE COURT: Okay. We had questions from
19 Jurors 9 and 11.

20 Mr. Coumou, does the State have
21

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1 fired by the Inglis pistol; is that correct?

2 A That's correct, yes.

3 Q And just a last question: Your opinion
4 still remains that that is the murder weapon?

5 A Yes. And again, based on those presumptions
6 that you presented, the hypothetical that you presented,
7 that these came from the body and the wound --

8 Q If I tell you that testimony has been
9 presented in court as to those factors that --

10 MR. SANTACROCE: I'm going to object. It's
11 leading.

12 THE COURT: Okay. Why don't you do it as a
13 hypothetical, Mr. Coumou.

14 MR. COUMOU: Okay.

15 THE COURT: On what you believe the
16 testimony has shown.

17 MR. COUMOU: Okay.

18 BY MR. COUMOU:

19 Q Assume that the testimony of those factors
20 that you were looking for were presented, your opinion still
21 remains that that is the murder weapon?

22 A And those, as I understand it, would be that
23 the bullets, 41-C and -F, were removed from the wound that
24 was determined to be the cause of death, then I would say

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1 any objection to the Court asking the juror questions?

2 MR. COUMOU: No, Judge.

3 THE COURT: And, Mr. Sciscento?

4 MR. SCISCENTO: No, Your Honor.

5 THE COURT: Okay. On -- on the things, Mr.
6 Johnson, Juror Number 9, Miss Manschreck, would like to
7 know: How old was the gun?

8 And the second part of that
9 question is: Can the serial number from the gun tell you
10 the age, when it was manufactured?

11 THE WITNESS: Well, the answer is I'm not
12 sure; and, yes, potentially, you could go to records that
13 the company is supposed to keep and determine the age of it.

14 I did do a little bit of
15 research -- research is a bad word. I looked into it a
16 little bit when I had the gun because they're not very
17 common; and they made them in several groups and because of
18 the time frames and that, I just couldn't -- I couldn't be
19 sure which one we had.

20 So I really don't know how old
21 it is.

22 THE COURT: Okay. We have a series of
23 questions from Juror Number 11, Mr. King.

24 He would like to know: Did any

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1 of the nine millimeter casings bear any marks that could not
2 have been caused by the examined nine millimeter Browning?

3 THE WITNESS: Potentially -- and I say that
4 because sometimes there are marks on cartridge cases even
5 before they're fired or marks that are put on them after
6 we -- after they're fired and before we see them.

7 And I can't -- I can't be sure
8 what the source of those marks would be. They could be from
9 loading, from handling, from that sort of things.

10 So it's difficult to say that
11 there weren't any marks that couldn't come from the gun.
12 There were no marks that I looked at, that were obviously
13 from firing, that wouldn't have been from this gun.

14 In other words, there was
15 nothing to indicate they were reloaded cartridges or that
16 they had been fired in a different gun.

17 THE COURT: Okay. Mr. King also has two
18 follow-up questions. He would like to know: When comparing
19 the test bullet with the evidence bullet, how many points of
20 identical likeness must be found in order to determine if a
21 bullet was fired through a specific barrel.

22 And then the second part of
23 that question is: Was that quantity found for each of the
24 evidence bullets?

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1 THE COURT: Mr. Santacroce?

2 MR. SANTACROCE: Yes. Thank you.

3 FURTHER RE-CROSS-EXAMINATION

4 BY MR. SANTACROCE:

5 Q That goes to the whole subjectivity issue,
6 doesn't it, because there is no number -- there is no magic
7 number to determine this bullet goes from this gun, is
8 there?

9 A That's correct.

10 Q You can't say 11 points of comparison or
11 five points, can you?

12 MR. COUNTOU: Judge, objection. I think that
13 question is compound and --

14 MR. SANTACROCE: He understands.

15 MR. COUNTOU: -- and argumentative.

16 THE COURT: Overruled. Go ahead. You can
17 answer that.

18 THE WITNESS: Basically, I admitted that
19 before. There isn't a -- there isn't a specific point in
20 tool mark or firearms examination.

21 BY MR. SANTACROCE:

22 Q So you may find a couple of points that are
23 significant and you would link it to that gun, but the next
24

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1 THE WITNESS: Okay. That -- the question is
2 based on a little bit of misunderstanding. We're not quite
3 the same as fingerprints, where we have a certain number of
4 point. We really don't specify.

5 What I look for, the criteria
6 that I'm looking for -- I sort of danced around this
7 before -- but what I'm looking for is a degree of
8 correspondence that significantly exceeds what I would
9 expect with bullets from different guns, from non-matching
10 bullets; and particularly, in that I'm -- I'm looking for
11 sequences of lines.

12 If we find three or four
13 matching lines in a group, that's very significant. That
14 just does not happen except if they come from the same --
15 the same source. (Indicating)

16 And -- and I would never have
17 written a report saying they were fired from this gun if I
18 hadn't far exceeded that point.

19 So that last question is, yes,
20 I did find more information than -- than I needed to make
21 that conclusion.

22 THE COURT: Okay. Mr. Countou, do you have
23 any follow up questions based on the juror questions?

24 MR. COUNTOU: No, Judge.

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1 person may not; isn't that correct?

2 A Well, the next person may have different
3 criteria, maybe more strict than mine, maybe less strict
4 than mine.

5 MR. SANTACROCE: Thank you.

6 THE COURT: Okay. Thank you very much, Mr.
7 Johnson, for coming to court and testifying this morning and
8 this afternoon.

9 THE WITNESS: Did you want to replace the
10 firearm?

11 THE COURT: Yes, please. Maybe -- perhaps,
12 maybe, you could come over with our court clerk and we can
13 get those organized here. Thank you very much.

14 Okay. Ladies and gentlemen,
15 we're going to go ahead and take our lunch recess at this
16 time.

17 During this recess, you are
18 admonished not to talk or converse among yourselves or with
19 anyone else on any subject connected with the trial;

20 Or to read, watch or listen to
21 any report of or commentary on the trial or any person
22 connected with this trial, by any medium of information,
23 including, without limitation, newspapers, television, the
24 Internet and radio;

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Or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

It's about 20 to one, so what I would ask you to do is meet Lisa at two p.m. right outside the door there and we will go ahead and get started with this afternoon's session.

(The following proceedings were had in open court outside the presence of the jury:)

THE COURT: Okay. Let the record reflect the jury has left the courtroom.

There is two matters I want to take up, and then I'll ask counsel if they have any more points.

I want to do the admonishment on Mr. Nasby right now, Mr. Santacroce, if I can, and Mr. Sciscento. So if he needs to ask you any questions, if you can stand by him, remain standing on this thing, Mr. Nasby.

Okay. Mr. Nasby, under the Constitution of the United States and under the Constitution of the State of Nevada, you cannot be compelled to testify in this case?

Do you understand that?

THE DEFENDANT: Yes.

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these rights?

THE DEFENDANT: No.

THE COURT: Sir, you are further advised that if you have felony conviction and morning ten years has not elapsed from the date you have been convicted or discharged from prison, parole or probation, whichever is later, and the defense has not sought to preclude that from coming before the jury and you elect to take the stand and testify, the deputy District Attorney, in the presence of jury, will be permitted to ask the following:

Number one: Have you ever been convicted of a felony?

Number two: What was the felony?

And number three: When did it happen?

However, no details may be gone into.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. Mr. Nasby, further, under the laws of the State of Nevada, that in the event the jury found you guilty of murder in the first degree, both you and the State have a right to request that the jury set the

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THE COURT: You may, at your own request, give up this right and take the witness stand and testify. If you do, you will be subject to cross-examination by the deputy District Attorney and anything that you may say, be it on direct or cross-examination, will be the subject of fair comment when the deputy District Attorney speaks to the jury in his final argument.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If you choose not to testify, the Court will not permit the deputy District Attorney to make any comments to the jury because you have not testified.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you elect not to testify, the Court will instruct the jury, but only if your attorney specifically requests, as follows:

The law does not compel a defendant in a criminal case to take the stand and testify and no presumption may be raised and no inference of any kind may be drawn from a failure of a defendant to testify.

Do you have any questions about

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sentencing punishment here.

Do you wish to waive your right to have that issue considered by the jury in the event that occurs and have a sentencing done by the Court?

(Whereupon, a sotto voce at this time.)

THE DEFENDANT: I want the Court -- I want the Court to do it.

THE COURT: Mr. Coumou, does the State stipulate to having the Court do the sentencing?

MR. COUMOU: Yes, Judge.

THE COURT: Okay. Thank you very much.

MR. SANTACROCE: Your Honor, I have a matter.

THE COURT: Yes, Mr. Santacroce.

MR. SANTACROCE: If I failed to admit any of my exhibits, I would do that at this time.

And in addition to that, there was a portion of one that had to be redacted and I wanted to do that before it gets back to the jury.

THE COURT: What I ask you to do is after lunch, if you and Mr. Coumou would approach the court clerk, and I think you can agree, I think we know what the

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redaction portion is.

And then we'll ask the court clerk to make that -- perhaps, if necessary, recopy that exhibit with the redaction made and re-photocopy it so the jury will not see that.

MR. SANTACROCE: Okay. Thank you very much.

THE COURT: Thank you very much.

(Recess in proceedings.)

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If I could just have the Court's indulgence for logistics reasons.

THE COURT: Yes.

MR. SCISCENTO: Your Honor, while we're waiting for the witness, could we approach?

THE COURT: Yes.

(Unreported discussion at the bench.)

THE COURT: Okay. Mr. Burnside, we will just have you step around over here to the left. And if you could just remain standing and raise your right hand, please. And why don't you face me, please.

Whereupon,

TOMMIE BURNSIDE

having been called as a witness by the State and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Thank you. You may be seated.

THE COURT: Okay. Mr. Burnside, have a seat; make yourself comfortable.

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Las Vegas, Nevada, Friday, October 15, 1999, 2:00 p.m.

* * * * *

(The following proceedings were had in open court in the presence of the jury.)

THE COURT: Good afternoon again, ladies and gentlemen.

This is the continuation of Case Number C154293, the State of Nevada versus Brendan J. Nasby.

Let the record reflect the presence of Mr. Nasby, together with his attorneys, Mr. Santacroce and Mr. Sciscento; Mr. Coumou, deputy District Attorney, representing the State of Nevada.

Mr. Coumou, will you stipulate to the presence of the jury?

MR. COUMOU: Yes, Judge.

THE COURT: Mr. Sciscento?

MR. SCISCENTO: Yes, Your Honor.

THE COURT: Okay. The State may call its next witness.

MR. COUMOU: Thank you. The State will be calling Tommie Burnside.

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The attorneys are going to ask you some questions here this afternoon. Please answer them the best you can without arguing with any of the attorneys.

Also, if there is an objection to any question asked to you, please don't answer it unless I tell you it's permissible to do so.

And would you state your name and spell your first and last name for our court reporter, please.

THE WITNESS: Tommie Burnside; T-o-m-m-i-e, B-u-r-n-s-i-d-e.

MR. SCISCENTO: Your Honor --

THE COURT: Mr. Sciscento.

MR. SCISCENTO: Before we begin on this, I understand Mr. Burnside is being represented by counsel. I would like to put on the record if his counsel has spoken to him or waived his rights at this time.

THE COURT: Well, Mr. Burnside's attorney is here. I gave his attorney an opportunity to visit with Mr. Burnside before he came out.

Mr. Sciscento, I think it's between the two of them.

MR. SCISCENTO: Okay.

THE COURT: Okay. Mr. Coumou, you may

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1 proceed.

2 MR. COUMOU: Thank you.

4 DIRECT EXAMINATION

5 BY MR. COUMOU:

6 Q Good afternoon, Tommie.

7 Were you a member, back in July
8 of 1998, of a group called the L.A. Crazy Riders?

9 A Yes, I was.

10 Q And was your brother, by the name of Jotee
11 Burnside, also a member of that group?

12 A No, he wasn't.

13 Q Okay. Was he friends or same friends with
14 your group?

15 A Yes, he was.

16 Q Did you know a young man by the name of
17 Michael Beasley?

18 A Yes.

19 Q And was he a member of this group?

20 A Yes.

21 Q And was he also a member of the L.A. Crazy
22 Riders.

23 A Yes.

24 Q Do you see somebody here in court today that

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1 THE COURT: Yes.

2 Okay. Counsel, again, for the
3 record, if you could identify yourself.

4 MR. FIGLER: Sorry, Your Honor.

5 Dayvid Figler. I am the
6 attorney for Mr. Burnside.

7 THE COURT: Thank you, Mr. Figler then.

8 Mr. Coumou, you may proceed.

9 MR. COUMOU: Okay.

10 BY MR. COUMOU:

11 Q Let's just -- let's just focus on -- on the
12 date in question I brought to your attention, on July
13 16th --okay -- 1998.

14 Were you at the -- at the
15 defendant's home during the evening hours?

16 A Yes.

17 Q And did you place a call to someone from the
18 defendant's home?

19 A Yes.

20 Q And who -- who did you call?

21 A Michael.

22 Q After you placed the call, what did you do?

23 A Don't remember.

24 THE COURT: Mr. Burnside, can you speak up

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1 was also a member of this group?

2 A Yes.

3 Q Point to him and tell me what he is wearing,
4 please.

5 A There is more than one member.

6 Q More than one member.

7 Well, focus your attention on
8 male members. Okay?

9 Point to a male member that you
10 see here in court today?

11 A (Indicating)

12 Q Okay. What -- who are you pointing to and
13 describe what he is wearing.

14 A Brendan Nasby in the blue suit.

15 MR. COUMOU: Judge, I think that should be
16 sufficient to identify --

17 THE COURT: Okay. The record will reflect
18 the witness has identified the defendant.

19 BY MR. COUMOU:

20 Q Tommie, prior -- prior to July 16th, 1998,
21 were you aware if there was a problem between the defendant
22 and Michael Beasley?

23 A I don't understand.

24 MR. FIGLER: Court's indulgence?

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1 when you are talking; and if you'd speak as loud as you
2 could, we'd appreciate that.

3 BY MR. COUMOU:

4 Q Did you ask Michael anything?

5 A I don't recall the whole conversation.

6 Q Okay. But what was the general gist of why
7 were you calling?

8 A Just to converse with him.

9 Q Were you going to take him -- take -- were
10 you -- all of you going to go to the desert?

11 A Ah, that was decided once --

12 MR. SCISCENTO: Your Honor, I'm going to
13 object to this as leading.

14 THE COURT: Sustained. Rephrase it, please.

15 MR. COUMOU: Okay.

16 BY MR. COUMOU:

17 Q Did there come -- did there come a point on
18 that night that Michael Beasley got to Brendan Nasby's
19 house?

20 A Yes.

21 Q From there, did -- where -- did you stay at
22 the home?

23 A No.

24 Q Where did you go?

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1 A To the mountains.
 2 Q Okay. Who -- who all went to the mountains?
 3 A Ah, me, Jotee, Brendan, Michael and
 4 Jeremiah.
 5 Q Jeremiah?
 6 A Yes.
 7 Q Does he go by the street name Woodpecker?
 8 A Yes.
 9 Q And when you got to the mountains, is this
 10 an isolated desert area?
 11 A Yeah.
 12 Q Now, was there a shooting?
 13 A Yes.
 14 Q And who -- who got shot?
 15 A Michael.
 16 Q Michael Beasley?
 17 A (Nods head affirmatively.)
 18 Q Did you shoot Michael Beasley?
 19 A No.
 20 Q Did your brother Jotee shoot Michael
 21 Beasley?
 22 A No.
 23 Q How about Woodpecker, did he shoot Michael
 24 Beasley?

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1 A No.
 2 Q And now you -- you've been charged in this
 3 crime, haven't you?
 4 A Yes.
 5 Q And did you plead guilty to -- to this case?
 6 A Yes.
 7 Q Could you tell the jury what you pled guilty
 8 to?
 9 A Accessory to murder.
 10 Q And where are you currently living at?
 11 A Indian Springs.
 12 Q And is that a prison facility?
 13 A Yes.
 14 Q Do you want to be here today?
 15 A No.
 16 MR. COUNOU: I'll pass the witness, Judge.
 17 THE COURT: Okay. Mr. Sciscento.

CROSS-EXAMINATION

BY MR. SCISCENTO:

Q Mr. Burnside, the District Attorney asked
 you about July 17th, 1998. (sic)
 Can you explain where you went
 that night about ten o'clock at night, if you remember?

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1 A To the desert.
 2 Q Prior to going to the desert, did you go
 3 somewhere?
 4 Let me rephrase that: Did you
 5 go over to Michael Beasley's house?
 6 A Yes, I did.
 7 Q Did Jotee, your brother Jotee Burnside,
 8 accompany you? Did he go with you to Michael Beasley's
 9 house?
 10 A Yes, he did.
 11 Q Did Woodpecker, that being Jeremiah Deskin,
 12 did he go to Michael Beasley's house?
 13 A Yeah.
 14 Q Whose car did you drive in?
 15 A Jeremiah's.
 16 Q Jeremiah's.
 17 Was anybody else with you when
 18 you drove -- when Jeremiah drove to Michael Beasley's house?
 19 A No.
 20 Q Brendan Nasby was not there, correct?
 21 A No, he was not there.
 22 Q All right. What was the purpose of you
 23 going over to see Michael Beasley that night?
 24 A To bring him over to Brendan's house.

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1 Q To bring him over to Brendan's house.
 2 Was there another reason you
 3 were going to go pick up Michael Beasley?
 4 A No.
 5 Q No? No idea?
 6 A No.
 7 Q You weren't going to take him out to the
 8 desert so somebody could shoot him?
 9 A That wasn't decided.
 10 Q Okay. You had no clue; there was no
 11 agreement about this?
 12 A Not at the time.
 13 Q Okay. So the time that you picked up
 14 Michael Beasley, there was no agreement between you or
 15 anybody else that there was going to be a shooting?
 16 A It had been spoke upon, but there was no
 17 agreement.
 18 Q But I'm talking specifically about the time
 19 you picked up Michael Beasley.
 20 A The time I picked up Michael Beasley, no.
 21 Q The time that you went there. All right.
 22 Are you a member of the group
 23 L.A. Crazy Riders?
 24 A Was.

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1 Q Was. That's a gang?
 2 A Something like that.
 3 Q You got social meetings; you guys get
 4 together a little?
 5 A Yes.
 6 Q You guys carry guns?
 7 A Some people -- some people do, some people
 8 don't.
 9 Q All right. Well, tell me: Was Sugar Bear a
 10 member of this L.A. Crazy Riders?
 11 A Yes.
 12 Q Sugar Bear ever carry a gun?
 13 A I'm not aware if he ever did.
 14 Q You are not aware?
 15 A I'm not aware if he ever did.
 16 Q You are not aware if he ever did. Okay.
 17 You gave a statement back on
 18 August 4th, 1998 to Detective Buczek; is that correct?
 19 A Uh-huh; yes.
 20 Q At that time that you gave the statement to
 21 him, were you in custody?
 22 A No.
 23 Q Were you placed in custody after that?
 24 A No.

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1 shot Michael Beasley; isn't that correct?
 2 A I don't -- I don't recall them being my exact
 3 words.
 4 Q Do you recall what your exact words were?
 5 A No.
 6 MR. SCISCENTO: If I can approach, Your
 7 Honor?
 8 THE COURT: Yes, you may.
 9 MR. SCISCENTO: Thank you.
 10 THE COURT: Would you show Mr. Coumou what
 11 you are referring to?
 12 MR. SCISCENTO: Your Honor, I'm sorry. I
 13 had this marked before. If I could have a moment. I want
 14 to show exactly --
 15 If I may approach, Your Honor?
 16 THE COURT: Yes.
 17 BY MR. SCISCENTO:
 18 Q Okay. Do you remember talking to Detective
 19 Buczek on August 4th, 1998? Do you remember -- do you
 20 remember that statement, giving that statement?
 21 A Yeah.
 22 Q You were saying in here that Sugar Bear was
 23 saying he was a bitch?
 24 A Yeah.

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1 Q Directly after, I'm saying --
 2 A No.
 3 Q You gave a statement; then you left and went
 4 home?
 5 A Yes.
 6 Q In that -- on August 4th, 1998, you gave a
 7 statement about who killed Michael Beasley, correct?
 8 If you don't remember, I've got
 9 the statement. I'll show you if you want to refresh your
 10 recollection.
 11 A Yes.
 12 Q Do you want to see it or do you remember
 13 saying that you told Detective Buczek who shot Michael
 14 Beasley?
 15 A Yes; yes, I remember.
 16 Q All right. So let me see if I understand
 17 this correctly:
 18 You, on August 4th, 1998, told
 19 Detective Buczek who shot Michael Beasley.
 20 A No. I told him I wanted to know who shot
 21 him, I believe.
 22 Q All right. Let's -- let's cut to the chase.
 23 A Yeah.
 24 Q You told Detective Buczek that Sugar Bear

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1 Q Okay. Who was Sugar Bear saying that to?
 2 A That statement is false though.
 3 Q Who was Sugar Bear saying that about?
 4 A I tell you that statement is false.
 5 Q I'm going to ask you again: The statement
 6 you gave to Detective Buczek, on August 4th, 1998, you said,
 7 "Sugar Bear was saying he's a bitch."
 8 Who was he, Sugar Bear, talking
 9 about?
 10 MR. COUMOU: Judge, I'm going to object.
 11 The witness has said the statement is false.
 12 THE WITNESS: I don't remember everything
 13 that was said in the statement.
 14 THE COURT: Okay. Hang on a second, Mr.
 15 Burnside.
 16 The objection is overruled.
 17 It's cross-examination. Mr. Sciscento has a right to
 18 clarify these points.
 19 Go ahead, Mr. Sciscento.
 20 BY MR. SCISCENTO:
 21 Q On the statement you gave to Detective
 22 Buczek, do you remember who you said was in that car?
 23 A Yes.
 24 Q Who was that, do you remember?

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1 A Me, my brother, Mazie, Brendan, Michael and
 2 Sugar Bear.
 3 Q Okay. I want to make sure I understand
 4 this: When you gave this statement, you were not in
 5 custody?
 6 A No.
 7 Q Okay. You were subsequently placed in
 8 custody, correct?
 9 A I don't understand the word --
 10 Q Later on --
 11 A Yes.
 12 Q -- you were placed in custody, for the
 13 murder, this murder?
 14 A Uh-huh.
 15 Q Was that before or after Jeremiah Deskin was
 16 placed in custody?
 17 A I don't know.
 18 Q Do you know when Jeremiah Deskin was
 19 arrested?
 20 A I don't know.
 21 Q When you arrested on this case.
 22 A October 27th.
 23 Q October 27th?
 24 And do you know when Jeremiah

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1 BY MR. SCISCENTO:
 2 Q You were describing to Detective Buczek what
 3 was going on that night, correct?
 4 A Yes.
 5 Q All right. And you were saying that you
 6 "put your head down between your legs. You know
 7 what I'm saying? I heard another one."
 8 That being a shot.
 9 A I remember that one.
 10 Q Is that correct?
 11 "And like a few seconds later,
 12 you know what I'm saying? Then everybody jumping
 13 out of the car saying 'The nigger dead?'"
 14 Did you say that?
 15 A Yes.
 16 Q "You know what I'm saying. It was a high
 17 pitched voice, you know what I'm saying? It seems
 18 like a high pitched voice. He was like, 'The
 19 nigger's dead,' you know what I'm saying?"
 20 "And I was like -- I was throwing up in the
 21 back seat."
 22 Did you say that?
 23 A Yes.
 24 Q "And my brother was calling out to me that

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1 Deskin was arrested.
 2 A No.
 3 MR. SCISCENTO: May I have the Court's
 4 indulgence for a moment, Your Honor.
 5 MR. SCISCENTO: All right. I'm going to
 6 direct you to page seven.
 7 MR. COLUMU: Okay.
 8 BY MR. SCISCENTO:
 9 Q Okay. The statement you gave on August 4th,
 10 1998, you were saying -- do you recall what you were saying
 11 then?
 12 A No.
 13 MR. SCISCENTO: Do you remember your
 14 answers?
 15 Your Honor, I think it might be
 16 easier if you have him read this portion of this.
 17 THE COURT: Okay. Do you want to read it or
 18 do you want him to read it?
 19 MR. SCISCENTO: Well --
 20 THE COURT: Do you want to read it and see
 21 if he agrees with it?
 22 MR. SCISCENTO: I want to see if I can -- I
 23 want to make this as quick as possible.
 24

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1 before they got in the car though -- you know what
 2 I'm saying? I started throwing up and I was sick
 3 because I heard the screams. You know what I'm
 4 saying?"
 5 Do you remember saying that?
 6 A Yes.
 7 Q "And everybody jumped in the car and I was
 8 leaving. I was like, man, you -- you did that
 9 shit. You know what I'm saying?"
 10 Now, when you said, "Man, you
 11 did that shit," who were you talking to?
 12 A In the -- in my statement?
 13 Q In the report, yes.
 14 A I don't remember. What does it say -- who
 15 does it say I was talking to anyway?
 16 MR. SCISCENTO: It doesn't say. It says --
 17 if I may approach, Your Honor?
 18 THE COURT: Yes.
 19 BY MR. SCISCENTO:
 20 Q "And everybody jumped in the car and I
 21 was -- and when we was leaving, I was like, man,
 22 you did that shit. You know what I'm saying?"
 23 The next statement is:
 24 "You honestly did that shit. You know what I'm

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1 'saying?"

2 A I don't know who I was saying it to though.

3 Q The next statement is:

4 "Sugar Bear kept saying he was a bitch. You
5 know what I'm saying?

6 And Blue was like, "Shut up, man; shut up,
7 man; don't even talk about it. You know what I'm
8 saying?

9 And he was sad about the shit."

10 Who was sad about the shit?

11 A Well, I guess -- well, I guess Blue was.

12 Q Who you talking to, "You honestly did that
13 shit?" Who were you talking to?

14 MR. COUMOU: Judge, I'm going to have to
15 object. It's obvious that this witness doesn't recall the
16 fine points of a lying statement that he gave to the police,
17 so we can keep on doing this for hours and hours, but he has
18 mentioned that that was a false statement. It's human
19 nature you are not going to remember fine points of a lie.

20 THE COURT: Well, Mr. Sciscento certainly
21 can read the statement and ask him if he -- if it's true or
22 not true, what it contains therein, and ask him if that was
23 the statement to the police on that day.

24 MR. SCISCENTO: All right.

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1 Q And what was your answer, do you recall?

2 A I said he shouldn't die.

3 Q Okay. Did you say -- did he ask you who
4 approached you regarding that?

5 A I don't remember if he approached me. I
6 mean who he -- if he asked me that.

7 Q Did Detective Buczek ask you who -- who
8 approached you?

9 A That's what I'm saying, I don't remember if
10 he --

11 Q Okay. Let me read this to you. Tell me if
12 you remember this:

13 "QUESTION: Okay. Did there come a time
14 where there was a vote made as to whether or not
15 Michael should die?

16 "ANSWER: I don't know about a vote, but I
17 know I was approached.

18 "QUESTION: Who approached -- who, who
19 approached you?

20 "ANSWER: Ah, Sugar Bear did.

21 "QUESTION: Sugar Bear approached you?

22 What did he say to you?

23 "ANSWER: Do I feel that he should die and I
24 told him no."

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1 THE COURT: So why don't we do it that way.
2 We might get it done more clearly.

3 BY MR. SCISCENTO:

4 Q Let me go on further.

5 "As a matter of fact, I think I seen my
6 brother drop some tears. You know what I'm
7 saying?"

8 Who are you talking about, my
9 brother?

10 A My brother, Jotee.

11 Q All right. "Then Sugar Bear is like, kind
12 of like, kind of still talking about it; and I told
13 him to "Shut up, man. You know what I'm saying?
14 Smoking a cigarette and driving, playing the
15 mu- -- the music, playing it loud. You know what
16 I'm saying? That's it."

17 There was a question: "And I asked you
18 earlier if there was ever a vote of whether or not
19 Michael Beasley should die. Do you remember what
20 your answer was, when I asked you earlier?"

21 A No, don't remember you asking me that.

22 Q Do you remember Detective Buczek asking you
23 about a vote of whether or not Michael should die?

24 A Yeah, I remember he asked me.

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1 In this statement that I'm
2 reading that you gave to Detective Buczek on August 4th,
3 1998, who were you replying to? Who were you speaking about
4 when Sugar Bear approached you and said: I think he should
5 die?

6 A Michael.

7 Q All right. Did you go on further that Sugar
8 Bear was upset with Michael because Michael was afraid to
9 fight somebody?

10 A Repeat it again, one more time.

11 Q Did you go on further in your statement to
12 say that Sugar Bear wanted Michael killed because Michael
13 was afraid to fight somebody?

14 A Yes.

15 Q Okay. You said that?

16 A Uh-huh.

17 Q Sugar Bear is the kind of guy that demands
18 respect in that gang, correct?

19 A I don't -- everybody demand respect.

20 Q All right. Sugar Bear the kind of guy that
21 would fight other gang members in the L.A. Crazy Rider
22 clique?

23 A It's happened.

24 Q Sugar Bear is the one that does it?

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1 Is that a yes or no?
 2 A Are you saying is he -- is he the only one
 3 that does it?
 4 Q I'm asking if Sugar Bear is the one that
 5 does it; if Sugar Bear was the one that fights other gang
 6 members in that gang?
 7 A Yeah, he does too.
 8 Q In this statement, on August 4th, you gave
 9 this statement to tell the police that Sugar Bear shot
 10 Michael Beasley; isn't that correct?
 11 A I don't remember.
 12 Q Do you know where Sugar Bear is?
 13 A No.
 14 A Do you know if he lives in California?
 15 A No.
 16 Q Do you know if he lives in South Central
 17 L.A.?
 18 A No.
 19 Q Were you ever asked that question, where
 20 Sugar Bear is right now? Do you remember what your answer
 21 was?
 22 A Yeah, he's in California. I remember that.
 23 Q All right. And the question -- next
 24 question was: Do you know where in California was he?

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1 A Well, they didn't move -- they -- no, not
 2 like that.
 3 Q Well, we had another member say earlier that
 4 L.A. Riders was an L.A. group that moved out here and merged
 5 with Crazy Young Niggers to form L.A. Crazy Riders.
 6 MR. COUNTOU: Judge, I'm going to object. I
 7 think that is misstating the evidence. They moved over here
 8 and then they formed.
 9 THE COURT: Okay. How we do this and how I
 10 do my policy, Mr. Sciscento, just say assuming there has
 11 been testimony as follows, and then the jury can test their
 12 own recollection as to what they believe the testimony has
 13 been.
 14 BY MR. SCISCENTO:
 15 Q Well, can you tell me how L.A. Crazy Riders
 16 was formed?
 17 A Just a group of people that stayed out here
 18 that was from California, came together.
 19 Q And Sugar Bear was from California?
 20 A Yes.
 21 Q Do you know Woodpecker?
 22 A Yes.
 23 Q Woodpecker is from California?
 24 A Yes.

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1 And do you remember your answer
 2 to the next question?
 3 A I don't remember what I said.
 4 Q South Central probably.
 5 A Uh-huh.
 6 Q Does that make sense?
 7 A Yeah.
 8 Q Do you recall that?
 9 A Yeah.
 10 Q Where is South Central?
 11 A Los Angeles.
 12 Q All right. Let's get back to this L.A.
 13 Crazy Rider thing. We spoke earlier with another witness
 14 who said L.A. -- there is L.A. Riders and Crazy Young
 15 Niggers.
 16 L.A. Crazy Riders is a
 17 compilation group, correct?
 18 A Uh-huh.
 19 Q All right. Can you move your hands --
 20 A Yes.
 21 Q -- so the person taking down dictation can
 22 hear you.
 23 Now, L.A. Riders is an L.A.
 24 group that moved out here to Vegas; is that correct?

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1 Q Okay. Are you from California?
 2 A Yes.
 3 Q The statement you gave on August 4th was
 4 given when you were out of custody, correct?
 5 A Yes.
 6 Q But now you are standing here today, in
 7 custody, changing your story.
 8 MR. COUNTOU: Judge, I'm going to object.
 9 The defendant -- this witness
 10 has pled guilty to an Information alleging accessory to
 11 murder, in which he admitted in court that he gave a false
 12 version to the version of facts leading to the death of
 13 Michael Beasley by stating that someone by the name of Sugar
 14 Bear actually was the killer, when, knowingly, the version
 15 was false with the intent that said Brendan James Nasby
 16 might avoid or escape arrest or punishment, having knowledge
 17 of said Brendan James Nasby has committed the felony of --
 18 to wit: Murder, and was liable of arrest therefor.
 19 So he pled guilty to this back
 20 on December the 3rd, 1998. That -- that's a misstatement.
 21 THE COURT: Well, again, Mr. Sciscento has a
 22 right to question Mr. Burnside about any inconsistencies in
 23 his previous testimony, and with that, his acknowledgement
 24 of the guilty plea agreement.

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Go ahead, Mr. Sciscento.

BY MR. SCISCENTO:

Q You initially gave a statement on August 4th, which is now vastly different than the statement you are giving today; is that correct?

A Yes.

Q The statement you gave on August 4th, you said or alluded to the fact that Sugar Bear did the killing; is that correct?

A No, no. I didn't -- then weren't my exact words.

Q Your exact words were not that Sugar Bear did the killing, but you alluded to the fact that Sugar Bear was the one that shot him?

A I was alluding?

Q Yes.

A Yeah, I guess.

Q Or giving inferences; you were inferring; you were throwing hints to the police; would you agree with that?

A No.

Q You basically told Detective Buczek that Sugar Bear did the shooting; is that right?

A I never told the detective anything like

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A I've already been.

Q So you've been paroled?

A Yes.

Q When is your release date?

A Next year.

Q Next year. So they've granted you parole?

A Yes.

Q When did you plead guilty in this case?

A December somewhere, back in December.

MR. COUNSEL: December 3rd.

BY MR. SCISCENTO:

Q December 3rd?

Why don't you tell the jury, for your -- let me -- let me see if I understand this:

You -- you acknowledge to the police that, in fact, you went up there and took Michael Beasley up there with the knowledge that he was going to be shot, correct?

A No.

Q All right. You just happened to pick him up that night and happened to drive him out to go target practicing and he just happened to get shot; is that what you are saying?

A Somewhat.

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that; nobody --

Q We've been through your statement where you said that he pulled the gun out.

A That's what I said in my statement again? Well, I guess that's what I said.

Q That you heard the shots, right?

A Uh-huh; yeah.

Q And that Sugar Bear kept saying he was a bitch and not to talk about it?

A Yes.

Q And that there was a vote and Sugar Bear asked you if Michael Beasley should die?

A Yes.

Q Now, you are here today giving different testimony, correct?

A Yes; yes.

Q You are saying this is all a complete lie?

A Yes.

Q You are in custody now?

A Yes.

Q You are up for parole when?

A I've already been to parole.

Q Are you up for parole?

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Q Somewhat.

Why don't you tell the jury the sentence you received?

A I received a one to five.

Q One to five. It's 12 months to 30 months; isn't that correct?

A Well, the judge gave me --

Q What did the judge give you?

A Twelve to 36.

Q Twelve to 36.

You've been in how long? How many months in custody have you been in?

A About 33 months, something like that.

Q And you will be out when?

A July.

Q Did the D.A. tell you that if you didn't testify today, he would hold you in contempt?

A He told me if I didn't testify, he would hold me in contempt?

Q Yes.

Did he say anything about if you testified or not, he would bring additional charges against you?

A He said it's possible.

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1 MR. SCISCENTO: Okay. No further questions,
2 Your Honor.

3 THE COURT: Mr. COUNOU.

4 MR. COUNOU: Judge, I would just like to
5 have this marked as whatever my next exhibit is.

6 It's a Judgment of Conviction
7 for Mr. Burnside, and it's certified, along with the
8 information to it.

9 THE COURT: Mr. Sciscento, do you have any
10 objection to admitting this Judgment of Conviction?

11 MR. SCISCENTO: No, Your Honor.

12 THE COURT: Okay. That will be marked and
13 received as State's next in order.

14 (State's Exhibit 68 marked for
15 identification and admitted
16 into evidence.)

17 MR. COUNOU: And I have a question.

18 REDIRECT EXAMINATION

19 BY MR. COUNOU:

20 Q Tormie, could you explain to the jury why
21 you told the police, on that August 4th date, not the truth?
22 Why didn't you tell the truth?

23 A Well, I know I had my own reasons back then.
24 I don't know.

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1 That's the only significant
2 change that you are saying in your statement from August 4th
3 to today; isn't that correct?

4 A I didn't say anybody did it. Yeah, it's
5 false.

6 MR. SCISCENTO: No further questions.

7 MR. COUNOU: Judge, I do have one just --

8 THE COURT: Go right ahead.

9

10 FURTHER REDIRECT EXAMINATION

11 BY MR. COUNOU:

12 Q Sugar Bear was not even there, correct?

13 A Yes, that's correct; that's correct.

14 THE COURT: Mr. Sciscento.

15

16 (Whereupon, a sotto voce at this time.)

17

18 FURTHER RECROSS-EXAMINATION

19 BY MR. SCISCENTO:

20 Q On August 4th, when you gave your statement,
21 you said Sugar Bear was there.

22 MR. COUNOU: Objection; asked and answered.

23 THE COURT: Overruled.

24 MR. SCISCENTO: It's a follow up.

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1 Q Do you remember what those reasons were?

2 A No.

3 Q Were you worried about being arrested that
4 day yourself?

5 MR. SCISCENTO: Objection, Your Honor;
6 that's leading.

7 THE COURT: Sustained. Rephrase the
8 question.

9 BY MR. COUNOU:

10 Q Were you worried at all when the police were
11 there interviewing you on August 4th, 1998?

12 A Yes.

13 MR. COUNOU: Nothing further then.

14 THE COURT: Mr. Sciscento.

15

16 RECROSS-EXAMINATION

17 BY MR. SCISCENTO:

18 Q You were so scared though, but you did tell
19 them that you were present at the time that Michael Beasley
20 was killed?

21 A Yes.

22 Q The only difference now is you are saying:
23 I was present at the time Michael Beasley was killed, but
24 Sugar Bear didn't do it. Brendan did it.

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1 THE COURT: Overruled.

2

3 (Whereupon, a sotto voce at this time.)

4

5 BY MR. SCISCENTO:

6 Q Did you say that people feared Sugar Bear?

7 A Um --

8 Q Did you ever say that in your statement?

9 A I might -- I might have, yes.

10 Q Okay. I want to see if I understand this,
11 as a follow-up to what the District Attorney just asked you.

12 The statement you gave on
13 August 4th, 1998 is pretty much exactly what you are saying
14 today with one exception: You are now saying Sugar Bear was
15 never there; is that correct?

16 A Yes.

17 Q That's the only difference?

18 A Yes.

19 MR. SCISCENTO: Okay. I have no further
20 questions.

21 THE COURT: Do any of the ladies and
22 gentlemen of the jury have any questions for Mr. Burnside?
23 (Negative response.)
24

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1 THE COURT: Okay. Mr. Burnside, thank you
2 very much for coming to court and testifying here this
3 afternoon; and you are excused then.

4 THE COURT: Okay. Lisa, would you maybe
5 help the officer take him out. Okay.

6 (Witness excused.)

7
8 THE COURT: Okay. The State may call its
9 next witness.

10 MR. COUNOU: Thank you, Judge.

11 The State will be calling Jotee
12 Burnside.

13 THE COURT: Okay. We'll wait.

14 THE BAILIFF: Just right up there.

15 THE COURT: Okay. Mr. Burnside, if you
16 could face me and remain standing; and raise your right
17 hand, please.

18
19 Whereupon,

20 JOTEE BURNSIDE

21 having been called as a witness by the State and
22 having been first duly sworn to tell the truth, the
23 whole truth and nothing but the truth, was examined
24 and testified as follows:

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1 the 16th, 1998.

2 How old were you back then?

3 A Thirteen.

4 Q Were you an associate or friends with a
5 group that your brother belonged to called the L.A. Crazy
6 Riders?

7 A Yeah.

8 Q Did you know an individual by the name of
9 Brendan Nasby?

10 A Yeah.

11 Q Do you see him here in court today?

12 A Right there. (Indicating)

13 Q Okay. Can you point to him and tell me
14 exactly what he is wearing and where is he seated.

15 A Wearing the blue and white suit next to the
16 lawyer.

17 MR. COUNOU: Judge, if the record could
18 reflect, I believe, that was identification.

19 THE COURT: The record will so reflect.

20 BY MR. COUNOU:

21 Q Jotee, did there come a point on that night,
22 on July 16th, that you were at his house?

23 A Yeah.

24 Q And --

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1 THE CLERK: Thank you. You may be seated.

2 THE COURT: Okay. Mr. Burnside, the
3 attorneys are going to ask you some questions here this
4 afternoon. Please answer them the best you can without
5 arguing with any of the attorneys.

6 Also, if any of the attorneys
7 object to any of the questions asked to you, please don't
8 answer it until I tell you it's permissible to answer it.

9 And also, I would ask you to
10 speak up as loud as you can to make sure the jury and the
11 attorneys can hear you as well.

12 Okay. Would you state your
13 name and spell for our court reporter, please.

14 THE WITNESS: Jotee Burnside; J-o-t-e-e,
15 B-u-r-n-s-i-d-e.

16 THE COURT: Thank you.

17 Mr. Counou.

18
19 DIRECT EXAMINATION

20 BY MR. COUNOU:

21 Q Good afternoon, Jotee.

22 How old are you right now?

23 A Sixteen.

24 Q And I'm going to draw your attention to July

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1 A JUROR: Your Honor, we have a question.

2 THE COURT: I think we have -- thank you.

3 Move that podium then.

4 A JUROR: Thank you.

5 THE COURT: And, Mr. Burnside, again, please
6 try and speak up as best you can.

7 Okay. Mr. Counou, rephrase it,
8 please.

9 MR. COUNOU: Thank you.

10 BY MR. COUNOU:

11 Q Was there a point that night, when you were
12 at his house, that you left?

13 A Yeah.

14 Q Who did you leave with?

15 A Ah, my brother, Tommie Burnside, Jeremiah
16 and myself, in the vehicle.

17 Q And where did you go?

18 A We went to Michael Beasley's house.

19 Q Who is Michael Beasley?

20 A Droop.

21 Q Droop? Was he a member of this group?

22 A Yeah.

23 Q Why did you go to that house?

24 A Pick him up.

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1 Q For what purpose?
 2 A To go in the desert.
 3 Q For what?
 4 A Going to the desert.
 5 Q Okay. Did you, in fact, pick him up?
 6 A Yeah.
 7 Q And what happened next?
 8 A We went back to Brendan's house. After that
 9 we left out to the desert.
 10 Q Okay. Who was all in the car?
 11 A Me, Brendan, my brother, Michael and
 12 Jeremiah.
 13 Q Okay. So only five of you?
 14 A Yeah.
 15 Q Who was driving?
 16 A Jeremiah.
 17 Q Jeremiah was?
 18 A Yeah.
 19 Q And did you go out to the desert?
 20 A Yes.
 21 Q Who -- who had the gun, do you know?
 22 A Not sure.
 23 Q Not sure?
 24 Now, when you got to the

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1 Q So you didn't kill Michael?
 2 A No.
 3 Q Tormie, your brother, did he have a gun in
 4 his hand?
 5 A No.
 6 Q So he didn't kill Michael, correct?
 7 A Yeah.
 8 Q Did Jeremiah have a gun in his hand?
 9 A Not to my knowledge.
 10 Q So he didn't kill --
 11 A Not to my knowledge.
 12 Q Now, after the killing, only four of you
 13 went home, right?
 14 A Yes.
 15 Q And they are Jeremiah driving, yourself,
 16 Tormie and the defendant, Brendan, right?
 17 A Yeah.
 18 Q And that's a yes?
 19 A Yes.
 20 Q Now, Jotee, on August 4th, did you give a
 21 statement to the police?
 22 A I think so -- yeah.
 23 Q Is that correct?
 24 A Yeah.

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1 desert, did everybody get out of the car?
 2 A Yeah.
 3 Q And was there a killing there?
 4 A Yeah.
 5 Q Who was killed?
 6 A Michael Beasley.
 7 Q Michael Beasley?
 8 Did -- where were you standing
 9 when Michael -- Michael was killed?
 10 A On the side of him.
 11 Q On the side of him, close to him?
 12 A (Nods head affirmatively.)
 13 Q And your brother, where was he?
 14 A He was a little behind me. He was still on
 15 the side of him.
 16 Q How about Jeremiah?
 17 A He was behind both of us.
 18 Q And what about Brendan Nasby, where was he?
 19 A He was behind both of us.
 20 Q And now you said Michael got killed?
 21 A Yeah.
 22 Q Did you have a gun in your hand at that
 23 time?
 24 A No.

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1 Q Did you tell the truth to the police that
 2 time?
 3 A Yeah.
 4 Q The whole truth on August the 4th?
 5 A From what I understood it was true, yeah.
 6 Q Didn't you blame, on August 4th, that
 7 someone else, other than the defendant, killed -- killed
 8 Michael Beasley?
 9 A Yes.
 10 Q And who is that?
 11 A Sugar Bear.
 12 Q Was that true?
 13 A No.
 14 Q Why -- why did you blame it on Sugar Bear?
 15 A Because I disliked him.
 16 Q So you just disliked him and that is why --
 17 A Yes.
 18 Q And so that version was actually false, what
 19 you gave to the police; is that correct?
 20 A Yeah.
 21 Q And subsequent to that, you got arrested on
 22 October the 27th; isn't that correct?
 23 A Yeah.
 24 Q Is that correct?

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1 A Yeah.
 2 Q Did you tell -- did you still tell the
 3 police that Sugar Bear was involved?
 4 A I don't think so.
 5 Q Okay.
 6 A Not to my knowledge.
 7 Q Sugar Bear wasn't there, was he?
 8 A No.
 9 Q And now, you pled guilty to this case,
 10 correct?
 11 A Yes.
 12 Q Could you tell the jury what you pled guilty
 13 to?
 14 A Accessory to murder.
 15 Q Accessory to murder?
 16 A Yeah.
 17 Q And did you receive a prison sentence?
 18 A Yeah.
 19 Q Are you still currently in that prison
 20 sentence?
 21 A Yeah.
 22 Q Would you tell the jury what sentence you
 23 got for being an accessory to this crime?
 24 A Twelve to 30 months.

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1 Q Twelve to 30 months.
 2 A Uh-huh.
 3 MR. COUNOU: Judge, if I could also have
 4 this marked and --
 5 THE COURT: Any objection, Mr. Sciscento?
 6 MR. SCISCENTO: No objection, Your Honor.
 7 THE COURT: Same --
 8 MR. COUNOU: Same thing.
 9 THE COURT: The State's next proposed
 10 exhibit, which I assume is the Guilty Plea Agreement of Mr.
 11 Jotee Burnside, may be admitted as the plaintiff's -- or the
 12 State's next in order.
 13 MR. COUNOU: It's a certified copy of
 14 Judgment of Conviction and the information that he pled
 15 guilty to.
 16 THE COURT: Thank you.
 17 (State's Exhibit 69 marked for
 18 identification and admitted
 19 into evidence.)
 20 BY MR. COUNOU:
 21 Q You don't want to be here; is that true?
 22 A That's true.
 23 Q What you've testified today, is that
 24 consistent with what you pled guilty to, your involvement in
 this crime?

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1 A Yeah.
 2 MR. COUNOU: Pass the witness, Judge.
 3 THE COURT: Mr. Sciscento.
 4
 5 CROSS-EXAMINATION
 6 BY MR. SCISCENTO:
 7 Q Mr. Burnside --
 8 A Yeah.
 9 Q I'm sorry. How old are you right now?
 10 A Sixteen.
 11 Q Sixteen?
 12 On August 4th, 1998, you gave a
 13 statement to Detective Thowson; is that correct?
 14 A Yes.
 15 Q And in that statement, you testified that --
 16 oh, I'm sorry -- you stated that Sugar Bear was the killer
 17 in this case?
 18 A Yes.
 19 Q All right. But you didn't come out and say
 20 that in the very beginning, did you?
 21 A No.
 22 Q As a matter of fact, you gave a different
 23 statement --
 24 A Yeah.

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1 Q -- for the first 23 pages?
 2 A Yeah.
 3 Q Is that a yes?
 4 A Yes.
 5 Q Okay. So for the first 23 pages, you didn't
 6 say anything that implemented (sic) you or said that you
 7 were there at the time of the murder?
 8 A Not to my knowledge.
 9 Q But then, at 4:32 to be exact -- or 1632, if
 10 you use military time -- Detective Thowson turns off the
 11 tape, and then starts the tape again, and now asks you if
 12 you are willing to tell the whole truth; is that correct?
 13 A Yep.
 14 Q That's what Detective Thowson tells you?
 15 A Yeah.
 16 Q Do you remember your answer to that
 17 question?
 18 A No, I don't remember the answer.
 19 MR. SCISCENTO: If I may approach?
 20 MR. COUNOU: What page are you on?
 21 MR. SCISCENTO: Page 23.
 22 BY MR. SCISCENTO:
 23 Q Do you remember what your answer was when
 24 Detective Thowson said:

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1 "Are you willing to tell me the truth now?"
 2 A I said yes.
 3 Q Yes, sir?
 4 A I said, "Yes, sir."
 5 Q Okay. Can you speak up a little for the
 6 members of the jury.
 7 And the next question was:
 8 "Why were you frightened before? Is that
 9 why you didn't tell me the truth?"
 10 I'm sorry.
 11 "Were you frightened before? Is that why
 12 you didn't tell me the truth?"
 13 Do you remember what your
 14 answer was?
 15 A No.
 16 Q What was your answer to that question?
 17 A "Yes, sir."
 18 Q And the question was: "What were you
 19 frightened of?"
 20 Your answer?
 21 A "Shugg."
 22 Q Shugg?
 23 A Yes.
 24 Q What else do you say?

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1 A "He knew -- he knew what he could get the
 2 information -- he -- wait a minute.
 3 "He knew where we could -- he knew where he
 4 could get the information from, where we lived
 5 and -- you know what I'm saying?"
 6 I said he knew where we lived
 7 and all.
 8 Q So you said to Detective Thowsen the reason
 9 I wasn't telling you the truth in the beginning is because I
 10 was afraid of Shugg; but now after a good 27 minutes, you
 11 change your story and you say: I was afraid of Shugg.
 12 And Detective Thowsen goes on
 13 and says:
 14 "Shugg, you are talking about who?"
 15 And your answer was -- do you remember?
 16 A "Damion, I think."
 17 Q "Shugg. I think, his real name is Damion or
 18 something. My brother knew it."
 19 Okay. But his nickname is Sugar Bear?
 20 A Yeah.
 21 Q And it was Sugar Bear that you were talking
 22 about that night?
 23 A Uh-huh.
 24 Q And when you gave this statement, you were

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1 out of custody, correct?
 2 A Yeah.
 3 Q When were you placed in custody on this?
 4 When were you arrested on these charges?
 5 A October 27th, '98.
 6 Q October 27th.
 7 Did you know on October 19th
 8 that Jeremiah Deskin was arrested?
 9 I'm sorry. Did you know on
 10 October 19th, 1998 that Jeremiah Deskin gave a statement to
 11 the police?
 12 A No. I wasn't sure.
 13 Q You didn't know anything about that?
 14 A I think --
 15 Q Or you weren't sure?
 16 A I'm not sure what day, but I know he gave a
 17 statement.
 18 Q You know he gave a statement before you were
 19 arrested?
 20 A Yeah.
 21 Q You knew that Jeremiah Deskin gave a
 22 statement before you were arrested; is that correct?
 23 A Yeah.
 24 Q Okay. And you knew that Jeremiah Deskin had

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1 cut a deal with the District Attorney; isn't that true?
 2 A I think so.
 3 Q And you knew that Jeremiah Deskin was going
 4 to be released from prison -- or from jail, from custody?
 5 I'm sorry.
 6 You knew that Jeremiah Deskin
 7 was going to be released from custody for giving that
 8 statement, didn't you?
 9 A I learned that after I was locked up.
 10 Q Okay. So when Deskin gave his statement on
 11 10/19/98 implementing (sic) Mr. Nasby, seven, eight days
 12 later, on 10/27/98, you gave a second statement?
 13 A Yes.
 14 Q That is implementing (sic) Mr. Nasby?
 15 A Yeah.
 16 Q But didn't get the same deal that Jeremiah
 17 Deskin got, did you?
 18 A No.
 19 Q No, because Jeremiah Deskin is not in
 20 custody, is he?
 21 A No.
 22 Q It was a little too late for you to give
 23 that statement, wasn't it, for you to benefit?
 24 MR. COUNTOU: Judge, I'm going to object.

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1 THE COURT: Sustained.
 2 MR. COUMOU: It's argumentative.
 3 THE COURT: Sustained.
 4 BY MR. SCISCENTO:
 5 Q You have a statement -- you gave a statement
 6 on page 30 -- in your statement to Detective Thowsen, you
 7 talked about the nine millimeter gun; is that correct?
 8 A Yeah.
 9 Q Do you remember that?
 10 A I think so, yeah.
 11 Q And do you know what you said about the gun?
 12 A No.
 13 Q When Detective Thowsen asked you:
 14 "Is there anything else you can tell me
 15 about it?" -- and I believe he's speaking about the gun --
 16 do you remember what your answer was?
 17 A No.
 18 MR. SCISCENTO: That's page 34.
 19 MR. COUMOU: Okay.
 20 BY MR. SCISCENTO:
 21 Q Yes. Can you read that to yourself?
 22 A After -- read it to myself?
 23 Q Go ahead and read it out loud if it
 24 refreshes your recollection.

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1 4th letter -- if I may approach?
 2 THE COURT: Yes.
 3 MR. SCISCENTO: I'll strike that, Your
 4 Honor.
 5 BY MR. SCISCENTO:
 6 Q You had no idea, when you were driving out
 7 there that night, that Michael Beasley -- when you went to
 8 pick him up, that Michael Beasley was going to be shot?
 9 A I didn't exactly, no.
 10 Q Not exactly. You had a feeling?
 11 A You could say that.
 12 Q All right. Who was with you that night when
 13 you drove out to pick up Michael Beasley at Michael
 14 Beasley's residence or wherever you picked him up from?
 15 A Tommie and Jeremiah.
 16 Q Tell the jury again.
 17 A Tommie and Jeremiah.
 18 Q And yourself.
 19 A Yes.
 20 Q Was Brendan Nasby there?
 21 A No.
 22 Q Where was Sugar Bear at this time?
 23 A He wasn't there.
 24 Q Where is Sugar Bear right now?

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1 A "After he moved the gun back, I don't know
 2 why Blue accepted it. He gave it back to Blue."
 3 Q Who gave it back to Blue?
 4 A I don't remember what -- what I said; don't
 5 know.
 6 Q You don't know? It couldn't have been Sugar
 7 Bear?
 8 A That's correct.
 9 Q How about David, Big Dave? Do you know a
 10 guy named big Dave?
 11 A Never met one.
 12 Q A person that sold the gun?
 13 A Never met him.
 14 Q You never heard of him?
 15 A Never met him.
 16 Q All right.
 17 Q Jeremiah Deskin, how well do you know him?
 18 A Oh, some.
 19 Q Well enough to go with him and go pick up
 20 Michael Beasley, who you knew was going to be shot and
 21 killed that night?
 22 A I didn't know he was going to be shot and
 23 killed.
 24 MR. SCISCENTO: On page 22 of your August

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1 A I don't know.
 2 Q He's from California?
 3 A Yeah.
 4 Q Have you seen him lately?
 5 A No.
 6 Q Has he come to talk to you?
 7 A No.
 8 Q Has he been arrested?
 9 A I don't know.
 10 Q Has he threatened you?
 11 MR. COUMOU: Judge --
 12 THE COURT: Mr. Sciscento, you are cutting
 13 him off before he gets a chance to answer.
 14 BY MR. SCISCENTO:
 15 Q Have you seen Sugar Bear lately, in the last
 16 seven months?
 17 MR. COUMOU: Judge, I'm going to object.
 18 The witness has already said he hasn't seen him.
 19 MR. SCISCENTO: I don't know if he said
 20 that.
 21 THE WITNESS: I said no.
 22 THE COURT: Okay. When is the last time you
 23 saw Sugar Bear, Mr. Burnside?
 24 THE WITNESS: Over a year ago.

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1 THE COURT: Okay. Mr. Sciscento, next
 2 question.
 3 MR. SCISCENTO: Okay.
 4 BY MR. SCISCENTO:
 5 Q Has he threatened you since that day?
 6 A Who, Sugar Bear?
 7 Q Yes.
 8 A No -- since what day? Hold on.
 9 Q I'm sorry. Has he threatened you?
 10 A Period?
 11 Q Recently?
 12 A No.
 13 Q Were you still -- were you still afraid of
 14 Sugar Bear?
 15 A I never was.
 16 Q Okay. So the statement you gave about Sugar
 17 Bear, you were -- was a lie?
 18 A You could say that.
 19 THE COURT: What was your answer, Mr.
 20 Burnside, to that?
 21 THE WITNESS: What?
 22 THE COURT: Mr. Sciscento asked you if that
 23 was a lie. What was your answer?
 24 THE WITNESS: Yeah.

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1 MR. SCISCENTO: No further questions, Your
 2 Honor.
 3 THE COURT: Mr. Coumou.
 4
 5 REDIRECT EXAMINATION
 6 BY MR. COUMO:U:
 7 Q Jotee, remember you are under oath and you
 8 are here because of a subpoena, right?
 9 A Yes.
 10 Q And that's not an invitation to accept; you
 11 have to be here, correct?
 12 A Yes.
 13 Q Now, Jotee, before you got arrested --
 14 before you got arrested, Jerimiah Deskin got arrested,
 15 correct?
 16 A I think so.
 17 Q Okay. And you said you think that Jerimiah
 18 gave a statement to the police?
 19 A Yeah.
 20 Q Is that true?
 21 A Yes.
 22 Q Are you -- are you -- you didn't read that
 23 statement, did you?
 24 A No, not then.

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1 MR. COUMO:U: That's a yes?
 2 THE COURT: Yes.
 3 MR. COUMO:U: Okay.
 4 BY MR. SCISCENTO:
 5 Q All right. Will you please tell the jury
 6 again, for your role in this, how many months have you
 7 served? What is the sentence that you received from the
 8 judge?
 9 A Twelve to 30.
 10 Q Twelve to 30 months.
 11 How much of that have you
 12 served?
 13 A Eleven and a half months.
 14 Q All right. Are you up for parole?
 15 A Yeah.
 16 Q Yes?
 17 Have you made your parole yet?
 18 A Yeah.
 19 Q Did the D.A. tell you they would help you in
 20 any way if you testified today?
 21 A No.
 22 Q Did the D.A. tell you if you didn't testify,
 23 he could hold you in contempt?
 24 A I think so.

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1 Q Okay.
 2 A Later on --
 3 Q So when -- when you gave your statement to
 4 the police on this date of October the 27th, when you
 5 actually got arrested --
 6 A Yes.
 7 Q -- you hadn't read --
 8 A No.
 9 Q -- Jerimiah's statement, had you?
 10 A No.
 11 Q In fact, you didn't even know what he had
 12 said, correct?
 13 A No.
 14 MR. COUMO:U: Pass the witness, Your Honor.
 15 THE COURT: Mr. Sciscento.
 16
 17 RECROSS-EXAMINATION
 18 BY MR. SCISCENTO:
 19 Q Deskin was arrested in Apple Valley and
 20 removed to the Clark County Detention Center?
 21 A Yeah.
 22 Q And you were in Clark County Detention
 23 Center?
 24 A Yeah.

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1 Q Yes? Is that -- is that a yes?
 2 A I'm not sure if it's the same time, but,
 3 yeah.
 4 Q Okay. Before you gave your statement, you
 5 knew that Deskin -- you stated earlier that Deskin gave a
 6 statement; isn't that correct?
 7 A Yeah, I was aware that.
 8 Q I'm sorry. I didn't --
 9 A I said I was aware that he did.
 10 Q You were aware that he did; and you were
 11 also aware that he said that Brendan Nasby did it?
 12 A No, I wasn't.
 13 Q You weren't?
 14 A No.
 15 Q You stated earlier that you were.
 16 A I said I was aware he made a statement.
 17 Q You were aware he made a statement?
 18 A I didn't read the statement; therefore, I
 19 can't tell you what he said.
 20 Q There was no talk on the street about what
 21 was said?
 22 A No, I don't believe --
 23 Q I'm sorry?
 24 A It was, but I didn't basically believe it.

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1 street that Jerimiah Deskin had named Mr. Brendan Nasby as
 2 the killer.
 3 MR. COUNTOU: Objection; there is no time
 4 frame here. When are we talking about?
 5 MR. SCISCENTO: I said prior to him giving
 6 the statement of November -- I'm sorry -- of October 27th.
 7 MR. COUNTOU: Are we talking about a time
 8 between --
 9 MR. SCISCENTO: I'm saying prior to --
 10 MR. COUNTOU: -- July 16th, all the way to
 11 October?
 12 MR. SCISCENTO: It would have to be between
 13 July 16th and -- that's when the murder happened. So we'll
 14 go from there.
 15 BY MR. SCISCENTO:
 16 Q July 17th to October 27th, in between
 17 October 4th -- let's go from October 4th -- I'm sorry --
 18 August 4th to October 27th, you heard that Jerimiah Deskin
 19 had given a statement implimenting (sic) Brendan Nasby as
 20 the killer.
 21 A I'm not sure if I knew it by then.
 22 Q You stated earlier that you heard that
 23 Jerimiah Deskin had?
 24 A I can't tell you when I heard it, but I'm

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1 Q There was talk on the street that Deskin
 2 said Brendan Nasby did it?
 3 A Yeah, Brendan --
 4 Q And there was talk on the street that
 5 Jerimiah Deskin cut a deal with the District Attorney prior
 6 to giving his statement?
 7 MR. COUNTOU: Judge, I'm going to object. I
 8 don't know if this witness is even able to answer these type
 9 of questions.
 10 THE COURT: Okay. Talk on the street --
 11 MR. SCISCENTO: Well, Your Honor, this is
 12 not going for the truth of the matter, and I can bring in
 13 Detective Thowsen, but, basically, it's for what he
 14 believes --
 15 THE COURT: Okay.
 16 MR. SCISCENTO: -- and why he gives a
 17 statement. It goes --
 18 THE COURT: Okay. Repeat the question,
 19 please.
 20 MR. SCISCENTO: All right.
 21 BY MR. SCISCENTO:
 22 Q Jerimiah -- I'm sorry.
 23 Jotee Burnside, Mr. Burnside,
 24 prior to you giving that statement, there was talk on the

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1 sure I heard it though.
 2 Q You heard it before you gave the statement
 3 though on October 27th?
 4 A I'm not sure it was -- when I heard it
 5 before, which statement though.
 6 Q You don't know when you heard it now?
 7 A I can't tell you exactly.
 8 Q Now you don't remember it.
 9 A I remember making the statement and all
 10 that.
 11 Q You don't remember the days you gave it?
 12 A What?
 13 Q You don't remember the day you heard -- you
 14 heard this?
 15 A What, about Jerimiah?
 16 Q About Jerimiah?
 17 A I couldn't tell you. It happened over a
 18 year ago.
 19 MR. SCISCENTO: It could have been
 20 yesterday.
 21 MR. COUNTOU: Judge, I'm going to object.
 22 We're at a point where we're arguing now.
 23 THE COURT: Sustained.
 24 MR. SCISCENTO: I have no further questions.

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THE COURT: Mr. Coumou.

MR. COUMOU: Nothing, Judge.

THE COURT: Do any of the ladies and gentlemen of the jury have any questions for Mr. Burnside? (Negative response.)

THE COURT: Okay. Mr. Burnside, thank you very much for coming to court and testifying. You can go with the bailiff here, please.

(Witness excused.)

THE COURT: Who is your next witness, Mr. Coumou?

MR. COUMOU: Brittany Adams.

THE COURT: Okay. Let's call her.

And we'll need to take a recess before that other witness we discussed.

MR. COUMOU: That's fine. That's why I'm calling her first.

THE COURT: Okay. Thank you.

Miss Adams just come on up here and step over to your right, please.

And if you could face me and raise your right hand.

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DIRECT EXAMINATION

BY MR. COUMOU:

Q Good afternoon, Miss Adams.

Could you tell the jury if you were involved with a group called the L.A. Crazy Riders?

A I was associated with them. I knew them, yes.

Q Okay. How were you associated with them?

A Through my best friend, Mike.

Q How was that group formed, do you know?

A Yes. Um, it was -- Michael and I and another guy -- another two guys, RJ and Mazie, were just sort of together, like a little clique at school. We called ourselves Crazy Young Niggers.

THE COURT: When you say Michael, is that Michael Beasley?

THE WITNESS: Yes.

THE COURT: Thank you. Go ahead.

I'm sorry. You can finish your answer up.

THE WITNESS: Okay. We called -- it was just a little clique in high school. We all hung around together, ate lunch and everything.

So Michael and Mazie met the

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Whereupon,

BRITTNY ADAMS

having been called as a witness by the State and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Thank you. You may be seated.

THE COURT: Miss Adams, the attorneys are going to ask you some questions here this afternoon. Just answer them the best you can without arguing with any of the attorneys.

Also, if there is an objection to any question asked to you, please don't answer it unless I tell you it's permissible to do so.

And could you state your name and spell your name for our court reporter, please.

THE WITNESS: Brittany Adams; first name B-r-i-t-t-n-y; last name A-d-a-m-s.

THE COURT: Thank you.

Mr. Coumou, you may proceed.

MR. COUMOU: Thank you, Judge.

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defendant Blue.

BY MR. COUMOU:

Q Okay.

A And he was -- he had the group called L.A. Riders.

Q Do you see that defendant here, Blue?

A Yes,

Q Can you please point to him and tell me what he's wearing?

A He's sitting over there between the two lawyers. (Indicating) He's got on glasses and a Navy blue tux.

MR. COUMOU: Judge, if the could so reflect.

THE COURT: The record will reflect the identification of the defendant.

BY MR. COUMOU:

Q So you met the defendant and he had his group called the L.A. Riders?

A Yes.

Q So what happened when the two groups became friendly with each other?

A It just cliqued up and that's where it became -- he said if L.A. Riders was L.A. Crazy Riders, and it was just us supposed to be a clique. Everybody just hung

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but together.

Q Okay. So it was really more of a clique?

A Uh-huh.

Q Did -- did it ever develop into what we hear in the news as gangs?

A You could say that, yes.

Q Yeah. Who was doing that? Who was trying to move it into a gang?

A Blue.

Q The defendant?

A Yes.

Q Who was -- who was -- who thought himself as a leader in this group?

MR. SCISCENTO: Objection, Your Honor; calls for speculation.

THE COURT: Overruled.

Go ahead, ma'am.

THE WITNESS: That was Blue.

BY MR. COUMOU:

Q And how many people were in this group, once it was kind of cliqued together as L.A. Crazy Riders?

A When it cliqued up, it was a lot of people that Blue knew and had associated with Blue before we met him.

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up, he would call me. We talked about -- we just had a very close relationship -- we'd just do anything for each other.

Q And is that common for you people to do if you were part of a group like this, a gang, to go beat up or fight or do anything for each other?

A Yes.

Q So you -- you were in a good relationship then with Michael?

A Yes.

Q Did you stay in touch with Michael?

A Up until, like, late May --

Q Okay.

A -- late May, early June of '98.

Q Why? What happened -- what was happening then?

A We just, um, cut all contact after -- it wasn't more like -- it was just kind of like loose contact; two people grow apart or something like that.

But the last conversation we had, I -- I was kind of uneasy about the conversation because of what he was explaining to me.

Q Now, did you still keep in contact with any of the other people in this group?

A No.

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There was only three of us, because RJ didn't really hang out with us. I knew Mazie. And we called him, Mike, Onoop. It was the three of us -- it was the three of us plus -- I mean, there had to have been at least ten people, at least, from Blue's side. So I would say between -- 13 plus people.

Q Okay. Now, how long did you stay associated, cliqued up, with this group yourself?

A Myself, I associated with them for a long time, because Mike was my friend and I tried to be with him a lot, whenever I could. So when Mike hung around there, I pretty much hung around there too.

Q You said Mike was your friend.

Could you explain to the jury what type of relationship you had with Michael?

A Mike and I, from school, he was like -- I guess you could say like a god brother, like a play brother to me, because we had a very close relationship. He could talk to me about anything. I could talk to him about anything.

If I ever had a problem with some guys, I could call Mike; and if I wanted somebody beat up, I could call Mike. And vice versa: If Mike had some problems with some females or female and wanted them beat

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Q So now, did there come a point, on August 1st, that you found out something that had happened to Michael?

A Yes.

Q How did that come about?

A I was with my younger cousin and I just had a feeling to go to Blue's house for -- I can't explain to you why. I just had the feeling. So my cousin and I, we went to Blue's house.

Q What is your cousin's name?

A Porsche Nichols.

Q All right.

A We got to Blue's house and Blue took me out and -- took me out into the garage. That was the hang out -- or that's where everybody went. You couldn't smoke cigarettes or anything else in the house, so you had to go out in the garage. Out in the garage, Blue handed me Mike's obituary and told me Mike had been killed.

And I asked him: Well, who did it?

And he told me that Sugar Bear did it and the two people involved with him was Crystal and Tanesha.

Q That's what he told you?

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1 A That's what he told me.
 2 Q What was his tone of voice like to you, and
 3 his attitude, when he was telling you this?
 4 A He tried to appear as re- -- he was saddened
 5 by it, but it didn't appear to me to be begin with.
 6 MR. SCISCENTO: I'm going to object; it
 7 calls for speculation.
 8 MR. COUNOU: It's her opinion, Judge.
 9 THE COURT: Overruled under N.R.S. 50.265.
 10 Go ahead, ma'am; you can
 11 answer.
 12 THE WITNESS: It didn't appear to begin
 13 with. It seemed like he was covering something up.
 14 BY MR. COUNOU:
 15 Q Did he say anything else about Michael at
 16 that point?
 17 A He told me what happened; he told me how it
 18 happened, who did it; how -- where they picked him up at,
 19 what kind of gun it was. He explained to me what happened.
 20 Q Do you remember exactly how he explained it
 21 to you?
 22 A Yes.
 23 Q Could you explain that to the jury, what --
 24 what the defendant told you.

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1 A He told me that Tanesha was running her
 2 mouth on the street, saying that Blue had killed Mike; and
 3 what -- had went to the funeral in California and told
 4 Mike's family out there that Blue had killed Mike.
 5 Q When you heard that, was anything said
 6 between you and -- and the defendant about -- about that?
 7 A Yes. He wanted me to kill her. He offered
 8 me a gun to kill her.
 9 Q Explain to me -- exact -- exactly what
 10 happened? Did --
 11 A I had -- he told me that if I didn't believe
 12 his story about what Tanesha was saying, that I could call a
 13 girl named Marla, which was Mike's girlfriend, and she was
 14 supposed to have been his baby's mother at the time.
 15 I called Marla -- Blue dialed
 16 the number -- and I talked to Marla. Blue did not talk to
 17 Marla whatsoever. I did. And Marla told me the exact same
 18 story that Blue did --
 19 Q Okay.
 20 A -- word-for-word.
 21 Q But now Blue, the defendant, suggested to
 22 you to call this Marla, right.
 23 A Yes.
 24 Q Okay. So what happened next?

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1 A He told me that on July 24th, that Tanesha
 2 and Crystal and Sugar Bear had called him on a four way call
 3 to Blue; and this was a Saturday morning, about seven
 4 o'clock in the morning.
 5 And they told him that Sugar
 6 Bear picked him -- picked Mike up from his house late at
 7 night in his Cadillac; Crystal and Tanesha were in the back
 8 seat. They were driving; they were going out to the desert;
 9 and Crystal had a nine millimeter gun in the back and loaded
 10 it with three bullets; handed it to Sugar Bear once they got
 11 to the desert.
 12 They forced Mike out of the
 13 car. Then Sugar Bear shot him twice in the -- twice in the
 14 neck and once in the head; and then they left --
 15 Q Okay.
 16 A -- and left him there.
 17 Q And he -- and he told you this in specific
 18 detail?
 19 A Specific detail.
 20 Q After he detailed this specifically to you,
 21 what -- did he say anything about Tanesha?
 22 A Yes.
 23 Q What did he tell you about Tanesha at that
 24 point?

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1 A Marla told me the exact same story
 2 word-for-word; and then she gave me direction to Tanesha's
 3 house, because I said I wanted to talk to Tanesha.
 4 Q Do you know what time this was?
 5 A This had to have been about 10:30 at night.
 6 Q And so did you want to go to Tanesha's
 7 house?
 8 A Yes.
 9 Q Why?
 10 A I wanted to talk to her and get her side. I
 11 wanted to find out the truth. I wanted to get every side I
 12 could, so I could find out what happened to Mike.
 13 Q Were you angry?
 14 A Very.
 15 Q Did you know what type of relationship
 16 Michael Beasley had with Tanesha?
 17 A Yes.
 18 Q What was that?
 19 A She is his baby's mother.
 20 Q Okay. So what happened -- well, did you go
 21 to -- to Tanesha's home?
 22 A Yes, I did.
 23 Q How did you get there?
 24 A Drove my car.

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1 Q Were you by yourself?
 2 A No.
 3 Q Who was with you?
 4 A Blue and my cousin Porsche.
 5 Q Where was the defendant Blue sitting?
 6 A In the driver's seat of my car, once we got
 7 there.
 8 Q In the driver's seat?
 9 A Yeah, once we got there.
 10 Q Okay. On the way over there, where was he?
 11 A The passenger seat.
 12 Q Now, you mentioned something about he wanted
 13 you to kill her.
 14 A Yes.
 15 Q What exactly did he do or say to you?
 16 A Well, before we left, he offered me his gun,
 17 one of his guns, to kill her.
 18 And I said: No. I'm not going
 19 to kill her. I'm going to talk to her. I want to find out
 20 what she knows.
 21 MR. SCISCENTO: Your Honor, may we approach?
 22 THE COURT: Yes.
 23
 24 (Unreported discussion at the bench.)

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1 him; he loved him.
 2 Q Now, this is still the same -- this is still
 3 the very first night, the very -- you know, within hours of
 4 you first hearing that your friend Michael was killed,
 5 right?
 6 A Yes.
 7 Q Now, did you go over to Tanesha's -- did you
 8 make it to Tanesha's house?
 9 A Yes.
 10 Q Did you take the hammer with you?
 11 A No.
 12 Q Why not?
 13 A I wasn't going -- I didn't want to kill
 14 anybody. I wasn't going to kill her.
 15 Q What happened when you got to the front door
 16 of Tanesha's home?
 17 A Her dad answered the door and I asked if
 18 Tanesha was home. And he then went back in and I heard them
 19 say: Well, who is it?
 20 And he didn't know, so he came
 21 back to the door and asked who I was. I told him my name.
 22 He went back in. And, at
 23 first, she didn't recognize me by my name. Then when he let
 24 me in, then she recognized who I was.

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1 THE COURT: Okay. Ladies and gentlemen of
 2 the jury, you'll disregard the last statement from Miss
 3 Adams pertaining to guns and that will be stricken from the
 4 record.
 5 Okay. Mr. Coumou.
 6 BY MR. COUMOU:
 7 Q On the way then to the house of Tanesha
 8 Banks, did he offer anything to you?
 9 A Yes. He offered me a hammer.
 10 Q Okay. Did you see this hammer?
 11 A Yes.
 12 Q Where was that hammer?
 13 A He had it between his legs under the seat,
 14 under the passenger side of the seat.
 15 Q Did you know he had carried it in?
 16 A No, I didn't.
 17 Q What did he say why -- why was he offering
 18 you this hammer?
 19 A He said: You can just hit her between the
 20 eyes and kill her; just kill her, cuz; just kill her.
 21 Q Do you know why he wanted you to do this?
 22 A He said because she was running her mouth on
 23 the street, saying that he had killed -- he said Mike was
 24 his homie and he would never kill him; he would never hurt

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1 Q Did you talk to Tanesha right there?
 2 A Just for a moment; said: Hi. How are you?
 3 I gave her a hug; said: I'm sorry to hear about Mike.
 4 On our way out the door, going
 5 back outside to talk, and her mother said: Well, has she
 6 seen the baby?
 7 And I hadn't. And the baby was
 8 on the couch sleeping, and she showed me the baby.
 9 Then we went outside. And I
 10 was -- and the car was parked across the street from her
 11 house. We went outside and I introduced her, because my
 12 cousin Porsche was standing outside the car. I introduced
 13 her to my cousin. I said: This is my cousin P.D. P.D.,
 14 this is Tanesha. That's what we call Porsche.
 15 Q Where was the defendant at?
 16 A Still sitting in the car.
 17 Q By himself?
 18 A Yes.
 19 Q And you said now in the driver's seat?
 20 A Uh-huh.
 21 THE COURT: Is that yes?
 22 THE WITNESS: Yes.
 23 BY MR. COUMOU:
 24 Q What happened next?

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1 A I then asked Tanesha what happened to Mike;
2 and she avoided the question. She starts stammering;
3 wouldn't look at me; and said she didn't know; she heard
4 some things, but didn't know.

5 Then I asked her: Well, what
6 did you tell his brother Donte in California?

7 And she gave me this look, like
8 I wasn't supposed to know she talked to Donte in California
9 and told him anything.

10 And then she said: Well, I
11 told him a couple of things, but we're still trying to find
12 out -- you know, still avoiding what I asked her, avoiding
13 really answering directly and it ticked me off. I was
14 already angry and it really -- it just ticked me off more.

15 And then I told her, I said: I
16 don't mean to be rude or disrespectful or hateful; and then
17 I said: But that was my MF'ing hommie.

18 And I hit her. And when I hit
19 her, she stumbled. I hit her again. She fell and I started
20 kicking her.

21 Then her dad or somebody came
22 outside and my cousin pulled me off of her and said: Come
23 on. Let's go.

24 We jumped in the car. Blue was

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1 involved in the killing, correct?

2 A Yes.

3 Q Now, that happened -- that happened on
4 August 1st, correct?

5 A Yes.

6 Q Since -- did you leave the defendant home?

7 A Yes.

8 Q Four days later, did you get a telephone
9 call from the defendant?

10 A Yes, on August 4th.

11 Q Okay. Why -- how -- how did you get that
12 call?

13 A It was a free call from the Clark County
14 Detention Center.

15 Q Okay. And from who was it?

16 A It was from Blue.

17 Q You recognized his voice?

18 A Yes.

19 Q What -- what did he tell you from the Clark
20 County Detention Center?

21 A He said: Cuz -- and please excuse my
22 language. He said: Cuz, that bitch Tanesha went and told
23 the police on me; said I killed Droop.

24 And I asked him, I said: Well,

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1 in the driver's seat. So he started the car up. I got in
2 the car. Tanesha's dad jumped on the car, was hanging on
3 from the window that was cracked.

4 Q Where -- where did you jump in? Were you
5 driving? You didn't jump in the driver's seat, did you?

6 A No, I jumped in the passenger's seat.

7 Q Okay. And so -- so Tanesha's dad was
8 hanging on the window?

9 A Yeah, he was hanging onto the car from the
10 window on the driver's side.

11 Q Right.

12 A And then we took off -- Blue took off down
13 the street, and after turning the corner, he -- her dad
14 couldn't keep his grip; he fell off the car and we left.

15 And all the way back to Blue's
16 house, the only thing he kept saying was: You should have
17 killed her, cuz, you should have killed her.

18 He kept repeating that over and
19 over again, until I told him: Just shut up. I'm not going
20 to kill anybody. I wasn't going to kill her. And just shut
21 up about it. And he shut up the whole way back. He didn't
22 say anything else.

23 Q And all this time, you had -- you had
24 learned this story that Tanesha, Crystal and Sugar Bear were

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1 what do you want me to do?

2 And by knowing that his baby's
3 mother Coleen lived with him at his mother's house, he told
4 me to go tell his family what happened. I knew he wanted
5 me --

6 MR. SCISCENTO: Your Honor, I'm going to
7 object to the rest of this. I think it's calling for
8 speculation as to what he expected Coleen or somebody else
9 to do once she told them.

10 THE COURT: Then why don't you just tell us
11 what Mr. Nasby told you. Just leave it at that.

12 Are you repeating the
13 conversation you had with Mr. Nasby?

14 THE WITNESS: Yes.

15 THE COURT: Are you telling us what Mr.
16 Nasby told you?

17 THE WITNESS: Yes.

18 THE COURT: So just tell us what Mr. Nasby
19 said.

20 BY COUNSEL:

21 Q Okay. So what did -- so the defendant Blue
22 told you that Tanesha had run to the police?

23 A Yes.

24 Q And that's why now he's locked up for -- for

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1 Michael's death?

2 A Yes.

3 Q What was his tone of voice like on -- to you
4 over the phone?

5 A He was pissed.

6 Q Okay. And what did he want you to do?

7 A He said to go tell his family that he was
8 locked up.

9 Q Okay. Did he want you to do anything else?

10 A Well, I don't want to cause any speculation.
11 MR. SCISCENTO: Well, then, Your Honor, I
12 would ask her not to answer.

13 THE COURT: Okay. Ma'am, all you can do is
14 tell us exactly what he said and leave it at that. Don't
15 interpret it; just tell us what he said.

16 BY MR. COUNOU:

17 Q Okay. Did -- what exactly did he say?

18 A He said go tell his family what happened and
19 do it ASAP.

20 Q And what did you take that to mean?

21 A I took that to mean go talk to the police;
22 tell the police what he had told me, but put it in first
23 person, for -- it was like they told me what happened.

24 Q Okay. So completely excluding him out of

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1 person?

2 A To totally exclude Blue from the picture, to
3 help him out, to make it where he didn't have anything to do
4 with it whatsoever.

5 Q How -- how did that -- and did you relay the
6 same version which you told the jurors as to what the
7 defendant told you --

8 A Yes.

9 Q -- on that August 1st night?

10 A Yes.

11 Q How did that interview go?

12 A Crazy.

13 Q Could you -- could you explain that?

14 A After I put out the voluntary statement, the
15 detectives called me upstairs, took me into the
16 interrogation room; and Detective Buczek was the one
17 interrogating me; and he started asking me questions and I
18 kept changing the story.

19 I didn't know the details, so I
20 kept entangling myself in more lies and more lies and more
21 lies, because I didn't know what really happened. I was
22 just saying what I was told.

23 And then he cut off the tape;
24 handed me the Rights of a Person Arrested card; had me read

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1 the picture?

2 A Exactly.

3 Q Now, what time do you remember of the day,
4 was it the morning, afternoon or evening, when this --

5 A It was evening.

6 Q Evening that he called you?

7 A Uh-huh.

8 THE COURT: Is that yes?

9 THE WITNESS: Yes.

10 BY MR. COUNOU:

11 Q Now, Miss Adams, did you end up going to the
12 police?

13 A Yes, I did.

14 Q And where -- where exactly did you go?

15 A I went down to the detective bureau
16 downtown.

17 Q Did you meet with the police detectives?

18 A Yes, I did.

19 Q And what -- what did you tell these
20 detectives?

21 A I told them exactly what Blue had told me,
22 but I put it in first person, as if they had called me on
23 three way and told me what happened.

24 Q Now, why were you putting it in first

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1 that and sign it; and I did; put the tape back on.

2 Then he asked me about what
3 happened at Tanesha's house that previous Saturday night.

4 And at first, I denied the
5 meeting. I told him I didn't know what he was talking
6 about.

7 Then he told me -- he said:
8 Well, your cousin Porsche has told us everything. And can
9 you explain to me why Blue said you went and knocked this
10 girl out for him?

11 And then that's when I came
12 clean and told them everything that happened --

13 Q What happened at the point --

14 A -- on Saturday night when I went to
15 Tanesha's house.

16 Q -- at Tanesha's?

17 At that point, did you realize
18 what -- what did you realize?

19 A I realized that I was in deep trouble and I
20 was going to jail, and that there was a lot of things I
21 didn't know about what happened.

22 Q Did you feel used?

23 A Very, very used.

24 Q By who?

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1 A I felt used by Blue.
2 Q Why?
3 A Because when I'm a friend to somebody, I'm a
4 true friend and I was trying to help him out as a friend.
5 And if he knew something that
6 he wasn't telling me and knew I was putting myself in
7 jeopardy, my freedom in jeopardy, going down lying to these
8 police officers, he could have at least told me.
9 But he told me nothing. He let
10 me go down there and make a complete fool of myself; get a
11 case, you know, just -- it wasn't necessary. He could have
12 just told me the truth from the very beginning; just told me
13 the truth.
14 Q Did you realize, at that point, that what he
15 had told you was a lie?
16 A I didn't realize everything he told me was a
17 lie until I was sitting behind bars, when the detectives
18 came down the next day, and that's when I told them what
19 really happened.
20 I told them that I didn't know
21 anything; that Blue was the one that told me the story. And
22 I was just telling them what he told me and I just told them
23 everything, everything I could possibly think of that could
24 pertain to the murder; and I told them that that's when I

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1 with myself?
2 A No.
3 Q Okay. With who then?
4 A I didn't make the negotiations. My lawyer,
5 Mr. Terry, negotiated with the D.A. on my case. And then
6 that's when he brought it to me as a deal and I accepted the
7 deal and said: Yes, I will help in any way I possibly can.
8 Q Why do you want to help?
9 A Because, for one, I was used unnecessarily;
10 for, two, Mike was my best friend. Mike was killed cold
11 bloodedly, senselessly; there was no reason for it. There
12 was nothing to justify --
13 MR. SCISCENTO: I object to this.
14 THE COURT: Sustained. Hang on. Sustained.
15 Okay. Next question.
16 BY MR. COUNOU:
17 Q Okay. You are not -- you are not coming
18 forward and testifying to your knowledge of the events of
19 this case in order to try to help yourself out, are you?
20 A No. I -- I really -- honestly, I don't care
21 what -- what happens with me on my case. I want help
22 whatever way I can on this.
23 Q Now -- so you were arrested on August 4th,
24 right?

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1 knew what was really going on.
2 Q And -- and you were arrested for -- for that
3 beating that you gave to Tanesha Banks, right?
4 A Yes.
5 Q Now, is that case still ongoing against you?
6 A Yes, it is.
7 Q And what were you actually charged with
8 initially?
9 A First degree kidnapping; intimidating a
10 witness; and battery with intent to commit a crime.
11 Q Okay. That's what you are charged with,
12 right?
13 A That's what I was charged with, yes.
14 Q What's -- what's the current status of the
15 case?
16 A The current status is it's being continued
17 until I'm finished testifying here as part of the deal to
18 testify, truthful testimony; and then they will drop the
19 felony charges and give me a misdemeanor battery charge,
20 which I'm guilty of.
21 Q Okay. And you acknowledge that you are
22 guilty of that?
23 A Yes.
24 Q Did you -- did you make those negotiations

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1 A Yes.
2 Q Had you -- did you receive any contact with
3 the defendant since that date?
4 A Yes.
5 Q What kind of contact did you have with him?
6 A After I got out of jail -- I got out of jail
7 August 14th and about -- I'd say a little less than a month
8 later, I received a letter in the mail and also a telephone
9 call from the defendant.
10 Q Did you talk to him personally?
11 A No, I wouldn't accept the call.
12 Q But you said you got a letter?
13 A Yes.
14 Q What did that letter say?
15 MR. SCISCENTO: Your Honor, I object at this
16 time.
17 May we approach on this matter?
18 THE COURT: Yes.
19 (Unreported discussion at the bench.)
20 THE COURT: Okay. Mr. Counou will move into
21 a different area then.
22 MR. COUNOU: I'll pass the witness then.
23
24

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1 Judge.

2 THE COURT: Okay. Thank you.

3 Ladies and gentlemen, I'm going
4 to take a break as soon as we get done with Miss Adams'
5 testimony.

6 Is that okay with everybody
7 here?

8 MR. SCISCENTO: Your Honor, in light of the
9 ruling for the defense, perhaps maybe now would be better to
10 take a 15 minute break.

11 MR. COUMOU: Judge, I got witnesses lined
12 up, and I think it would probably be better if we finish
13 this witness.

14 THE COURT: We have this other matter.

15 MR. SCISCENTO: I mean, we take a break
16 anyway. When I finish with this one, we take another break.

17 MR. COUMOU: Well, we have some issues over
18 this item here, and I would prefer that we finish with Miss
19 Adams.

20 THE COURT: Let's finish her up, Mr.
21 Sciscento.

22 MR. SCISCENTO: If I could have one moment.

23 THE COURT: If you can tell me it's
24 prejudicial in some way, approach the bench. I'm not sure

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1 people call it a gang; some people call it a club -- L.A.
2 Crazy Riders?

3 A I'm associated with them, yes.

4 Q You are associated with them.

5 What does that mean?

6 A I hung out with them; did things with them.
7 I associated with them.

8 Q Okay. But you weren't an active gang
9 member?

10 A No.

11 Q Okay. Most gang members have a -- or most
12 associates even have monikers, nicknames?

13 A Yes.

14 Q You had one?

15 A Yes.

16 Q Do you have one?

17 A Yes. I think I said that.

18 Q What is your moniker or nickname?

19 A B.K.

20 Q Does that stand for Blood Killer?

21 A No, it stands for Brittany Keshia.

22 Q When you gave this statement, you were not
23 under arrest for anything at that time, initially?

24 A No.

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1 what you got in mind.

2 (Whereupon, a sotto voce at this time.)

3 CROSS-EXAMINATION

4 BY MR. SCISCENTO:

5 Q Miss Adams, on August 4th, 1998, you gave a
6 statement to Detective Buczek?

7 A Yes.

8 Q And in that statement, you implemented (sic)
9 somebody else was the killer of Michael Beasley?

10 A Yes.

11 Q And the District Attorney asked you that
12 question?

13 A Yes.

14 Q You said that Michael was your best friend.

15 A Yes.

16 Q You'd do anything for him.

17 A Yes.

18 Q And you'd back him up in any way?

19 A Yes.

20 Q He'd back you up?

21 A Yes.

22 Q Okay. And you are a member of this -- some

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1 Q You testified or you stated in your
2 statement that somebody else had committed this murder?

3 A Yes.

4 Q Okay. And then, on page five, the tape is
5 turned off and you were arrested. All right.

6 You were given a person's -- a
7 Rights of Person Arrested card; is that correct?

8 A Yes.

9 Q But you were arrested for -- they were going
10 to arrest you for beating up Brittany or -- I'm sorry --
11 beating up Tanesha Adams?

12 (Whereupon, a sotto voce at this time.)

13 BY MR. SCISCENTO:

14 Q Tanesha Banks.

15 You were going to be arrested
16 for beating up Tanesha Banks?

17 A I was arrested for that.

18 Q You were arrested -- you were charged with
19 kidnapping?

20 A Yes.

21 Q Battery with substantial bodily harm?

22 A No, battery with intent to commit a crime.

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1 Q Battery with intent to commit a crime.
 2 And what else?
 3 A And intimidating a witness.
 4 Q Okay. Kidnapping, was it first degree
 5 kidnapping?
 6 A Yes. And do you know what kind of sentence
 7 that had -- that carries?
 8 A Something like 25 to life or something to
 9 that effect.
 10 Q Twenty-five to life?
 11 A Something to that effect. I know it
 12 carried -- it carried a life sentence on it.
 13 Q And that's for your actions that you did
 14 against Tanesha?
 15 A Yes.
 16 Q And -- Tanesha Banks?
 17 A Yes.
 18 Q You have not been sentenced on that case yet
 19 today?
 20 A No.
 21 Q You were supposed to go in court today;
 22 isn't that correct?
 23 A No, yesterday.
 24 Q Thursday. I'm sorry. You were supposed to

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1 Q Labor Day.
 2 I called you from my office to
 3 ask you about this case.
 4 A I don't know where you called me from, but
 5 you called me.
 6 Q Okay. And I asked if I could speak to you
 7 regarding this matter?
 8 A Yes.
 9 Q And your response was?
 10 A Talk to my attorney.
 11 Q And did your attorney ever tell you I
 12 contacted him and asked to speak to you?
 13 A No.
 14 Q Okay. Did your attorney ever tell you that
 15 I wanted to speak to you?
 16 MR. COUNTOU: Judge, I'm going to object.
 17 That sounds to me like a lot of hearsay here.
 18 THE COURT: Well, it sounds like it can be
 19 privileged too, so I'll sustain that.
 20 BY MR. SCISCENTO:
 21 Q Were you ever informed that -- by other than
 22 myself -- that I wanted to speak to you?
 23 MR. COUNTOU: Objection; same -- same basis:
 24 You are looking for hearsay; relevance.

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1 go into court Thursday, but it got continued until after the
 2 trial?
 3 A Yes.
 4 Q For you to testify here today?
 5 A Yes.
 6 Q And if you testify, as you say,
 7 truthfully -- if you testify truthfully in this case --
 8 A Uh-huh.
 9 Q -- you are going to receive a misdemeanor?
 10 A Yes.
 11 Q And how much time are you going to spend in
 12 jail?
 13 A I don't know.
 14 Q A misdemeanor carries, at the most, six
 15 months?
 16 A I don't know.
 17 Q Did your attorney tell you how much time you
 18 expect to spend?
 19 MR. COUNTOU: Judge, I'm going to object.
 20 THE COURT: Sustained.
 21 BY MR. SCISCENTO:
 22 Q I contacted you, I believe it was September
 23 3rd?
 24 A September 7th. It was Labor Day.

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1 THE COURT: I think that's okay, ma'am, as
 2 phrased. I'll let you --
 3 MR. SCISCENTO: I'm not asking for the truth
 4 of the matter either.
 5 THE COURT: I don't want you to get in to
 6 conversations.
 7 Here's what -- ma'am, I don't
 8 want you to tell us about any conversations you had with
 9 your attorney. That's between you two.
 10 If there is a way you can
 11 answer the question, other than discussing what you and your
 12 attorney talked about, then you can answer it. If not, if
 13 it's only between you and your attorney, you let me know.
 14 THE WITNESS: Well, can I say what I was
 15 instructed to do?
 16 THE COURT: By your attorney?
 17 THE WITNESS: Uh-huh.
 18 THE COURT: No.
 19 MR. SCISCENTO: Your Honor, I think she's --
 20 if we can approach? Can we approach, Your Honor?
 21 (Unreported discussion at the bench.)
 22 BY MR. SCISCENTO:
 23 Q Mr. Terry is your attorney, correct?
 24

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1 A Yes, that's correct.
 2 Q Did Mr. Terry ever tell you not to speak to
 3 anybody regarding this case?
 4 A He informed me not to speak to you regarding
 5 this case.
 6 Q Okay. So he told you specifically not to
 7 speak to me regarding this case?
 8 A Yes.
 9 Q Okay. Because I'm represent -- no, strike
 10 that.
 11 How long did you spend in
 12 jail --
 13 MR. COUNOU: Objection; relevance.
 14 MR. SCISCENTO: -- regarding -- regarding
 15 the battery.
 16 MR. COUNOU: Objection; relevance.
 17 THE COURT: Overruled.
 18 THE WITNESS: I spent ten day -- ten days in
 19 jail.
 20 BY MR. SCISCENTO:
 21 Q And that's regarding the battery and the
 22 kidnapping?
 23 A It's regarding all the charges. I spent ten
 24 days before I bailed out.

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1 A We went outside, yes.
 2 Q And they know what happened?
 3 A I asked her a couple of questions. I got
 4 more angry. I hit her and beat her up; jumped in the car;
 5 left.
 6 Q Okay. Well, you went over there -- you
 7 stated earlier you went over there with Brendan. Brendan
 8 kept telling you along the way: Kill her; kill her; kill
 9 her.
 10 A No. On the way back, he kept saying that.
 11 Q So, at the very beginning, he never said
 12 that you -- that I want you to kill her, that you should
 13 kill her?
 14 A At his house before we left, he was like:
 15 You should just kill her, cuz.
 16 Q Before you left to go to Tanesha Banks'
 17 house?
 18 A Yes.
 19 Q So, in fact, before you went there, you had
 20 in the back of your mind Brendan telling you I want you to
 21 kill her and you are thinking maybe you should go beat her
 22 up?
 23 A No.
 24 Q What happened?

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1 Q Now, you went over to Tanesha Banks' house
 2 under this guise that you were a friend of hers; is that
 3 correct?
 4 A What do you mean by that?
 5 Q Well, you went over there -- you testified
 6 earlier, you went over there with the intent of beating her
 7 up.
 8 A No, I never said I went over there with the
 9 intent to beat her up. I said I went over there with the
 10 intent to find out what happened.
 11 Q You went inside her house?
 12 A Yes, I was invited in by her father.
 13 Q And you held Tanesha Banks' baby?
 14 A No, I saw the baby. The baby was lying on
 15 the couch sleeping.
 16 Q How long were you -- how long were in the
 17 house with Tanesha Banks?
 18 A A couple of minutes.
 19 Q Okay. You were talking to her?
 20 A I told her I was sorry to hear about what
 21 happened. I asked her how she was doing.
 22 Q So you went over there and you told her you
 23 were sorry; asked her how she was doing; and then you took
 24 her outside; you went outside?

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1 A That's not what I was thinking. I told you
 2 what I wanted to do, what I was going over there for.
 3 Q You were just going to go over there and
 4 talk to her?
 5 A I wanted to find out what happened. I said
 6 I want to find out every possible information I could about
 7 what happened to Mike.
 8 Q How bad did Tanesha Banks get beat up that
 9 day?
 10 A I don't know.
 11 Q Did she go to the hospital?
 12 A I don't know. I left.
 13 MR. COUNOU: Judge, I'm going to object.
 14 The witness has just said she doesn't know.
 15 THE COURT: She doesn't know.
 16 MR. SCISCENTO: I'm just saying how bad --
 17 THE COURT: She said she didn't know, Mr.
 18 Sciscento.
 19 Next question.
 20 BY MR. SCISCENTO:
 21 Q Tanesha Banks' parents were home that day?
 22 A Yes.
 23 Q You were nice to the parents?
 24 A Nice how I spoke. I said hello.

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1 Q You said hello to them.
 2 A Yes.
 3 Q And then after that, you hit their daughter;
 4 the father jumps on your car; and you took off, even though
 5 he's still holding on to the car?
 6 A Yes.
 7 Q You went over there with the knowledge that
 8 you may be getting in a fight with Tanesha Banks; isn't that
 9 correct?
 10 A No.
 11 Q You went over there with somebody telling
 12 you to go kill Tanesha Banks?
 13 A Yes.
 14 Q Would you say you had some pretty good
 15 acting when you were over there talking to Tanesha Banks,
 16 acting like you were going to be nice to her?
 17 MR. COUMOU: Judge, objection; now we're
 18 getting to a point, the way the question is phrased, it's
 19 argumentative.
 20 THE COURT: Sustained as phrased.
 21 BY MR. SCISCENTO:
 22 Q I want to make sure I understand this one
 23 more time: Kidnapping, battery with intent to commit a
 24 crime and coercion --

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1 BY MR. SCISCENTO:
 2 Q You understand that -- you've been informed
 3 that first degree kidnapping has what they call a life
 4 sentence.
 5 A That's what I was -- understood to believe
 6 that it could go to life. It could pull a life sentence.
 7 Q You could be in prison for life?
 8 A Yes.
 9 Q Now, you testified today you are getting a
 10 misdemeanor?
 11 A That's what it was negotiated, yes.
 12 MR. SCISCENTO: I have no further questions,
 13 Your Honor.
 14 THE COURT: Mr. Coumou.
 15 MR. COUMOU: I don't think I have anything
 16 further, Judge.
 17 THE COURT: Do any of the ladies and
 18 gentlemen of the jury have any questions for Miss Adams?
 19 (Negative response.)
 20
 21 THE COURT: Okay. Miss Adams, thank you
 22 very much for coming to court and testifying this afternoon.
 23 You are excused.
 24 (Witness excused.)

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1 A Intimidating witness.
 2 Q -- intimidating a witness, 25 to life, the
 3 first degree kidnapping case --
 4 MR. COUMOU: Judge, I'm going to object.
 5 That is improper, incorrect; that's not what the first
 6 degree kidnapping --
 7 THE COURT: Mr. Sciscento.
 8 MR. SCISCENTO: She said that's what she
 9 understood it to mean.
 10 MR. COUMOU: And it's wrong.
 11 MR. SCISCENTO: Now, if you want to pull out
 12 the statute --
 13 THE COURT: Now, Mr. Sciscento, you are
 14 giving the jury the wrong idea on it. If you want to ask
 15 her if she knows what the penalty is or that her -- you
 16 certainly can go into what the statutory penalty is if you
 17 want, as to the issue of bias, but let's not -- if you know
 18 that's not the penalty, that's not --
 19 MR. SCISCENTO: Your Honor, she said
 20 specifically --
 21 THE COURT: Well --
 22 MR. SCISCENTO: You understand -- let me
 23 rephrase it then.
 24

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1 THE COURT: Okay. Ladies and gentlemen,
 2 we're going to go ahead and take our afternoon recess.
 3 During this recess, you are
 4 admonished not to talk or converse among yourselves or with
 5 anyone else on any subject connected with this trial;
 6 Or to read, watch or listen to
 7 any report or commentary on the trial or on any person
 8 connected with this trial by any medium of information,
 9 including, without limitation, newspapers, television, the
 10 Internet and radio;
 11 Or to form or express any
 12 opinion on any subject connected with this trial until the
 13 case is finally submitted to you.
 14 It's about twenty to four. I
 15 do have a legal matter I have to go through with the
 16 attorneys right now, so what -- we'll do a little bit longer
 17 break, so we'll meet -- this is Richard by the way here.
 18 He's will be -- Lisa is out this afternoon.
 19 If you will meet Richard at
 20 four o'clock right outside the door, we should get started
 21 right at that time.
 22 (The following proceedings were had in open
 23 court outside the presence of the jury.)
 24 THE COURT: Okay. The record will reflect

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1 the jury has left the courtroom.

2 The other witness the State is
3 going to call, Mr. John Holmes, as far as what portion of
4 his testimony would be admissible.

5 MR. SCISCENTO: I would ask for the Court --
6 well, to clear the courtroom before we start, Your Honor.

7 I was just concerned because
8 there is some other witnesses that may --

9 THE COURT: They've cleared out.

10 Okay. The issue is -- first of
11 all, did the parties get an opportunity to review the
12 transcript of Mr. Holmes' testimony at the evidentiary
13 hearing regarding the date when he first spoke to law
14 enforcement regarding the alleged cooperation requested by
15 law enforcement?

16 MR. COUMOU: I have, Judge.

17 MR. SCISCENTO: Yes.

18 THE COURT: And what date was that, if you
19 recall, or what time frame was it in relation to when Mr.
20 Nasby allegedly delivered these letters to him --

21 MR. SCISCENTO: He said --

22 THE COURT: -- do you remember?

23 MR. COUMOU: It was my reading that it
24 happened after the -- the contact --

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1 disagree with that?

2 MR. COUMOU: I didn't follow it. He's --

3 that -- that he gave his confession to Holmes --

4 MR. SCISCENTO: I'm not talking --

5 MR. COUMOU: -- after?

6 MR. SCISCENTO: I'm talking the letter
7 itself.

8 MR. COUMOU: Oh, the letter.

9 THE COURT: The letter.

10 MR. SCISCENTO: It was after November 5th.

11 November 5th is when he contacted the police and said: I
12 want to help you. I have some information. Then they said:
13 Go get some more information.

14 THE COURT: Okay. My recollection is -- and
15 correct me if I'm wrong -- was that Mr. Holmes' testimony
16 was that Mr. Nasby allegedly confessed to him before this
17 November 5th date.

18 MR. COUMOU: Yes.

19 THE COURT: And then he went to law
20 enforcement and I guess reported this alleged confession and
21 then law enforcement said go get some more information.

22 MR. SCISCENTO: That's correct.

23 MR. COUMOU: If he can.

24 THE COURT: And subsequent to that date, he

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1 THE COURT: Okay.

2 MR. COUMOU: -- where they were playing
3 chess and the defendant suddenly says: Do you want to
4 tell -- you know, do you want to know the truth? I killed
5 the hommie or something like that.

6 THE COURT: Okay. But I wondered -- was
7 that -- was the letter incident before or after law
8 enforcement allegedly told him to see what information you
9 could get?

10 MR. COUMOU: Now, that's where -- I -- I
11 leave it up to the Court because my mind has been racing on
12 other witnesses.

13 THE COURT: Well, I'll ask the defense and
14 see if you disagree. I mean, it's in the transcript.

15 MR. SCISCENTO: November 5th; and then after
16 November 5th is when he receives the transcript or -- I'm
17 sorry -- receives the -- the letter.

18 MR. COUMOU: Yeah.

19 THE COURT: So you are saying -- your
20 reading of that transcript was that Mr. Holmes' conversation
21 with law enforcement was prior to the time he received the
22 letters from Mr. Nasby.

23 MR. SCISCENTO: Exactly, yes.

24 THE COURT: Okay. Mr. Coumou, would you

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1 obtained those letters from Mr. Nasby, which the State
2 wishes to introduce into evidence then.

3 MR. COUMOU: Can I be heard on that now?

4 THE COURT: Yes.

5 MR. COUMOU: And I agree with -- that's the
6 reading -- how -- how I remembered it now.

7 THE COURT: Okay. Mr. Coumou, then let's
8 talk about the admissibility of any -- the issue would be
9 then, I think, as we discussed the other day: There is no
10 question that any statements allegedly made before this
11 contact with law enforcement are admissible.

12 I think the defense
13 acknowledged that, Mr. Sciscento; is that correct?

14 MR. SCISCENTO: Yes.

15 THE COURT: Okay. So we're talking about
16 what happened from the date law enforcement allegedly told
17 this gentleman to go get more information, which would
18 include the -- the subsequent letters and all like that.

19 Okay. Mr. Coumou.

20 MR. COUMOU: Now, Judge, I gave you a -- a
21 legal memorandum this morning as to the cases that the State
22 thinks should be applicable.

23 THE COURT: Did you give that to Mr.
24 Sciscento?

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1 MR. COUNOU: No, I didn't. I never got a
2 chance.
3 THE COURT: Well, I might add, Mr. Counou, I
4 got commend you, because a lot of the memorandum was
5 favorable to the defense, but you did present both sides of
6 the issue.
7 MR. COUNOU: And I want to be fair about
8 this, because, again, I -- the way I'm looking at it right
9 now -- and I was -- since this issue was never brought up
10 before trial, that's why it never -- never came to my
11 mind --
12 THE COURT: Right.
13 MR. COUNOU: -- and that's why I was never
14 concerned about it.
15 But under the circumstances, in
16 a situation that we're in, I would defer, although I'm not
17 conceding, but I would defer that the statement, the three
18 page document that the defendant gave to John Holmes -- now,
19 that's another key point I want to say.
20 John Holmes received it. He
21 didn't know he was getting this. He just -- the defendant
22 came up to him and encouraged him: Here, take this. I want
23 you to photocopy it. I want you to go find somebody to come
24 in and testify to -- to this.

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1 THE COURT: So you are saying then the
2 intimidation issue, you would like to get in as another bad
3 act under Petrocelli then, not -- not the -- the letter per
4 se, because of the Fifth and Sixth Amendment issues, but
5 just simply the other bad acts.
6 MR. COUNOU: Okay. In order to protect the
7 record --
8 THE COURT: Okay.
9 MR. COUNOU: -- I feel that because we're
10 now dealing with an individual who is not doing any
11 interrogation -- I'm talking about John Holmes -- and he
12 suddenly gets this two-page document with names on them and
13 says I -- you know, these are people I want scared,
14 intimidated, killed --
15 THE COURT: All right.
16 MR. COUNOU: -- that's a whole separate
17 crime.
18 THE COURT: I understand the issue then.
19 MR. COUNOU: So that -- and that is why I
20 gave you this legal memorandum.
21 THE COURT: Okay. I appreciate that.
22 Mr. Sciscento, you are going to
23 win on this, so don't say anything.
24 MR. SCISCENTO: Yes, Your Honor. We'll

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1 He -- I mean, he -- he's
2 quickly giving it to him. John Holmes is not there going in
3 to -- you know, as in the Boehn case where, you know, he's
4 wired, he's encouraged, he's probing, you know, he's asking
5 the questions. There's no interrogation going on. And I
6 think that's key.
7 But now my concern is that if
8 we allow that, there may be a violation of the Sixth
9 Amendment.
10 Now, let's -- let's not push
11 the issue on the letter then. Let's look at the list on the
12 intimidation.
13 That's a whole separate crime,
14 the intimidation, giving the letter -- giving the two-page
15 document with names, address, phone numbers. That is a
16 whole separate crime.
17 THE COURT: Well, that would be Petrocelli.
18 Then we'd have to treat that as a Petrocelli issue.
19 MR. COUNOU: And we did go through somewhat
20 of a Petrocelli hearing, and the Court has heard -- we've
21 even heard of a handwriting expert saying that that is --
22 THE COURT: Okay.
23 MR. COUNOU: -- saying that that is the
24 case.

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1 submit.
2 MR. COUNOU: Oh, I lose.
3 THE COURT: Okay. Are you done?
4 Okay. Basically, first of all,
5 on the issue there, again, for the record, on the -- on the
6 use of Mr. Holmes as an agent of law enforcement, the Nevada
7 Supreme Court has held in the case of Hollofield versus
8 State, 101 Nevada 793, that that is improper.
9 I would note that that decision
10 was in 1985. Subsequent to that, the United States Supreme
11 Court did allow somewhat similar conduct in the case of
12 Illinois versus Perkins, 110 Supreme Court Reporter 2394.
13 However, that would have given
14 the Nevada Supreme Court the opportunity to follow that
15 principle enumerated by the United States Supreme Court.
16 When this issue did come up --
17 a similar issue did come up again in Nevada -- then -- in
18 the case of Boehn, B-o-e-h-n, versus State, 113 Nevada 910,
19 1997, the Nevada Supreme Court again reinforced their
20 holding on Hollofield and declined to follow Illinois versus
21 Perkins.
22 So the Nevada Supreme Court has
23 held in a recent decision here in favor of the defendant on
24 that point.

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1 So that takes care of that one
2 issue, which Mr. Coumou really isn't arguing.

3 The issue then on Petrocelli is
4 the three standard -- it has to -- the State has to prove by
5 clear and convincing evidence that the incident occurred;
6 and also the other tests are -- or one of the other tests is
7 is it more probative than prejudicial.

8 Again, the Court finds that
9 although it's probative, that the prejudice outweighs the
10 probative value.

11 So, for that reason, understand
12 Petrocelli versus State, the Court will exclude the letters.

13 MR. COUMOU: The intimidation documents that
14 I --

15 THE COURT: Yes. I think it's more
16 prejudicial than probative.

17 MR. COUMOU: Now, Judge, I was under the
18 hundred percent assumption that I was firmly going into it.
19 I made my opening statement. And I just ask now that
20 counsel not be allowed to comment --

21 MR. SCISCENTO: Your Honor, I -- with the
22 understanding that when we had this hearing, the issue -- I
23 didn't know about the issue until it actually came up. If I
24 knew about it earlier, I would have filed motions. I think

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1 (The following proceedings were had in open
2 court in the presence of the jury:)

3 THE COURT: Good afternoon again.

4 This is the continuation of
5 Case Number C154293, State of Nevada versus Brendan J.
6 Nasby.

7 Let the record reflect the presence of
8 the defendant, together with his attorneys Joseph Sciscento
9 and Frederick Santacroce; the State of Nevada represented by
10 Frank Coumou, deputy District Attorney.

11 Mr. Coumou, will the State
12 stipulate to the presence of the jury?

13 MR. COUMOU: I do, Judge.

14 THE COURT: Will the defense?

15 MR. SCISCENTO: Yes, Your Honor, we will.

16 THE COURT: Thank you very much.

17 The State may call its next
18 witness.

19 MR. COUMOU: Thank you, Judge.

20 The State will be calling John
21 Holmes.

22 THE COURT: Okay. Mr. Holmes, if you would
23 come up here, straight ahead, please, and just step around
24 to your right here; and if you could face me and raise your

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1 so this Court acknowledge that both Frank -- Mr. Coumou and
2 I had filed numerous motions.

3 THE COURT: Right.

4 MR. SCISCENTO: I would agree with that,
5 because it may have come to surprise, but it will not be
6 referenced.

7 THE COURT: I appreciate that, Mr.
8 Sciscento, your stipulation not to bring that up in closing
9 argument.

10 I think Mr. Coumou's request is
11 more than reasonable, because this is a legal issue that's
12 developed through the course of the trial, and we didn't
13 know how it would come out until all the issues played out.

14 But now that it has, I think,
15 out of fairness to both the State and the defense, we should
16 just ignore this issue in closing argument then.

17 MR. COUMOU: Okay. That will leave me with
18 two witnesses.

19 THE COURT: You got two witnesses left.

20 MR. COUMOU: Yeah.

21 THE COURT: Okay. Off the record.

22 (Recess in proceedings.)
23
24

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1 right hand.

2
3 Whereupon,

4 JOHN R. HOLMES

5 having been called as a witness by the State and
6 having been first duly sworn to tell the truth, the
7 whole truth and nothing but the truth, was examined
8 and testified as follows:

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: Okay. Mr. Holmes, the attorneys
11 are going to ask you some questions here this afternoon.
12 Please answer them the best you can without arguing with any
13 of the attorneys.

14 Also, if there is an objection
15 to any question asked to you, please don't answer it unless
16 I tell you it's permissible to do so.

17 Could you state your name and
18 spell your last name for the court reporter, please.

19 THE WITNESS: John Robert Holmes;

20 H-o-l-m-e-s.

21 THE COURT: Mr. Coumou, you may proceed.

22 MR. COUMOU: Thank you.
23
24

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DIRECT EXAMINATION

BY MR. COUNOU:

Q Mr. Holmes, how do you actually -- how are you called?

A RJ.

Q Is that the nickname or --

A Yeah.

Q -- that you go by.

A Uh-huh; yes.

THE COURT: Sir, you need to say yes or no.

THE WITNESS: Yes.

THE COURT: Thank you.

BY MR. COUNOU:

Q Mr. Holmes, were you -- were you familiar or friends with a young man by the name of Michael Beasley?

A Yes.

Q How did you meet him?

A I met him when we -- I first moved out here from California.

Q And what type of relationship did you have with Michael?

A Um, he came to my house and we went and kicked it, talked to some girls, whatever, you know, and that was it.

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A Yes. Could you please point to him and tell me what he's wearing.

A The blue tuxe- -- the blue suit with the white shirt and blue tie with the glasses on.

MR. COUNOU: Judge, if the record could reflect the witness has identified the defendant.

THE COURT: The record will so reflect.

BY MR. COUNOU:

Q How long had you known the defendant when you first -- well, when you first met him, how long -- how long a time had you started getting yourself really familiarized with him?

A For three years, three years.

Q For three years?

A Uh-huh.

Q Did you stay in contact with him constantly?

A Yes.

Q Did there come a point where you kind of stopped having contact with him?

A Yes, when I left town.

Q When -- when was that?

A It was about a year ago.

Q A year ago?

A Uh-huh.

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Q Did you form a group --

A Yeah.

Q -- or a clique between the two of you and others?

A Yes.

Q And what -- what group did you form?

A CYN.

Q CYN?

A Yes.

Q And do you know what that stands for?

A Yes.

Q What is that?

A Crazy Young Niggers.

Q Did that clique stay together?

A Yes.

Q Okay. Did it ever join with any other group?

A Yes.

Q And what group is that?

A L.A. Riders.

Q And who -- who was the leader of L.A. Riders?

A Brendan Nasby.

Q Do you see him here in court today?

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Q Now, so you knew that this L.A. Riders join -- did they join with --

A CYN.

Q -- CYN?

A Yes.

Q And what group was then formed?

A L.A. Crazy Riders.

Q Now, did everybody get along with L.A. Crazy Riders?

A We didn't get along in Vegas.

Q You didn't get along with the people from Vegas?

A Yes.

Q But you got along with each other as L.A. Riders, right?

A Yes.

Q And why was that? Why did you get along with them?

A Because they was from California.

Q Just like yourselves?

A Yes.

Q Okay. So the -- it would say that two cliques merged in to a gang; would that be a fair way of putting it?

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1 A Yes.
 2 Q Now, you said you left town.
 3 Did you go to California for a
 4 while?
 5 A No, I left to Texas.
 6 Q To Texas.
 7 And, Mr. Holmes, I'm going to
 8 draw your attention now to -- well, did you get -- did you
 9 return to Las Vegas?
 10 A Yes.
 11 Q When did you return?
 12 A Ah, about a month after I -- Michael was
 13 killed.
 14 Q Okay. Do you know when Michael was killed?
 15 A I can't remember the date.
 16 Q Okay. Who -- how did you find out that
 17 Michael was killed?
 18 A When I got back in town, a friend of mine
 19 named Slim told me.
 20 Q Do you know how he got killed?
 21 A No. At first, he was saying somebody
 22 Spanish killed him in the desert; and then that the homies
 23 was talking about going to ride for him. And I was, like:
 24 Man, why? What happened?

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1 Mexican girl.
 2 And I'm like, no.
 3 And he said: Are you sure,
 4 named Lorraine or something like that?
 5 And I said: Yeah, she was
 6 Hawaiian.
 7 He was like: You don't
 8 remember me? I said: No.
 9 He said: I'm Blue.
 10 I'm like: Blue from Riders?
 11 And we just started talking
 12 from there.
 13 Q Okay. And then -- then you remembered him
 14 again?
 15 A Yeah, when he said his name.
 16 Q Okay. And during this meeting, did you --
 17 did you bring up the fact about your friend Michael having
 18 been killed?
 19 A Not right then and there, I didn't.
 20 Q Okay.
 21 A I waited for about -- a little while, about
 22 a month.
 23 Q Did that subject come up?
 24 A Yes.

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1 I got to trying to call --
 2 Q What did you say, the homies was going to
 3 ride for him?
 4 A They was saying that.
 5 Q What does that mean?
 6 A Our homies was going to look for the guy
 7 that killed Michael.
 8 Q Okay.
 9 A And I couldn't get in touch with nobody.
 10 Q But this was just street talk, right?
 11 A Yeah.
 12 Q Now, around November of the same year that
 13 Michael got killed, were you living in an area where you
 14 came back in contact with the -- with the defendant?
 15 A Yes.
 16 Q And, um, did the two of you recognize each
 17 other?
 18 A Yes. Well, he recognized me.
 19 Q Okay. Tell -- tell exactly what -- how did
 20 that first recognition happen in this place where you were
 21 living together?
 22 A Well, I hung up the phone for me for
 23 calling -- I was standing outside -- I was standing there,
 24 and he was, like -- then he said: You used to mess with a

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1 Q How did it come up?
 2 A He asked me what I was in there -- he asked
 3 me where I'd been at. I told him where I had been at. And
 4 I asked him where he had been at, and he just -- we was just
 5 sitting there talking.
 6 Then he said that he was locked
 7 up for, ah, some -- some -- something he indicated. I can't
 8 remember what he said --
 9 Q Okay.
 10 A -- but it was another charge.
 11 Q Did -- did you bring up the fact about
 12 Michael at that point?
 13 A Yeah. I told him -- I said: You didn't
 14 know about the homie getting killed?
 15 Q You mean the homie, you are talking about
 16 Michael?
 17 A Michael.
 18 Q And when you say homie, you are talking
 19 friend?
 20 A Yeah.
 21 Q Okay. What -- what did you tell him
 22 about -- about -- go ahead.
 23 What did you talk about or what
 24 did you bring up about --

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1 A All I asked him -- I said: Did you hear the
2 hommie -- Michael got killed? He was like, yeah, he heard
3 about it.

4 He said -- he was like, man,
5 that's messed up or whatever. And I'm like, heck, yeah.

6 And we got off of that subject,
7 and we were just sitting there talking about where I'd been
8 and what I'd been up to and that was about it.

9 And I was saying --

10 Q Did there come a point though that you guys
11 were playing chess a few days later?

12 A Yes.

13 MR. SCISCENTO: I'm going to object as
14 leading, Your Honor.

15 THE COURT: Sustained.

16 MR. SCISCENTO: I'll withdraw.

17 MR. COUMOU: It doesn't matter. I'm just
18 bringing him to a certain point --

19 MR. SCISCENTO: I'll withdraw.

20 THE COURT: Thank you, Mr. Sciscento.

21 MR. COUMOU: Okay.

22 THE COURT: Okay. Go ahead.

23 BY MR. COUMOU:

24 Q A few days after this initial conversation

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1 about Michael having been killed, did you -- did you -- were
2 you playing chess?

3 A Yes.

4 Q And was this approximately November the
5 5th --

6 A Yes.

7 Q -- 1998?

8 A Yes.

9 Q What -- tell the jury what happened when you
10 were playing chess.

11 MR. SCISCENTO: Your Honor, I'm going to
12 object.

13 If we could approach?

14 THE COURT: Yes.

15 (Unreported discussion at the bench.)
16

17 THE COURT: Okay. Mr. Coumou, you may
18 proceed.

19 MR. COUMOU: Thank you.

20 BY MR. COUMOU:

21 Q So now, Mr. Holmes, what -- what did you --
22 what did you and the defendant -- you were playing chess
23 with the defendant?
24

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1 A Yes.

2 Q What did you guys start talking about or
3 how -- what happened?

4 A Well, we were just sitting there, just
5 playing chess, and then we was also watching TV at the same
6 time. And I had made a move, and he made a move, and he was
7 like: You want to know something?

8 I'm like: What?

9 And he was like -- ah, he said:
10 It's about the hommie, Michael.

11 I'm like: Okay.

12 He was like he know who killed
13 him.

14 I'm like: Okay, too.

15 He said: T-Bone did it.

16 I'm like: T-Bone did it?

17 He was like: Yeah.

18 I'm like: Well, whatever

19 reason -- whatever he did it for, it must have been
20 something personal or whatever. I'm not sure.

21 And then, ah, we sat there and
22 played, made a couple moves and he was like: Now, do you
23 want to know the truth? He said: I killed him?

24 I said: For what?

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1 He said: Because he was trying
2 to take over the stripes -- at first he said that don't
3 make -- it don't make no difference why I killed him, but I
4 did it.

5 I'm like: Okay, whatever. You
6 did it for a good reason, I'm pretty sure.

7 And he was like: Whatever.

8 And then he said he did it
9 because he was trying -- Michael was trying to take over his
10 stripes.

11 I'm like: Then why didn't you
12 just go for the shoulders?

13 Because -- he was like:

14 Because the rest of the hommies wanted him dead.

15 Q And that's what he told you?

16 A Yes.

17 Q But he told you he killed him because he --
18 he thought he was taking away his stripes?

19 A Taking away his stripes, yeah.

20 Q And to you, what did that mean, take away
21 his stripes?

22 A Michael was trying to be a bigger man than
23 Brendan was.

24 Q In the gang?

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1 A Yes.
 2 Q And when you heard that, what were you --
 3 what did that make you feel?
 4 MR. SCISCENTO: I'm going to object. I
 5 don't see the relevance here.
 6 THE COURT: Sustained.
 7 BY MR. COUMOU:
 8 Q What -- when you learned -- when the
 9 defendant confessed to you about this, what -- what did you
 10 do?
 11 A Well, by then, the game was over. I got up
 12 and walked -- and went in my room and just sat there.
 13 And then when they locked us
 14 down, I talked to the officer on what happened there.
 15 MR. SCISCENTO: Your Honor, I object to this
 16 too. I think we're getting --
 17 MR. COUMOU: Okay.
 18 THE COURT: Thank you.
 19 BY MR. COUMOU:
 20 Q Did you contact the police?
 21 A Yes.
 22 Q And did you --
 23 MR. SCISCENTO: Your Honor, I don't see
 24 where we're going with this.

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1 MR. COUMOU: Well --
 2 THE COURT: Mr. Coumou, where are we going
 3 with this?
 4 MR. COUMOU: Well, Judge.
 5 THE COURT: Why don't you approach.
 6 MR. COUMOU: Yeah, let me approach,
 7 because --
 8
 9 (Unreported discussion at the bench.)
 10
 11 BY MR. COUMOU:
 12 Q Okay. Mr. Holmes, did you -- after you --
 13 after the defendant confessed to you about killing Michael,
 14 did you report that to the police?
 15 A Yes.
 16 Q And why did you report it to the police?
 17 A 'Cause I was mad because he killed my home
 18 boy.
 19 Q And that's -- is that the reason?
 20 A Yes.
 21 MR. COUMOU: Pass the witness, Judge.
 22 THE COURT: Okay. Mr. Sciscento.
 23 MR. SCISCENTO: Thank you, Your Honor.
 24

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CROSS-EXAMINATION

1 BY MR. SCISCENTO:
 2 Q Mr. Holmes, let's clear up the mystery.
 3 This was said, this
 4 conversation was done, while you were inside of the Clark
 5 County Detention Center; is that correct?
 6 A Yes.
 7 Q Okay. What were you in there for?
 8 A Robbery.
 9 Q Robbery?
 10 A Yes.
 11 Q Was it robbery with use?
 12 A Yes.
 13 Q Which means what, robbery with use --
 14 A Robbery with the use and conspiracy to
 15 commit robbery.
 16 Q Okay. But robbery with use with a deadly
 17 weapon, with a weapon?
 18 A With the use of a deadly weapon.
 19 Q Okay. Was it a firearm?
 20 A Yes.
 21 Q Okay. The District Attorney hasn't given
 22 you any leniency or hasn't promised you any -- anything for
 23 your testimony today, have they?
 24

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1 A No.
 2 Q Okay. You said when you first met Mr.
 3 Nasby, he came up to you and said: Do you remember me?
 4 Didn't you used to date that Mexican girl, something like
 5 that?
 6 A Yes.
 7 Q And you didn't recognize him at first?
 8 A No, I didn't.
 9 Q Okay. And then subsequently to that, you
 10 were sitting down, having this chest game?
 11 A Yes.
 12 Q How long did that -- was that time period?
 13 A I'd said about a month and a half or two
 14 months.
 15 Q Okay. He didn't know you -- or you
 16 didn't -- you really weren't that good of friends when you
 17 first got in there, were you, with Mr. Nasby?
 18 A Well, no, not really.
 19 Q Because --
 20 A He wasn't --
 21 -- because he didn't recognize you?
 22 A He recognized --
 23 Q I'm sorry. You didn't recognize him? You
 24 didn't recognize him, correct?

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1 A Yes.
 2 Q Okay. So now, you are telling us that, out
 3 of the blue, this guy would just come out and tell you that
 4 he did it, that he killed?
 5 A Well, 'cause when we was in there, it came
 6 out to where he -- he was saying we was cousins.
 7 Q Okay. You said your -- your homies were
 8 going to ride for him. And I'm assuming you mean --
 9 A Ride for Michael.
 10 Q -- ride for Michael?
 11 A Yeah.
 12 Q Which means what?
 13 A They were going to go look for the people
 14 who did it.
 15 Q And who is a homie?
 16 A Who was my homie?
 17 Q Not your homie in particular --
 18 A Who is the homie?
 19 Q -- but let's get to the definition of
 20 homies.
 21 A Friends.
 22 Q Friends, people in the gang?
 23 A Yes.
 24 Q Most likely people in gangs, they consider

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1 each other homies?
 2 A Yes.
 3 Q Dogs and stuff like that?
 4 A Not dogs, but we consider ourselves homies.
 5 Q Dog is a term of endearment though, too; is
 6 that correct?
 7 A That's something totally different.
 8 Q Homie is tighter?
 9 A Yes.
 10 Q Homie is -- let me see if I understand
 11 this: The lingo is a dog is a friend, but homie is closer
 12 than that?
 13 A Yes.
 14 Q Okay. So a homie is somebody very close
 15 and your gang members are usually your homies?
 16 A Yes.
 17 Q So if Michael's homies were going to ride,
 18 that means Michael's -- the members of the L.A. Crazy Riders
 19 were going to --
 20 A No, the members of CYN was going to ride.
 21 Q CYN?
 22 A Yeah.
 23 Q CYN is the Las Vegas gang.
 24 A No. They're still California.

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1 Q Wait a minute. The L.A. Riders are --
 2 A L.A. Riders is California; CYN is
 3 California, but they are two different cliques.
 4 Q And they come over here and they formed L.A.
 5 Crazy Riders?
 6 A We came out here, we form CYN first.
 7 Q Okay.
 8 A When -- Brendan and they was from L.A.
 9 Riders.
 10 Q Okay.
 11 A We both -- all of us was from L.A., so we
 12 cliqued up together, and that's how it became L.A. Crazy
 13 Riders.
 14 Q Do you know a person in that gang named
 15 Sugar Bear?
 16 A Yes, I do.
 17 Q Samion Von Lewis?
 18 A Yes, I do.
 19 Q He's from California?
 20 A Yes.
 21 Q Was he a homie of Michael's?
 22 A Yes.
 23 Q Okay. Prior -- sometime while you were in
 24 custody, you contacted my office; is that correct?

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1 A Yes.
 2 Q And you contacted my office for my office to
 3 represent you; is that correct?
 4 A Yes.
 5 Q And I informed you --
 6 MR. COUNTOU: Judge, can I get a date when?
 7 MR. SCISCENTO: I'm not sure exactly when.
 8 BY MR. SCISCENTO:
 9 Q Do you remember when you contacted my
 10 office?
 11 A No.
 12 MR. COUNTOU: Judge, I think Mr. Sciscento
 13 should have some sort of record if he knows that there was a
 14 contact.
 15 MR. SCISCENTO: You'd think.
 16 MR. COUNTOU: What?
 17 MR. SCISCENTO: You'd think.
 18 THE COURT: Okay. Mr. Sciscento, where are
 19 we going with this anyway?
 20 MR. SCISCENTO: Well, I'm trying to show a
 21 little bias, Your Honor, if I can have a little more leeway.
 22 MR. COUNTOU: Then I would object. I don't
 23 see where the bias would be.
 24 THE COURT: Well, I -- bias is proper to

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1 bring out in cross-examination, but why don't you get to
2 what you think the bias is.
3 MR. SCISCENTO: Let me get to that.
4 BY MR. SCISCENTO:
5 Q I informed you at that time that I couldn't
6 represent you because I was representing Brendan Nasby; is
7 that correct?
8 A Yes.
9 Q Okay. You have your trial for robbery with
10 use of a deadly -- or robbery with use of a deadly weapon,
11 you have a trial coming up?
12 A Yes.
13 Q Okay. And the D.A. hasn't given you any
14 deals or anything like that?
15 A No.
16 Q Okay. Not like they've given deals to
17 anybody else who testifies against Brendan Nasby?
18 MR. COUMOU: Objection; assumes facts that
19 the witness may not know about.
20 THE COURT: Sustained.
21 MR. SCISCENTO: I have no further questions.
22 Withdraw the question.
23 THE COURT: Mr. Coumou.
24

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1 step around, you may do so also.
2 MR. COUMOU: And I've -- Mr. Holmes, if you
3 can just hold it up and I can make a record.
4 Okay. Where is the CYN?
5 THE WITNESS: It's LACRG.
6 MR. COUMOU: Oh, LACRG on his shoulder.
7 BY MR. COUMOU:
8 Q Do you have an actual tattoo that says CYN?
9 A That actually says -- (Shakes head
10 negatively.)
11 THE REPORTER: Is that no?
12 THE WITNESS: No.
13 BY MR. COUMOU:
14 Q And that tags you as a member, or as a
15 former member right now, I guess, as -- from the L.A. Crazy
16 Riders?
17 A No. They dropped L.A. Crazy Riders.
18 Q What's that?
19 A They just dropped. There is no more L.A.
20 Crazy Riders.
21 Q Okay. It's just L.A. Riders then?
22 A Just CYN.
23 Q And that's what you are now still a clique
24 in?

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1 REDIRECT EXAMINATION
2 BY MR. COUMOU:
3 Q Mr. Holmes, are you expecting anything in
4 return because of what you are doing here today?
5 A Honestly?
6 Q Yes.
7 A Him to go to the penitentiary.
8 Q Why did you say that?
9 A Because he took my hommie's life for no
10 reason.
11 MR. SCISCENTO: I'm going to object to that,
12 Your Honor
13 THE COURT: Okay. The jury will disregard
14 the last statement made by Mr. Holmes and it's stricken from
15 the record.
16 BY MR. COUMOU:
17 Q Mr. Holmes, do you happen to have a tattoo
18 that has CYN on yourself?
19 A It's L.A. Crazy Riders.
20 MR. COUMOU: Could you show that to the
21 jury?
22 THE COURT: Mr. Holmes, why don't you stand
23 in front of the jury box, please.
24 And, counsel, if you wish to

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1 A Yes.
2 MR. COUMOU: All right. I have nothing
3 further then.
4 THE COURT: Mr. Sciscento.
5 RE-CROSS-EXAMINATION
6 BY MR. SCISCENTO:
7 Q I want to make sure I understand this: On
8 your arm, it says LACR, L.A. Crazy Riders?
9 A Yes.
10 Q That's one clique, one group; and then
11 there's CYN?
12 A No. L.A. Crazy Riders, meaning we both
13 cliqued up.
14 Q L.A. Riders, one clique?
15 A CYN is another.
16 Q CYN's another.
17 You merged with Crazy Riders,
18 right?
19 A Yes.
20 Q And you have L.A. Crazy Riders?
21 A LACR.
22 Q Okay. Which stands for L.A. Crazy Riders?
23 A Yes.
24

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1 Q But somebody with CYN may not be an L.A.
 2 Crazy Rider?
 3 A Right.
 4 MR. SCISCENTO: Okay. No further questions,
 5 Your Honor.
 6 THE COURT: Mr. Coumou.
 7 MR. COUMOU: Nothing, Judge.
 8 THE COURT: Do any of the ladies and
 9 gentlemen of the jury have any questions for Mr. Holmes?
 10 (Negative response.)
 11
 12 THE COURT: Okay. Mr. Holmes, thank you for
 13 coming to court and testifying this afternoon. You are
 14 excused.
 15 (Witness excused.)
 16
 17 THE COURT: The State may call its next
 18 witness.
 19 MR. COUMOU: Thank you.
 20 The State calls Detective Tom
 21 Thowsen.
 22 THE COURT: Okay. Detective, if you will
 23 just come up here and step around to your right.
 24

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DIRECT EXAMINATION

1 BY MR. COUMOU:
 2 Q Sir, could you inform the jury as to your
 3 employment?
 4 A I'm a police officer with the Las Vegas
 5 Metropolitan Police Department assigned to the homicide
 6 section.
 7 Q What is the exact duties that you have with
 8 the homicide division?
 9 A We are charged with investigating homicides
 10 and suspicious deaths, as well as suicides.
 11 Q Do you have a partner in this case?
 12 A Yes, I do.
 13 Q And what is his name?
 14 A His name is Detective James Buczek.
 15 Q Now, he indicated -- if I tell you that he
 16 indicated earlier in his testimony that you -- when you
 17 respond as a partner, that you flip flop: One time, you
 18 take the crime scene; the next time, you take the witnesses.
 19 Is that normally how it works?
 20 A That's correct.
 21 Q I'm going to draw your attention now to July
 22 the 6th -- 17th, 1998.
 23 Were you working that date?
 24

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1 Whereupon,
 2 THOMAS D. THOWSEN
 3 having been called as a witness by the State and
 4 having been first duly sworn to tell the truth, the
 5 whole truth and nothing but the truth, was examined
 6 and testified as follows:
 7
 8 THE CLERK: Thank you. You may be seated.
 9 THE WITNESS: Thank you.
 10 THE COURT: Detective, the attorneys are
 11 going to ask you some questions here this afternoon. Please
 12 answer them the best you can without arguing with any of the
 13 attorneys.
 14 Also, if there is an objection
 15 to any question asked to you, please don't answer it until I
 16 tell you it's permissible to do so.
 17 And could you state your name
 18 and spell your last name for our court reporter, please.
 19 THE WITNESS: Yes, sir, Your Honor,
 20 Thomas D. Thowsen;
 21 T-h-o-w-s-e-n.
 22 THE COURT: Mr. Coumou, you may proceed.
 23 MR. COUMOU: Thank you.
 24

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1 A Yes.
 2 Q And did you and your partner get called out
 3 to a crime scene?
 4 A Yes, we did.
 5 Q Could you explain where were you called out
 6 to?
 7 A It was the desert area in the northwest area
 8 of town.
 9 Q The area where you went to, could you
 10 describe to the jury exactly what you saw.
 11 A There was a power line that we followed for
 12 approximately, I believe it was, 2.1 miles from Alexander --
 13 and I believe the cross street is Jensen, off the top of my
 14 head.
 15 When you get out into this
 16 portion of the desert, it's just open desert with this power
 17 line road, the giant power line. And then you can see
 18 houses to the east off in the distance, and to the west,
 19 there are mountains.
 20 Q When you got to the crime scene or what you
 21 believe -- what you saw as a crime scene, did the duties
 22 divvy up and got -- did it get divvied up between the two of
 23 you?
 24 A Yes.

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1 Q And what were you in charge of?
 2 A I was in charge of the crime scene
 3 investigation.
 4 Q Okay. What do you do when you are in charge
 5 of the crime scene?
 6 A When we're in charge of the crime scene, we
 7 work closely with the crime scene analysts. They're the
 8 ones that actually take the photographs, gather the
 9 evidence, take fingerprints and that.
 10 And what we do is we work along
 11 with them, trying to determine what evidence is available,
 12 and make sure that they collect the available evidence and
 13 that we're familiar with what they're -- what they're
 14 collecting.
 15 Q Did you see a -- a possible homicide
 16 suspect -- I mean homicide victim?
 17 A Yes.
 18 Q Yeah?
 19 And what position -- what did
 20 you see him in?
 21 A This person was laying in an area that was
 22 kind of a -- a turn-around area by this power line road. He
 23 was laying right near the edge of it. The edge dropped off
 24 about 20 feet down and then spanned out toward the

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1 A It looked like there were no signs of trauma
 2 that would indicate to us that he'd been in any sort of a
 3 struggle. We didn't see any cuts or bruises that you would
 4 see normally if somebody was having a fight with somebody.
 5 We also noted that the person had jewelry on -- he had a
 6 watch and a ring on, so it didn't appear that he was robbed
 7 at that point.
 8 Q In your line of work then, when you see
 9 something like that in -- a victim laying in an isolated
 10 area, in the condition that you've just described, what does
 11 that generally mean?
 12 What does that tell you when
 13 somebody is in a -- with no cuts, scrapes or bruising?
 14 A That they probably come there with somebody
 15 they know and trust and feel comfortable with.
 16 Q Now, after -- after you have described the
 17 body, is there anything else that you do for your task, and
 18 that is, documenting the crime scene?
 19 A Well, we also look near the body for any
 20 evidence, such as shell casings, weapons that might be
 21 around, things like that.
 22 Q Eventually, witnesses were -- were
 23 identified and both of you started narrowing your
 24 investigation at one particular individual; is that correct?

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1 mountains. And this was a young black male that was lying
 2 on his back.
 3 Q You say he was lying on his back.
 4 Could you describe the physical
 5 condition that you saw him in?
 6 A He had blood coming from areas of his head.
 7 There was a blood-like substance that was around the back of
 8 his head.
 9 There was some -- a little bit
 10 of skin slippage that was visible on his face. He had an
 11 apparent through and through gunshot wound that went from
 12 his back out his neck in the front, and a gunshot entry
 13 wound to his left eye. (Indicating)
 14 There was -- there was also an
 15 area with a little bit of dirt puffed up against his head,
 16 where there was a slight crater next to the left side of his
 17 head, as if a bullet had struck the ground next to him.
 18 Q Did -- when you look at a homicide,
 19 certainly gunshot wounds will capture your attention.
 20 Do you also look at the
 21 physical body itself as to what condition it was in?
 22 A Yes.
 23 Q And in this particular case, what was this
 24 young victim's body -- in what condition was it in?

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1 A That's correct.
 2 Q And who was that person?
 3 A That is Brendan Nasby, also known as Blue.
 4 Q Okay. During your investigation, did you
 5 ever come in contact with the defendant Blue?
 6 A Yes.
 7 Q And where was that?
 8 A At his residence.
 9 Q And what date was that?
 10 Could it be August 4th, 1998?
 11 A That sounds correct, yes.
 12 Q Okay. Do you see him here in court today?
 13 A Yes, I do.
 14 Q Okay. What -- point to him, please, and
 15 tell me what he's wearing today.
 16 A He would be the gentleman at the defense
 17 table wearing the blue suit, white shirt with a dark tie.
 18 MR. COUNTOU: Okay. Judge, if the record
 19 could reflect that the witness has identified the defendant.
 20 THE COURT: The record will so reflect.
 21 BY MR. COUNTOU:
 22 Q What was your duty at the -- at the search
 23 warrant at the defendant's home?
 24 A Well, we had -- several of us responded,

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1 Whenever we do a search warrant, we try to get several
2 people involved, just as a safety factor, especially when
3 we're dealing with a homicide case.

4 At that point, my duty was
5 going to be to determine if Mr. Nasby was there; if Mr. --
6 Mr. Nasby was located, I was going to accompany Detective
7 Buczek back to the detective bureau or another location to
8 speak with him; and Detectives Marin and Morgan were going
9 to remain at the scene to do the actual search.

10 Q Who actually took physical custody of the
11 defendant?

12 A Detective Buczek.

13 Q Now, after the search warrant -- well, prior
14 to the search warrant, did you get involved in a side
15 investigation of possible intimidation?

16 A Yes.

17 Q And what was that all about?

18 A One of the witnesses that had come forward
19 and given us a statement had been contacted by Mr. Nasby and
20 threatened.

21 Q Okay. Who -- who was that?

22 A That's Tanesha Banks.

23 Q Okay. Explain exactly how this intimidation
24 happened.

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1 from Tanesha Banks.

2 Q Okay. Looking at that, does it help refresh
3 your memory as to when you took -- took this statement as to
4 this intimidation?

5 A Yes. I took the statement from her at one
6 o'clock in the afternoon on the 23rd, so the intimidation
7 would have happened the previous night, on the 22nd.

8 Q Okay. Now, Detective Thowsen, now that you
9 went to take this statement, did you do anything personally,
10 independent of police verification, to see if, in fact, Miss
11 Banks could have received a call from the defendant?

12 A Yes, I did.

13 Q What -- what exactly did you do?

14 A I contacted the office of the Director of
15 the Clark County Detention Center and spoke with his
16 assistant, who put me in touch with an individual that's in
17 charge of inmate phones, a person by the name of Arnold
18 Young, and I requested Mr. Young research to determine
19 whether or not the phone number in question did come from
20 the jail.

21 I should point out that in my
22 investigation, as I took the statement from Tanesha Banks,
23 she actually showed me her caller identification machine
24 that still had the number logged on it. So I was able to

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1 A She received a telephone call at her
2 residence, and upon speaking with this individual, he
3 identified himself as Blue; and then she recognized his
4 voice as Brendan Nasby; and threats were made to her that
5 she should not testify or her life was in jeopardy.

6 Q Okay. When -- when was this that you
7 responded to her home, do you recall the date?

8 A It would have been the same date that I took
9 a statement from her and --

10 Q About that incident?

11 A About that incident.

12 Q And what -- could that have been September
13 the 23rd, 1998? If I show you a statement, would that help
14 refresh your memory?

15 A Yes, it would.

16 MR. COUNOU: Court's indulgence, Judge.

17 THE COURT: Yes.

18 MR. COUNOU: If I may approach counsel?

19 THE COURT: Yes, you may.

20 BY MR. COUNOU:

21 Q Do you recognize what I've just handed you?

22 A Yes.

23 Q What is that?

24 A This is a copy of the statement that I took

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1 see that and record that right from her machine.

2 Q Do you recall what that number was?

3 A I believe it was 315-4415.

4 Q And is that a -- the prefix, 315, is that a
5 specific prefix for the Clark County Detention Center?

6 A Yes, it is.

7 Q Okay. And did you verify if that number
8 could have been placed -- if that number was called from the
9 Clark County Detention Center?

10 A Yes, I did.

11 Q Okay. And if that number does, in fact,
12 return to the Clark County Detention Center?

13 A Yes, it does.

14 MR. COUNOU: Judge, I'll pass the witness.

15 THE COURT: Mr. Santacroce.

16 MR. SANTACROCE: Thank you.

17 CROSS-EXAMINATION

18 BY MR. SANTACROCE:

19 Q Officer Thowsen, with regard to your role in
20 the crime scene investigation, when you arrived at the crime
21 scene, who was there?

22 A When I arrived, there were approximately two
23 or three patrol officers and a patrol sergeant, as I recall.

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1 Q And had they been around the body at that
2 time?
3 A According to Sergeant Carroll, he explained
4 that he'd carefully approached the body and made sure that
5 there were no signs of life or anything else around there,
6 and then backed out and preserved the scene, waiting for us
7 to arrive.
8 Q And how would he have preserved the scene?
9 A By his mere presence of making sure nobody
10 else came down the road and would approach the -- the body.
11 MR. SANTACROCE: You prepared a report in
12 this matter -- may I approach, Your Honor?
13 THE COURT: Yes.
14 BY MR. SANTACROCE:
15 Q I'm going to show you this report and ask
16 you if this is, in fact, your report. (Indicating)
17 A Yes, this is a copy of my report.
18 Q On your report, you said -- you have a
19 section "Persons at the Scene," and there was a Sergeant J.
20 Carroll?
21 A That's correct.
22 Q Officer McGhie?
23 A That's correct.
24 Q Giersdorf?

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1 and that homicide should be involved and that it's not just
2 a suicide or a natural death that they would normally
3 handle.
4 Q You also have individuals Lieutenant
5 Petersen, Hefner, Thowsen and yourself -- I mean, Buczek and
6 yourself?
7 A That would be the homicide section.
8 Q So there was four homicide detectives there?
9 A Two detectives, one sergeant and one
10 lieutenant.
11 Q Okay. And what was Peterson's and Hefner's
12 role?
13 A They gather information from us to relay
14 information on to their supervisors and to the media.
15 Q So is everybody gathering information,
16 gathering evidence, gathering information? What's going on?
17 A No. The crime scene analyst are collecting
18 evidence information; Lieutenant Petersen doesn't go up and
19 look for evidence in that. He stands back by the patrol
20 cars. We go back and tell him what we found, what
21 information is pertinent, and then he can make a press
22 release from the information we pass on to him.
23 Q I guess what I'm asking you is: How many
24 people actually trampled on the scene?

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1 A I'm not familiar with that name. It's not a
2 person I know, so whatever I have on the report would --
3 Q Would be accurate?
4 A -- would be accurate.
5 Q Smith, Officer Smith?
6 It's on the report. Was he
7 there?
8 A If it's on the report.
9 Q Okay. What were these -- what were the
10 functions of these individuals?
11 A These individuals were further down the
12 road, making sure nobody drove up.
13 Q Were they there when you arrived?
14 A They were further down the road.
15 I believe Sergeant Carroll was
16 the main one that was right closest by the turn-around area.
17 Q You also listed Detective Falvey.
18 A She showed up later.
19 Q After you.
20 And what was her function
21 there?
22 A She's a general assignment detective.
23 Normally, they arrive at the
24 scene before we do and determine that it appears suspicious

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1 A Nobody trampled on the scene.
2 Q Okay. What -- how many people were within
3 50 feet of the body?
4 A There would be myself, Detective Buczek
5 would have come by; Sergeant Hefner, three crime scene
6 analysts, and Sergeant Carroll, I believe.
7 Q Now, Buczek testified that he was
8 responsible for taking witness statements. You were in
9 charge of the crime scene; that is, I guess, gathering or
10 pointing out evidence.
11 Would that be accurate to say?
12 A I don't actually gather the evidence; the
13 crime scene analysts gather it.
14 Q So more people came then besides who we've
15 listed, right?
16 A No.
17 Q Okay. What about criminalist Cabrales?
18 A He's one of the persons that I just named
19 off, mentioned.
20 Q How about Sams?
21 A That's another one I just mentioned.
22 Q Neil.
23 A That's the third one that I mentioned, three
24 crime scene analysts.

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1 Q Okay. So three crime scene analysts come
2 and they gather the evidence?
3 A That's correct.
4 Q I'm still unclear as to what you're doing.
5 Are you pointing out: Pick
6 this up; pick this up; pick this up?
7 A What I'm pointing out is: I notice this
8 over here. I notice this over here. I'm communicating with
9 them, saying: What do you see? I'm saying: I see three
10 nine millimeter casings. What do you see? They say: We
11 see that, plus maybe we see this right here.
12 Q Okay.
13 A So that everybody -- we have more eyes than
14 just one set looking for evidence. It's kind of managing a
15 crime scene.
16 Q Okay. When you got to the scene, besides
17 noticing what -- what's the first step you take: You view
18 the body?
19 A No. The first thing that we do is we're
20 away from the body and we'll connect with Sergeant Hefner,
21 Detective Buczek and myself, and we'll speak with whoever is
22 going to give us a rundown on what happened that brought us
23 all there today. In this case, it was Sergeant Carroll.
24 And Sergeant Carroll will speak

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1 with us and tell us exactly how he got the call, what
2 information he has, what route he took to walk towards the
3 body, so that we'll be able to take the same route when we
4 go back.
5 And then what we normally do is
6 we'll wait for the crime scene analysts to arrive so that we
7 can approach the body all at the same time with the crime
8 scene analysts, so that we don't have people traipsing all
9 over the crime scene.
10 Q Okay. When you got there -- there's a
11 section in your report, "Description of the Scene," and you
12 say in your report that the area showed remnants of heavy
13 firearm target practice, correct?
14 A That's correct.
15 Q And numerous cartridge casings of different
16 sizes, correct?
17 A Correct.
18 Q And you say the majority of the cases --
19 cases were dirty, weathered in appearance; is that also
20 correct?
21 A That is correct.
22 Q But you did retrieve some casings on the
23 scene, didn't you?
24 A Yes, we did.

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1 Q And what did you retrieve?
2 A We retrieved three nine millimeter cartridge
3 cases that were head stamped "Winchester nine millimeter."
4 Q And let me stop you there.
5 Why did you retrieve those
6 three?
7 A Because they stood out like stars in the
8 night, because they were nice and shiny and new, instead of
9 being old, like they'd been out there for a long time.
10 Q And when you looked at the body, did you
11 know you were looking for a nine millimeter?
12 A Absolutely not.
13 Q Okay. But these three casings were shiny
14 and bright and you thought, "Some relevance; we'll take them
15 back."
16 A Yes.
17 Q And what was your intent to do with those
18 casings?
19 A To have them available so that if, at some
20 point, we came upon a weapon that was used by a suspect, we
21 could try to see if those casings came from that weapon, and
22 when we recovered any projectiles or bullets from the
23 victim's body, to see if they were the same caliber at those
24 shell casings.

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1 Q And you would have wanted those reviewed by
2 a forensic firearms person, correct?
3 A Yes, sir, that's correct.
4 Q Okay. Let's talk about some of the other
5 things that you picked up over there on the scene.
6 You picked up three
7 Winchester -- well, strike that. Let me go back.
8 Where were these casings
9 located in relation to the body?
10 A As you were looking at the body, as I
11 recall, they were away from the head towards -- I guess it
12 would be the northwest area.
13 Q And these are casings that would normally
14 have ejected from the weapon --
15 A Yes.
16 Q -- after it was shot?
17 A Yes.
18 Q You also state in your report you picked up
19 three Winston cigarette butts; or at least you observed
20 them. Maybe you didn't pick them up, but you had them
21 picked up, correct?
22 A Yes, that's correct.
23 Q And what was important about that?
24 A They also looked like they hadn't been there

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1 for a long, long period of time, and we collected those in
2 case there was evidence that could be obtained from them.
3 Q And all of this evidence is trying to put
4 this to a perpetrator, correct, the trigger person? That's
5 your hope and desire?
6 A Correct. We want to find the truth.
7 Q So we have three Winston cigarette butts and
8 three shiny cases, nine millimeter, right now?
9 A As well as a shiny .46 Colt casing.
10 Q Okay. Now, you also located some
11 footprints, I believe; is that also correct?
12 A There were two partial footwear impressions
13 in this gravel area.
14 Q And what did you do relative to those
15 impressions?
16 A The crime scene analyst took photographs in
17 order to try to capture an impression as best they could in
18 case there was anything that was good enough to be compared
19 at a later date with footwear from a suspect.
20 Q Did you do any castings of those?
21 A I believe it wasn't quality, according to
22 them, to cast; and they believe they got their best results
23 by taking photographs. That would be a call that the crime
24 scene analyst supervisor would make.

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1 A Yes.
2 Q On that search warrant that you served, did
3 you indicate that you were looking for a nine millimeter
4 weapon?
5 A Yes.
6 Q And when you went to the Nasby residence,
7 who was the first person that came to the door?
8 A His mother.
9 Q And you showed her the search warrant?
10 A Sergeant Hefner may have been the one who
11 showed her the search warrant.
12 Q In fact, you told her that you were looking
13 for a nine millimeter weapon, didn't you?
14 A I don't believe I told her anything, sir.
15 Q Did you hear anyone tell her that?
16 A No.
17 Q Where was Brendan at the time when you
18 served the search warrant on Mrs. -- on his mother?
19 A Upstairs, in his bedroom.
20 Q Did you give his mother a copy of the search
21 warrant?
22 A Sergeant Hefner would have been doing that,
23 so I don't know at what point he would have given it to her.
24 Most likely, he would give her a copy as we're going to

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1 Q Did you or any other officer touch the body?
2 A No.
3 Q Remove anything from the body?
4 A No.
5 Q Other than what you've told us here today --
6 strike that.
7 Subsequent to this on-scene
8 investigation, you then, at some point, executed a search
9 warrant on the home of Brendan Nasby; is that correct?
10 A That's correct. I assisted in executing a
11 search warrant.
12 Q Were you the one that got the search warrant
13 from the judge? Did you prepare the search warrant?
14 A No, I did not.
15 Q Who did that?
16 A Detective Buczek, my partner.
17 Q And you -- did you review a copy of that?
18 A I --
19 Q Did you see a copy --
20 A I would have seen a copy prior to us going
21 to the house.
22 Q When -- when you get a search warrant, do
23 you list specific items that you are looking for at a
24 particular location?

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1 leave the residence.
2 Q Okay. So now -- you also have a crime scene
3 analyst with you at the search warrant residence, correct?
4 A We ultimately get a crime scene analyst
5 after we make sure that it's safe.
6 Q And he testified here in court earlier.
7 Now, I believe it was his
8 testimony -- the jury can recall their own recollections --
9 but I believe he said that you would instruct him what items
10 to pick up because he really didn't know much about what he
11 was looking for. He didn't know much about the crime.
12 Would that be accurate?
13 A I don't think he would be talking about me,
14 since I probably wasn't there for most of the time. Maybe
15 he was talking about Marin and Morgan and Sergeant Hefner.
16 Q Okay. Were you there when the search was
17 conducted?
18 A I was there initially. Then I left the
19 scene to follow Detective Buczek with Mr. Nasby from the
20 area; and then I followed Detective Buczek back to the scene
21 momentarily and went back into the scene where I did go back
22 into the bedroom.
23 Q Did you go into the northwest bedroom or the
24 bedroom of Brendan Nasby?

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1 A Yes, I did.
 2 Q Saw some shoes, footwear, in his bedroom?
 3 A I don't specifically remember seeing shoes.
 4 I went there looking for a weapon.
 5 Q Did you see cigarettes in his room?
 6 A I wasn't looking for cigarettes.
 7 Q You were not looking for Winston cigarettes,
 8 even though you'd picked three up at the crime scene?
 9 A I did not respond back there to conduct the
 10 actual search warrant. I was assisting Detective Buczek
 11 with Mr. Nasby as we were about to go interview him and had
 12 returned back to recover the weapon.

13
 14 (Whereupon, a sotto voce at this time.)

15
 16 BY MR. SANTACROCE:

17 Q Did you recover -- let me go back a little
 18 bit.

19 Brendan Nasby was arrested on
 20 the date that you conducted the search warrant, correct?

21 A That's correct.

22 Q Did you recover any other evidence from that
 23 point forward?

24 MR. COUMOU: Judge, I --

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1 sometimes we are separated.
 2 Q Let's talk about Deskin.
 3 A The statement itself will indicate on there
 4 who was present, in the very first line.
 5 Q It says you were present on 10/19/98,
 6 Buczek, Deskin and his attorney, Chad Golightly, were
 7 present.

8 Do you recall that?

9 A May I see that, sir?

10 Q Sure.

11 A Yes.

12 Q You were present?

13 A Yes, sir.

14 Q Do you have an independent recollection of
 15 that?

16 A I haven't reviewed that statement for
 17 however long it's been since that statement was taken, sir.

18 Q Do you have an independent recollection of
 19 the interview?

20 A No, sir, I don't; not at this time.

21 Q I'm going to show you page two and ask you
 22 to take a look at that; and then I want to ask you some
 23 questions about it. Okay?

24 A Okay.

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1 MR. SANTACROCE: Do you want me to clarify
 2 that.

3 MR. COUMOU: -- ask for clarification.

4 THE COURT: Would you rephrase, please?

5 MR. SANTACROCE: Sure.

6 BY MR. SANTACROCE:

7 Q Did you go back out to the crime scene to
 8 look for more evidence after Brendan was arrested.

9 A Not that I recall, no, sir.

10 Q Did you go back to Brendan's house to look
 11 for more evidence after he was arrested?

12 A Not after the house was completely searched
 13 by the other officers, no.

14 Q So after his arrest, what you had in the way
 15 of evidence, you had already collected; is that correct?

16 A That sounds correct, yes, sir.

17 Q Now, Buczek testified that he took witness
 18 statements from various individuals.

19 Were you privy to any of those
 20 statements?

21 What I mean by that: Were you
 22 with him when some of these statements were taken?

23 A It would depend on which individual and
 24 which date you are talking to. Sometimes I'm with him; and

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1 Q Are you done?
 2 A Yes.
 3 Q The initials T.T., would that have been you?
 4 A Yes, it would.
 5 Q You make a statement here on page two that
 6 you wanted to point out that:

7 "Part of the plea agreement that your --
 8 quoting -- that your attorney has reached with the
 9 District Attorney's Office, parenthesis, loud
 10 speaker going off in jail, and that as part of the
 11 plea agreement and your charges, you have stated,
 12 through your attorney, that you are willing to give
 13 a true and accurate statement about the death of
 14 Michael Nasby; is that correct?

15 "QUESTION: Michael Beasley."

16 THE COURT: Would you read --

17 BY MR. SANTACROCE:

18 Q So you were mistaken about the victim and
 19 then it was corrected to Michael Beasley, correct?

20 A Correct.

21 Q Mr. Deskin had already reached a plea
 22 agreement, at least it was your understanding, with the
 23 District Attorney's Office, before he gave any statement
 24 implicating my client; isn't that correct?

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1 A According to what that says, that would
2 sound correct, yes, sir.
3 Q Now, you were asked some questions about
4 intimidation, specifically regarding Tanesha Banks, and I
5 believe it was your testimony that she contacted you and
6 said that she was being intimidated?
7 A Yes, sir.
8 Q You subsequently took a statement from her,
9 correct?
10 A That is correct.
11 Q And all of the comments you made were her
12 version as to what she perceived was happening; isn't that
13 correct?
14 A That is correct.
15 Q And to verify that then, you look at her
16 caller I.D.
17 Were you at her house at the
18 time when she gave the statement?
19 A Yes, I was.
20 Q And you looked at her caller I.D.; is that
21 correct?
22 A That is correct.
23 Q And her caller I.D. had the number 315-4415
24 on it?

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1 A Yes, sir.
2 Q Didn't have a name, did it?
3 A No, sir.
4 Q Subsequently, you went to Arnold Young,
5 correct?
6 A That is correct.
7 Q And you went there to try to verify if this
8 number was what?
9 A Was from the jail.
10 Q And you found out it was?
11 A Yes.
12 Q How many other numbers did you find out were
13 from the jail?
14 A He said that the jail has a rotary system
15 that has more than a hundred numbers.
16 Q Same prefix, 315?
17 A I don't know if they all have the same
18 prefix. He just said that there is several that go through.
19 Q And one of those numbers was 315-4415?
20 A That's correct.
21 Q So that number could have come from any one
22 of the thousands of inmates that are in the Clark County
23 Detention Center; isn't that correct?
24 A No, that's not correct.

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1 Q Okay. Tell me why it's not correct.
2 A It's not correct because we narrowed it down
3 to coming to a specific area. He called me back today
4 and --
5 MR. SANTACROCE: Okay. Go ahead.
6 MR. SCISCENTO: I'm going to object to that,
7 and if we can approach?
8 MR. SANTACROCE: Your Honor, if we may
9 approach on this?
10 THE COURT: Okay.
11 MR. COUMOU: Getting a lot of exercise here,
12 but, sure.
13
14 (Unreported discussion at the bench.).
15
16 BY MR. SANTACROCE:
17 Q Go ahead; answer the question, sir.
18 A I spoke with him again today, because when I
19 originally spoke with him, he was perplexed that he could
20 not verify exactly where this number was coming from.
21 Because he explained to me what
22 they do is they take the number outside the jail that's
23 called and they trace it backwards through some place in
24 Texas. And he said, initially, that he couldn't come back

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1 to exactly which phone it came from.
2 When we were discussing it
3 earlier, he'd said that he couldn't find it. He mentioned
4 the date of it being in 1999, and I informed him that the
5 correct date he was supposed to be looking for was in 1998.
6 He then called me back 15
7 minutes later and faxed me a sheet indicating that two phone
8 calls did, in fact, come from the area, which is adjoining
9 to the section that Mr. Nasby is housed in, from a bank of
10 seven phones.
11 Q Okay.
12 A So he would have access to that just by
13 walking across.
14 Q And how many inmates are in -- do you know
15 how many inmates are in that unit?
16 A No, sir, I don't.
17 Q Quite a few?
18 A I have no idea.
19 Q What prompted you to call him as recently as
20 yesterday regarding this information?
21 A I heard that it was going to be a question
22 that was going to be asked as to whether or not it could be
23 verified or not.
24 Q And who -- who gave you that information?

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1 A The District Attorney's Office.
 2 Q Didn't you testify on Monday that you didn't
 3 know where the number came from, in what part of the jail?
 4 A I didn't know then. I didn't know until
 5 just a few minutes ago. And I can show you, the fax has the
 6 date and time that I got it, if you'd like to see it.
 7 Q So subsequent to that testimony then, you
 8 went and did further investigation and you found out that it
 9 came from a unit adjoining where Mr. Nasby was -- was
 10 housed; is that correct?
 11 A Actually, it wasn't further investigation;
 12 it was a continuing investigation that had already started.
 13 Q Okay. Did Miss Banks tell you that she had
 14 other friends in the Clark County Detention Center at the
 15 same time that this call came through?
 16 A Yes, she did.
 17 Q And that would have been relevant
 18 information for your investigation, wouldn't it?
 19 A Yes.
 20 Q Did you contact these friends of hers that
 21 were in Clark County Detention Center to find out if they
 22 had placed the call?
 23 A She recognized the voice and knew right who
 24 it was. There was no reason to contact them.

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1 Q She told you she talked to the individual on
 2 the phone?
 3 A Are you talking about Tanesha Banks?
 4 Q Yes.
 5 A Yes.
 6 Q What other investigation, if any, did you do
 7 to substantiate her claims of intimidation?
 8 A That was the only thing that I could do.
 9 Q So the only thing you did was you saw a
 10 number that came from the Clark County Jail, one of a
 11 hundred numbers, and you narrowed it down to a unit that was
 12 adjoining Mr. Nasby's?
 13 A That's correct.
 14 Q And this was done yesterday, the narrowing
 15 down part?
 16 A The -- yes, sir, that's correct.
 17 (Whereupon, a sotto voce at this time.)
 18
 19 MR. SANTACROCE: Could we have the Court's
 20 indulgence for one moment, Your Honor.
 21
 22 (Whereupon, a sotto voce at this time.)
 23
 24

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1 MR. SANTACROCE: I have no further
 2 questions.
 3 Thank you, Detective.
 4 THE COURT: Mr. Coumou.
 5 MR. COUMOU: Thank you.
 6

REDIRECT EXAMINATION

7 BY MR. COUMOU:
 8 Q Detective Thowsen, is -- as a homicide
 9 detective though, once you think you solve the case, do you
 10 still continue once in a while doing investigations?
 11 A Yes.
 12 Q And so trying to verify this phone number at
 13 the District Attorney's request is -- is typical of what you
 14 would be doing in a particular case, correct?
 15 A That's correct. We want to find out what
 16 the truth is, even if it ends up hurting the case.
 17 Q And so now, this new fax that you just got,
 18 that is just because, initially, the man that you contacted
 19 wasn't able to specifically determine where that number
 20 was dialed from?
 21 A He was checking the wrong date. He was
 22 checking 1999, instead of the correct date in 1998, that was
 23 requested of him.
 24

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1 Q Okay. And so when he checked that 1998 --
 2 how did you find out that he was checking 1999, as opposed
 3 to September of 1998?
 4 A I just was talking with him, to try to see
 5 what information he was running down; and he read off the
 6 information as being 1999; and I explained we're not looking
 7 for 1999; we're looking for a year ago, 1998.
 8 And he said: That's another
 9 story altogether. Let me call you back in 15 minutes.
 10 Q And that's when you got this information?
 11 A Right before coming to court today.
 12 Q Okay. And so -- and that's why you were
 13 unable to tell me about this information?
 14 A That's correct.
 15 Q Now, you are telling the jury then that the
 16 information you've just learned, regarding this
 17 intimidation, came from a telephone number that this man,
 18 the defendant, had access to. (Indicating)
 19 A That is correct.
 20 MR. COUMOU: Nothing further, Judge.
 21

RECROSS-EXAMINATION

22 BY MR. SANTACROCE:
 23 Q How do you know he had access to it at that
 24

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1 time? What did you do to find out?

2 A I don't know he had access to it at that
3 time. I know -- what I did is obtain a printout of where he
4 was housed at that time. And I know from talking to the
5 telephone man where the phone banks are and it's two
6 adjoining areas.

7 Q Isn't it a fact that inmates don't have
8 unrestricted use of the telephone when they're incarcerated?

9 A I don't know what the facts are concerning
10 inmate phone calls.

11 Q Did you investigate it?

12 A Pardon me?

13 Q Did you investigate when he had access to
14 the telephone on the date in question?

15 A I don't know how I would do that, sir.

16 Q The answer is: You didn't investigate it?

17 A I investigated every aspect that I could.

18 Q You stated that once the case is solved, you
19 continue the investigation; is that correct?

20 A I don't believe that's what was stated.

21 Q Well, you told me --

22 A I believe what was stated was that even if
23 we have the crime solved, sometimes we still do further
24 investigation.

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1 Q So you don't have any recollection as to
2 what you did to find him specifically?

3 A No. We would do everything within our power
4 to find him at that point.

5 Q And you couldn't find him, so, hey, you had
6 Brendan Nasby; that's enough?

7 A Not at all. We continued our investigation
8 and established, through the investigation, beyond a
9 reasonable doubt, with probable cause and evidence that is
10 brought to court for a jury, that Brendan Nasby is the
11 correct suspect.

12 That's where we are here today.

13 Q That's -- that's what you determined?

14 A I believe a lot of people determined --
15 that's why we are here.

16 We don't go to court merely on
17 a detective's whim. It has to be something that is looked
18 at by the District Attorney's Office and approved by a
19 judge.

20 Q What was Damion Von Lewis' last known
21 address back in August of 1998?

22 MR. COUMOU: Judge, I'm going to start
23 objecting now. We're really going well beyond redirect.
24

THE COURT: We are, Mr. Santacroce.

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1 If something new comes up, we
2 will certainly look into it. We don't turn a blind eye just
3 because the case is solved and we don't want to hear further
4 information. If something pertinent comes forward, we will
5 look into it. If it's not pertinent, we will not look into
6 it.

7 Q After you arrested Brendan Nasby, you had
8 information that Damion Von Lewis had committed the crime.

9 What did you do to investigate
10 that?

11 A For a period of time, we put out an ATL for
12 Damion Von Lewis, also known as Sugar Bear, so that if any
13 police officer in this state were to stop him, they could
14 contact us immediately.

15 Then, through our
16 investigation, we eliminated him as a suspect and removed
17 that.

18 Q So other than putting him on the SCOPE in
19 case somebody stopped him, did you take any affirmative
20 steps, like try to find out where he lived?

21 A Yes. We could not find him.

22 Q What did you do?

23 A I don't know specifically what I did on that
24 because we look for people every single day.

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1 MR. SANTACROCE: I'll leave that.

2 THE COURT: Okay. Sustained.

3 MR. SANTACROCE: I'll leave it be.

4 MR. SANTACROCE: Thank you very much.

5 THE COURT: Do any of the ladies and
6 gentlemen of the jury have any questions for Detective
7 Thowsen?

8 (Negative response.)
9

10 THE COURT: Detective, thank you very much
11 for coming to court and testifying this afternoon.

12 Okay. Ladies and gentlemen,
13 we're going to go ahead and take our weekend recess at this
14 time.

15 During this recess, you are
16 admonished not to talk or converse among yourselves or with
17 anyone else on any subject matter connected to this trial;
18 Or to read, watch or listen to
19 any report of or commentary on the trial or about any person
20 connected with this case, or by any medium of information,
21 including, without limitation, newspapers, television, the
22 Internet or radio.

23 You are further admonished not
24 to form or express any opinion on any subject connected with

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1 the trial until the case is finally submitted to you.

2 I'll tell you the schedule a
3 little bit, ladies and gentlemen, the best I know it, for
4 Monday.

5 I'm going to ask you to come
6 back at 1:30 on Monday. I am meeting with the attorneys in
7 the morning to go through the final arrangements, as far as
8 the conclusion of the trial and discussing jury
9 instructions, so we'll be ready to go.

10 I anticipate that the defense
11 will complete their case on Monday afternoon and that we
12 will have jury instructions and closing arguments.

13 So the case -- as of right
14 now -- and, again, we will have to wait and see, but,
15 normally, that's what we anticipate the schedule to be.

16 So we will have the case to you
17 on Monday. I don't know what time though.

18 But, anyway -- but I do
19 anticipate we will finish it on Monday.

20 A JUROR: 1:30 on Monday?

21 THE COURT: 1:30 Monday, meet -- Lisa should
22 be back, so if you'll meet her.

23 And we'll thank Richard for his
24 help this afternoon.

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1 THE COURT: Fine. Maybe you can visit on
2 that now, and then we'll discuss it when I see you on Monday
3 at 11:15 to meet on jury instructions.

4 MR. COUMOU: Okay.

5 MR. SCISCENTO: In that case, Your Honor, I
6 understand Mr. Coumou has the ability to bring back Jeremiah
7 Deskin.

8 THE COURT: You indicated you want him back.

9 MR. SCISCENTO: Yes, if -- maybe.

10 THE COURT: I will request, Mr. Coumou, on
11 Monday to make those arrangements.

12 MR. COUMOU: You know, I -- I still don't
13 think Jeremiah Deskin was in that video, because it was --
14 that was instructed, but if you want Jeremiah Deskin, that's
15 fine.

16 THE COURT: All I can say is I gave the
17 defense the right to recall him.

18 MR. COUMOU: Right.

19 THE COURT: So we'll recall him and we'll
20 see if he has anything relevant to say.

21 MR. COUMOU: Because the reason why I say
22 this is I had offered Brittany Adams. She has looked at the
23 video and she knows what the video is on.

24 THE COURT: Why don't you, counsel, visit

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1 And we'll meet Lisa right
2 outside the door 1:30 on Monday afternoon and we'll go ahead
3 and get started.

4 So, again, if you will leave
5 your badges and tablets right on the chairs. We wish you
6 all a very nice weekend. See you back here on Monday
7 afternoon.

8 (The following proceedings were had in open
9 court outside the presence of the jury:)

10 THE COURT: Okay. Let the record reflect
11 the jury has left the courtroom.

12 Do you have any matters to put
13 on the record before we take our weekend recess?

14 MR. COUMOU: Not by the State, Judge.

15 MR. SCISCENTO: Not by the defense.

16 THE COURT: And, Mr. Coumou, I forgot to ask
17 you: Does the State rest at this time?

18 MR. COUMOU: We will rest --

19 THE COURT: In front of the jury?

20 MR. COUMOU: Yes.

21 THE COURT: Okay.

22 MR. COUMOU: And then, I don't -- well, I'll
23 talk to Mr. Sciscento about what we're going to do with his
24 intent on showing this video.

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1 and decide what you want to do.

2 MR. COUMOU: Okay.

3 THE COURT: We're in recess.

4
5 (Proceedings recessed until Monday,
6 October 18, 1999, at 11:15 a.m.)

7 * * * * *

8 ATTEST: Full, true and accurate transcript of proceedings.

9
10 *[Signature]*
11 RENEE SILVAGGIO, L.C. No. 122
12 OFFICIAL COURT REPORTER

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1 INST

FILED IN OPEN COURT

OCT 19 1999

19/134 pm

SHIRLEY B. PARRAGUIRRE, CLERK

BY Tina Hurd

TINA HURD DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,

12 Defendant.
13
14

Case No. C154293
Dept. No. VII
Docket P

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is your
18 duty as jurors to follow these instructions and to apply the rules of law to the facts as you find
19 them from the evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it would
22 be a violation of your oath to base a verdict upon any other view of the law than that given in
23 the instructions of the Court.
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CE52

1
2 If, in these instructions, any rule, direction or idea is repeated or stated in different ways,
3 no emphasis thereon is intended by me and none may be inferred by you. For that reason, you
4 are not to single out any certain sentence or any individual point or instruction and ignore the
5 others, but you are to consider all the instructions as a whole and regard each in the light of all
6 the others.

7 The order in which the instructions are given has no significance as to their relative
8 importance.

1 An Information is but a formal method of accusing a person of a crime and is not of itself
2 any evidence of his guilt.

3
4 In this case, it is charged in an Information that on or about the day of, 17th July, 1978 the Defendant
5 committed the offenses of Conspiracy to Commit Murder and Murder With Use of a Deadly
6 Weapon, as follows:

7 COUNT I - CONSPIRACY TO COMMIT MURDER

8 Defendants did then and there meet with each other or unknown individuals and between
9 themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and
10 agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did
11 commit the acts as set forth in Count II, said acts being incorporated by this reference as though
12 fully set forth herein.

13 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

14 Defendants did then and there wilfully, feloniously, without authority of law, and with
15 premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a
16 human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon,
17 to-wit: a firearm, in the following manner, to-wit: by said Defendants and an unknown
18 individual acting pursuant to a conspiracy to commit murder, aiding or abetting each other by
19 counsel and encouragement by entering into a course of conduct whereby Defendants and an
20 unknown individual drove said MICHAEL BEASLEY into the desert, lured said MICHAEL
21 BEASLEY out of the vehicle whereby Defendant BRENDAN JAMES NASBY repeatedly shot
22 said MICHAEL BEASLEY with said firearm while Defendants JERIMIAH JOHN DESKIN,
23 TOMMIE C. BURNSIDE JR., JOTEE BURNSIDE and JERIMIAH JOHN DESKIN acted as
24 lookouts and fled the scene together..

25 It is the duty of the jury to apply the rules of law contained in these instructions to the
26 facts of the case and determine whether or not the Defendant is guilty of one or more of the
27 offense(s) charged.

28 Each charge and the evidence pertaining to it should be considered separately. The fact

1 that you may find a defendant guilty or not guilty as to one of the offenses charged should not
2 control your verdict as to any other Defendant offense charged.

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INSTRUCTION NO. 4

Conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

1
2 It is not necessary in proving a conspiracy to show a meeting of the alleged
3 conspirators or the making of an express or formal agreement. The formation and existence
4 of a conspiracy may be inferred from all circumstances tending to show the common intent
5 and may be proved in the same way as any other fact may be proved, either by direct
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial
7 evidence.
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2 In order to find a defendant guilty of conspiracy, in addition to proof of the unlawful
3 agreement and specific intent, there must be proof of the commission of at least one of the
4 overt acts alleged in the information. It is not necessary in proving the guilt of any particular
5 defendant that the defendant personally committed the overt act, if he was one of the
6 conspirators when such an act was committed.

7 The term "overt act" means any step taken or act committed by one of the conspirators
8 which goes beyond mere planning or agreement to commit a public offense and which step
9 or act is done in furtherance of the accomplishment of the object of the conspiracy.

10 The crime is the agreement to do something unlawful; it does not matter whether it
11 was successful or not.

1
2 Each member of a criminal conspiracy is liable for each act and bound by each declaration
3 of every other member of the conspiracy if the act or the declaration is in furtherance of the
4 object of the conspiracy.

5 The act of one conspirator pursuant to or in furtherance of the common design of the
6 conspiracy is the act of all conspirators. Every conspirator is legally responsible for an act
7 of a co-conspirator that follows as one of the probable and natural consequences of the object
8 of the conspiracy even if it was not intended as part of the original plan and even if he was
9 not present at the time of the commission of such act.
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INSTRUCTION NO. 8

Murder is the unlawful killing of a human being, with malice aforethought, whether express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

1
2 Malice aforethought means the intentional doing of a wrongful act without legal cause
3 or excuse or what the law considers adequate provocation. The condition of mind described as
4 malice aforethought may arise, not alone from anger, hatred, revenge or from particular ill will,
5 spite or grudge toward the person killed, but may result from any unjustifiable or unlawful
6 motive or purpose to injure another, which proceeds from a heart fatally bent on mischief or with
7 reckless disregard of consequences and social duty. Malice aforethought does not imply
8 deliberation or the lapse of any considerable time between the malicious intention to injure
9 another and the actual execution of the intent but denotes rather an unlawful purpose and design
10 in contradistinction to accident and mischance.
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2 Express malice is that deliberate intention unlawfully to take away the life of a fellow
3 creature, which is manifested by external circumstances capable of proof.

4 Malice may be implied when no considerable provocation appears, or when all the
5 circumstances of the killing show an abandoned and malignant heart.
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INSTRUCTION NO. 11

Murder of the First Degree is murder which is perpetrated by any kind of willful, deliberate and premeditated killing.

1
2 Premeditation is a design, a determination to kill, distinctly formed in the mind at any
3 moment before or at the time of the killing.

4 Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous
5 as successive thoughts of the mind. For if the jury believes from the evidence that the act
6 constituting the killing has been preceded by and has been the result of premeditation, no matter
7 how rapidly the premeditation is followed by the act constituting the killing, it is willful,
8 deliberate and premeditated murder.
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INSTRUCTION NO. 13

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2 The intention to kill may be ascertained or deduced from the facts and circumstances of
3 the killing, such as the use of a weapon calculated to produce death, the manner of its use, and
4 the attendant circumstances characterizing the act.
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INSTRUCTION NO. 14

If you find the defendant guilty of Murder you must also determine whether or not a deadly weapon was used in the commission of that crime.

1
2 A deadly weapon is any weapon, device, instrument, material or substance which, under
3 the circumstances in which it is used, attempted to be used or threatened to be used, is readily
4 capable of causing substantial bodily harm or death.

5 You are instructed that a firearm is a deadly weapon.
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2 If you find beyond a reasonable doubt that a defendant committed Murder of the First
3 Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of Murder
4 of the First Degree with the Use of a Deadly Weapon is the appropriate verdict.

5 If, however, you find that a deadly weapon was not used in the commission of the
6 Murder, but you do find that a Murder was committed, then you are instructed that the
7 verdict of Murder of the First Degree without the Use of a Deadly Weapon is the appropriate
8 verdict.

9 You are instructed that you cannot return a verdict of both Murder of the First Degree
10 with the Use of a Deadly Weapon and Murder of the First Degree without the Use of a
11 Deadly Weapon.

INSTRUCTION NO. 17

The offense of First Degree Murder necessarily includes the lesser offense of Second Degree Murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by a defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

INSTRUCTION NO. 18

Murder of the Second Degree is murder with malice aforethought, but without the admixture of premeditation.

All murder which is not Murder of the First Degree is Murder of the Second Degree.

INSTRUCTION NO. 19

1
2 You are instructed that if you find a defendant guilty of murder of the second degree
3 you must also determine whether or not a deadly weapon was used in the commission of this
4 crime.
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1
2 If you find beyond a reasonable doubt that a defendant committed Murder of the
3 Second Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of
4 Murder of the Second Degree with the Use of a Deadly Weapon is the appropriate verdict.

5 If, however, you find that a deadly weapon was not used in the commission of the
6 Murder, but you do find that a Murder was committed, then you are instructed that the
7 verdict of Murder of the Second Degree without the Use of a Deadly Weapon is the
8 appropriate verdict.

9 You are instructed that you cannot return a verdict of both Murder of the Second
10 Degree with the Use of a Deadly Weapon and Murder of the Second Degree without the Use
11 of a Deadly Weapon.

1
2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances surrounding
5 the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers
7 only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider evidence
10 of motive or lack of motive as a circumstance in the case.

1
2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material element
4 of the crime charged and that the Defendant is the person who committed the offense.

5 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
6 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
7 the jurors, after the entire comparison and consideration of all the evidence, are in such a
8 condition that they can say they feel an abiding conviction of the truth of the charge, there is not
9 a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

10 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict
11 of not guilty.
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2 You are here to determine the guilt or innocence of the Defendant from the evidence in
3 the case. You are not called upon to return a verdict as to the guilt or innocence of any other
4 person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of
5 the Defendant, you should so find, even though you may believe one or more persons are also
6 guilty.

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2 Where two or more persons are accused of committing a crime together, their guilt
3 may be established without proof that each personally did every act constituting the offense
4 charged.

5 All persons concerned in the commission of a crime who either directly and actively
6 commit the act constituting the offense or who knowingly and with criminal intent aid and
7 abet in its commission or, whether present or not, who advise and encourage its commission,
8 are regarded by the law as principals in the crime thus committed and are equally guilty
9 thereof.

10 A person aids and abets the commission of a crime if he knowingly and with criminal
11 intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the
12 commission of such crime.

13 The state is not required to prove precisely which defendant actually committed the
14 crime and which defendant aided and abetted.
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Evidence that a defendant attempted to suppress evidence against himself in any manner, such as the intimidation of a witness or by offering to compensate a witness or by destroying evidence may be considered by you as a circumstance tending to show a consciousness of guilt. However, such evidence is not sufficient in itself to prove guilt and its weight and significance, if any, are matters for your consideration.

1
2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence: direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the crime
6 which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain
7 of facts and circumstances which tend to show whether the Defendant is guilty or not guilty.
8 The law makes no distinction between the weight to be given either direct or circumstantial
9 evidence. Therefore, all of the evidence in the case, including the circumstantial evidence,
10 should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However,
12 if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence
13 and regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to the
16 answer.

17 You must disregard any evidence to which an objection was sustained by the court and
18 any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.

1
2 The credibility or believability of a witness should be determined by his manner upon the
3 stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to
4 have observed the matter to which he testified, the reasonableness of his statements and the
5 strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not proved
8 by other evidence.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may give
4 his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it. You
6 are not bound, however, by such an opinion. Give it the weight to which you deem it entitled,
7 whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for
8 it are unsound.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you must
3 bring to the consideration of the evidence your everyday common sense and judgment as
4 reasonable men and women. Thus, you are not limited solely to what you see and hear as the
5 witnesses testify. You may draw reasonable inferences from the evidence which you feel are
6 justified in the light of common experience, keeping in mind that such inferences should not be
7 based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 30

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 31

1
2 In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the
3 subject of penalty or punishment is not to be discussed or considered by you and should in no
4 way influence your verdict. The subject of punishment lies solely with the court. Your duty
5 is confined to the determination of the guilt or innocence of the Defendant.
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1
2 When you retire to consider your verdict, you must select one of your number to act as
3 foreperson who will preside over your deliberation and will be your spokesperson here in court.

4 During your deliberation, you will have all the exhibits which were admitted into
5 evidence, these written instructions and forms of verdict which have been prepared for your
6 convenience.

7 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
8 signed and dated by your foreperson and then return with it to this room.

1
2 If, during your deliberation, you should desire to be further informed on any point of law
3 or hear again portions of the testimony, you must reduce your request to writing signed by the
4 foreperson. The officer will then return you to court where the information sought will be given
5 you in the presence of, and after notice to, the district attorney and the Defendant and his/her
6 counsel.

7 Readbacks of testimony are time-consuming and are not encouraged unless you deem it
8 a necessity. Should you require a readback, you must carefully describe the testimony to be read
9 back so that the court reporter can arrange his/her notes. Remember, the court is not at liberty
10 to supplement the evidence.

INSTRUCTION NO. 34

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

Given this 18 day of October, 1999.


MARK GIBBONS
DISTRICT COURT JUDGE

1
2
3 Premeditation means with planning or deliberation. The amount of time needed for
4 premeditation of a killing depends on the person and the circumstances. It must be long enough, after
5 forming the intent to kill, for the killer to have been fully conscious of the intent and to have considered
6 the killing.

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9 Ninth Circuit Modern Federal Jury Instruction Section 8.24A
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Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing. Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind.

Deliberate means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed cause of action.

If the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation and deliberation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is willful, deliberate and premeditated murder.

"There need be no appreciable space of time between the intention to kill and the act of killing; the may be as instantaneous as successive thoughts of the mind. It is only necessary that the act of killing be preceded by a concurrence of will, deliberation, and premeditation on the part of the slayer." State v. Randolph, 49 Nev. 241, 242 (1926)

A reasonable doubt is a doubt based upon reason and common sense, and may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty.

If after careful and impartial consideration with your fellow jurors of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration with your fellow jurors of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Ninth Circuit Modern Federal Jury Instructions Section 3.03; The jury must be provided with meaningful principles or standards to guide it in evaluating the sufficiency of the government's evidence. United States v. Wosepka, 757 F.2d 1006, 1009, modified 787 F.2d 1294 (9th Cir. 1985).

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
FILED IN OPEN COURT
OCT 19 1999, 19

* * * *
SHIRLEY B. PARRAGUIRRE, CLERK
BY *Tina Hurd*

THE STATE OF NEVADA,	)	TINA HURD DEPUTY
)	
Plaintiff,	)	CASE NO. C154293
)	
Vs	)	DEPT. NO. VII
)	
BRENDAN JAMES NASBY,	)	DOCKET P
)	
Defendant..)	

BEFORE THE HONORABLE:

MARK GIBBONS DISTRICT JUDGE

MONDAY, OCTOBER 18, 1999, 11:28 A.M.

VOLUME VI

APPEARANCES:

FOR THE STATE:	FRANK J. COUMOU
	Deputy District Attorney

FOR THE DEFENDANT:	JOSEPH S. SCISCENTO, ESQ.
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REPORTED BY:	PATSY K. SMITH, C.C.R. #190
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PATSY K. SMITH, OFFICIAL COURT REPORTER

RECEIVED
OCT 19 1999
COUNTY CLERK

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)
Plaintiff,) CASE NO. C154293
vs) DEPT. NO. VII
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Defendant.)

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Deputy District Attorney

FOR THE DEFENDANT: JOSEPH S. SCISCENTO, ESQ.

REPORTED BY: PATSY K. SMITH, C.C.R. #190

MONDAY, OCTOBER 18, 1999, 11:28 A.M.

THE COURT: This is the continuation of case number C154293, the State of Nevada versus Brendan James Nasby.

The record will reflect the presence of the attorney for the defendant, Joe Sciscento, Frank Coumou, Deputy District Attorney, representing the State of Nevada.

This is the time set for the settlement of Jury Instructions.

Mr. Sciscento, would you waive the presence of your client for purposes of settling Jury Instructions?

MR. SCISCENTO: Yes, your Honor.

THE COURT: Further, would the parties stipulate we can settle the Jury Instructions even though the State has not rested on the record and the defense has not rested on the record?

MR. SCISCENTO: We are waiving that defect.

MR. COUMOU: Same with us, Judge.

THE COURT: Very well.

MR. COUMOU: Just with the understanding that should the defense suddenly present somewhat of a case, I don't know whatever that may be, that it's still -- the Court will still be open to supplementing what we have settled on.

MR. SCISCENTO: Yes, we agree to that too.

THE COURT: So, Mr. Sciscento, we are settling these assuming the defendant isn't presenting a case. If you do, certainly if there is evidence presented, you may have the right to further jury instructions and the record will reflect that the Court would give you that opportunity; is that correct?

MR. SCISCENTO: That is correct.

THE COURT: Is the State familiar with the Court's Proposed Jury Instructions 1 through 34?

MR. COUMOU: We are, Judge.

THE COURT: Does the State object to the giving of any of the Instructions?

MR. COUMOU: No, Judge.

THE COURT: Does the State have any additional Instructions to propose?

MR. COUMOU: None.

THE COURT: Is the defendant familiar with the Court's Proposed Jury Instructions 1 through 34?

MR. SCISCENTO: Yes, your Honor.

THE COURT: Does the defendant object to the giving of any of those Instructions?

MR. SCISCENTO: Yes, we do. I believe as to Jury Instruction No. 12, which is premeditation, it is a designed, I won't continue reading that. On the record I

I have proposed two separate --

THE COURT: Why don't we go through the ones you object to and tell me why you object to them and then I will give you the opportunity to propose any additional jury instructions you wish to propose.

MR. SCISCENTO: As to Jury Instruction No. 12, the premeditation, I don't believe that it fully provides the jury instruction as to how to determine what premeditation is. It doesn't show the time frame for forming intent. My belief is, the way it's written now, the intent is almost simultaneously. I propose Jury Instruction No. Defense A, which comes from the Ninth Circuit Modern Federal Jury Instructions, which provides, "Premeditation must be long enough, after forming the intent to kill, for the killer to have been fully conscious of the intent and to have considered the killing."

THE COURT: What is the State's position regarding the proposed defense jury instruction?

MR. COUMOU: Judge, as to Jury Instruction No. 12, that's the Instruction that has been adopted in the courts here and this language is of the Ninth Circuit Court. It has not been considered and I ask that we keep the Instruction that has been adopted by our state and has been upheld.

1 THE COURT: Okay, the defendant's objection
2 is overruled.

3 MR. SCISCENTO: Your Honor --

4 THE COURT: I'm going to give you a chance,
5 Mr. Sciscento, to propose the other instructions in a
6 minute.

7 MR. SCISCENTO: Also on premeditation?

8 THE COURT: Yes. So the objection to
9 Proposed 12 is overruled.

10 Does the defendant have any objection to any
11 of the other Court's Proposed Jury Instructions?

12 MR. SCISCENTO: Again, as to Court's
13 Instruction 12, the same objection and I have proposed
14 Defendant's B, which was accepted by State versus Randolph,
15 which is 49 Nevada 241, 1926. It basically mirrors what
16 the State has proposed with the addition, "If the jury
17 believes from the evidence that the act constituting the
18 killing has been preceded by and has been the result of
19 premeditation and deliberation, no matter how rapidly the
20 premeditation is followed by the act constituting the
21 killing, it is willful, deliberate and premeditated
22 murder."

23 THE COURT: What is the State's position to
24 the objection by the defense?

25 MR. COUMOU: Judge, it's just cumulative

1 language. In the Instruction 12, in the second paragraph,
2 it covers everything that is being tried to be set forth in
3 Defense B.

4 THE COURT: Objection is overruled.

5 Does the defendant object to any of the
6 other Proposed Jury Instructions of the Court?

7 MR. SCISCENTO: As to Instruction No. 22,
8 your Honor, which is I would consider the reasonable doubt
9 definition, I have Proposed Defense Exhibit C Instruction,
10 which was accepted by the Ninth Circuit Modern Federal Jury
11 Instructions and also accepted in the case United States
12 versus W-O-S-E-P-K-A, 757 F.2d, 1006, Ninth Circuit, 1985.

13 THE COURT: Okay. What is the State's
14 position on the defense's objection to proposed Instruction
15 22?

16 MR. COUMOU: Judge, I ask that we keep the
17 Instruction on reasonable doubt, the one that has been
18 adopted by our Supreme Court and the one that has been
19 upheld now for quite some time. So defense's is not
20 appropriate.

21 THE COURT: The defense objection to
22 Instruction 22 is overruled.

23 Does the defense have any additional Jury
24 Instructions to propose?

25 MR. SCISCENTO: No further objections, your

1 Honor.

2 THE COURT: Does the defense have additional
3 Instructions to propose?

4 MR. SCISCENTO: No, your Honor, but we do
5 have an understanding that the packet we have at this very
6 moment excludes No. 30, which talks about my client
7 testifying and the jury not to make any determination
8 whether he testifies or not to testify.

9 THE COURT: And the defense --

10 MR. SCISCENTO: That will be provided, as I
11 understand it.

12 THE COURT: And the defense has requested
13 Proposed No. 30?

14 MR. SCISCENTO: Yes, and my understanding is
15 the State will provide that.

16 THE COURT: Mr. Sciscento, would you
17 approach the clerk and give her copies of Instructions A,
18 B, and C which you are proposing so they can be
19 incorporated in the record.

20 MR. SCISCENTO: Thank you.

21 THE COURT: Is there an additional record
22 that you wish to make as to Defendant's Proposed A, B, and
23 C?

24 MR. SCISCENTO: No, your Honor.

25 THE COURT: Does the State object to the

1 giving of A, B, and C?

2 MR. COUMOU: Do I object to him giving
3 those, no.

4 Yes, I do. I thought you meant giving it to
5 the clerk here.

6 THE COURT: Is the State's basis for the
7 objection the same as stated in your response to Mr.
8 Sciscento's objection to the Proposed Court Jury
9 Instructions?

10 MR. COUMOU: Yes.

11 THE COURT: The State's objection to
12 Proposed A, B, and C are sustained.

13 Does either the State or the defendant
14 object to the proposed forms of verdict of the Court?

15 MR. COUMOU: No, Judge.

16 MR. SCISCENTO: No objection from the
17 defense, your Honor.

18 THE COURT: Do either counsel request that
19 the Court instruct the jury before closing arguments?

20 MR. COUMOU: I ask that we instruct them
21 before closing.

22 THE COURT: Do the parties waive the
23 reporting of the reading of the Jury Instructions by the
24 Court to the jury by the court reporter?

25 MR. COUMOU: Yes.

1 MR. SCISCENTO: Your Honor, as for the
2 defense, I think it's important if we put on the record a
3 full record of Instruction No. 12 and Instruction No. 22
4 because I do have an objection to that. I don't know if
5 the Court makes it a part -- well, these Instructions are
6 part of the record, I'm assuming, and I'm going to refer to
7 that.

8 THE COURT: Okay. So you are saying you are
9 requesting the court reporter to report the reading of
10 Instruction No. 12 and No. 22, but you don't object to her
11 not reporting the reading of the remainder of the
12 Instructions?

13 MR. SCISCENTO: Exactly.

14 THE COURT: Okay.

15 MR. SCISCENTO: With the understanding that
16 these are going to be in the Instructions given to the
17 jury. We can read them right now so that it would preserve
18 the right as to what exactly I'm objecting to, the
19 language.

20 (Off the record discussion not reported.)

21 THE COURT: We will read Proposed
22 Instruction 12. Proposed Instruction 12, "Premeditation is
23 a design and determination to kill, distinctly formed in
24 the mind at any moment before or at the time of the
25 killing.

1 guilty."

2 Okay, Mr. Sciscento, anything else you would
3 like me to do?

4 MR. SCISCENTO: I guess I have already
5 objected to reasonable doubt. My other concern, upon
6 reading it, lines 10 to 11, if you have a reasonable doubt
7 as to the guilt or the defendant, he is entitled to a
8 verdict of not guilty. I would propose that to say you
9 must return a verdict of not guilty. I believe the burden
10 is placed upon them to return a verdict of not guilty. I
11 think entitled is not strong enough.

12 It's a specific objection I want to make as
13 to that word.

14 MR. COUMOU: Judge, that's the language we
15 have been using and I'm not going to ask you to make it a
16 mandatory-type language. Plus we're also talking semantics
17 here.

18 THE COURT: Objection is overruled.

19 MR. COUMOU: Judge, one question. Is Mr.
20 Santacroce going to be here?

21 MR. SCISCENTO: No.

22 MR. COUMOU: We may want to put something on
23 the record so the jury doesn't wonder where he is.

24 THE COURT: Do the parties stipulate that I
25 instruct the jury that Mr. Santacroce is excused from

1 Premeditation need not be for a day an hour
2 or even a minute. It may be as instantaneous as successive
3 thoughts of the mind. For if the jury believes from the
4 evidence that the act constituting the killing has been
5 preceded by and has been the result of premeditation, no
6 matter how rapidly the premeditation is followed by the act
7 constituting the killing, it is a willful, deliberate and
8 premeditated murder."

9 Instruction No. 22 is, "The defendant is
10 presumed innocent until the contrary is proved. This
11 presumption places upon the State the burden of proving
12 beyond a reasonable doubt every material element of the
13 crime charged and that the defendant is the person who
14 committed the offense.

15 A reasonable doubt is one based on reason.
16 It is not mere possible of doubt but is such a doubt as
17 would govern or control a person in the more weighty
18 affairs of life. If the minds of the jurors, after the
19 entire comparison and consideration of all the evidence,
20 are in such a condition that they can say they feel an
21 abiding conviction of the truth of the charge, there is not
22 a reasonable doubt. Doubt to be reasonable must be actual,
23 not mere possibility or speculation.

24 If you have a reasonable doubt as to the
25 guilt of the defendant, he is entitled to a verdict of not

1 today's session?

2 MR. SCISCENTO: He is up in Reno for a
3 deposition.

4 THE COURT: Do you want me to so instruct
5 the jury?

6 MR. COUMOU: Yes.

7 THE COURT: I will just simply instruct the
8 jury he's been excused by the Court to attending today's
9 session.

10 MR. COUMOU: Okay.

11 THE COURT: Very well. Thank you,
12 gentlemen.

13
14 (Off the record at 11:38 a.m. and back
15 on the record at 1:32 p.m.)

16
17 THE COURT: Good afternoon, ladies and
18 gentlemen. This is the continuation of case number
19 C154293, the State of Nevada versus Brendan James Nasby.
20 The record will reflect the presence of Mr.
21 Nasby together with his attorney, Joe Sciscento, Frank
22 Coumou, Deputy District Attorney, representing the State of
23 Nevada.

24 Mr. Coumou, do you stipulate to the presence
25 of the jury?

1 MR. COUMOU: We do, Judge.
 2 THE COURT: Mr. Sciscento?
 3 MR. SCISCENTO: Yes, your Honor.
 4 THE COURT: Ladies and gentlemen, Mr.
 5 Santacroce could not be here this afternoon. So I did
 6 excuse him from being present this afternoon, so that's the
 7 reason he will not be here.
 8 At this time, Mr. Coumou, does the State
 9 have any additional witnesses to call?
 10 MR. COUMOU: Judge, the State will rest.
 11 THE COURT: Mr. Sciscento, is the defense
 12 going to call any witnesses?
 13 MR. SCISCENTO: May we approach, your
 14 Honor?
 15 THE COURT: Yes.
 16 (Off the record discussion not reported.)
 17 THE COURT: Ladies and gentlemen, I'm going
 18 to have to step outside for a hearing for just a moment.
 19 It should be just a few minutes. I will ask the court
 20 reporter and the court clerk to come with me, please.
 21 Okay, the record will reflect we're outside
 22 the presence of the jury at the request of the counsel for
 23 the defense.
 24 Mr. Sciscento.
 25 MR. SCISCENTO: Yes, at this time, your

1 Honor, the State has rested and at this time I make a
 2 motion to dismiss based on the fact that I believe the
 3 State has failed to prove their case beyond a reasonable
 4 doubt. The witnesses that they used contradicted
 5 sometimes, they had motivations to lie, and there was no
 6 physical evidence which actually connects Mr. Nasby to this
 7 death.
 8 All the evidence that they had is hearsay
 9 evidence based on a motivation to lie, based upon the fact
 10 that these people received favorable plea bargains in
 11 connection to them saying that Mr. Brendan Nasby committed
 12 this murder.
 13 With that, your Honor, I would submit it.
 14 THE COURT: Mr. Coumou.
 15 MR. COUMOU: Judge, this motion as it should
 16 be an argument that should be posed to the jury, not for
 17 the Court to decide to rule on an issue of fact.
 18 THE COURT: Well, again, the Court finds
 19 that the State has set forth a prima facie case for which
 20 the jury could find the defendant guilty. Ultimately,
 21 that's the decision for the jury, whether the State has
 22 proved its case beyond a reasonable doubt at the conclusion
 23 of the case, but for that reason the motion is denied.
 24 MR. COUMOU: Thank you.
 25 (Off the record discussion not reported.)

1 THE COURT: Okay, the record will reflect we
 2 are back in the presence of the jury.
 3 Mr. Sciscento, does the defense have any
 4 witnesses to call?
 5 MR. SCISCENTO: At this time, your Honor,
 6 the defense rests.
 7 THE COURT: Okay, ladies and gentlemen, the
 8 evidence in the case is now closed. So what we're going to
 9 do is proceed with our Jury Instructions and our closing
 10 arguments.
 11 Ladies and gentlemen of the jury, I'm about
 12 to instruct you on the laws as it applies in this case. I
 13 would like to instruct you orally without reading to you.
 14 However, these Instructions of such importance, that it is
 15 necessary for me to read these carefully prepared written
 16 Instruction.
 17 The Instructions are long and some are quite
 18 complicated. If they are not especially clear, when I read
 19 them to you, please keep in mind, when you go to the jury
 20 room, you will be able to take them and read them carefully
 21 so you can consider them.
 22 Okay, ladies and gentlemen of the jury, I'm
 23 going to have 34 Jury Instructions to read to you and I
 24 will read them to you in numerical order.
 25

1 (At this time, the Court read the Jury
 2 Instructions to the jury.)
 3
 4 THE COURT: I think there is a typo on the
 5 Information.
 6 MR. COUMOU: Judge, it should be July 16th,
 7 1998.
 8 MR. SCISCENTO: We will waive any defects.
 9 THE COURT: Will the parties stipulate by
 10 interlineation I can insert the date July 16th, 1998?
 11 MR. COUMOU: Yes. Thank you, Judge.
 12 MR. SCISCENTO: Yes, sir.
 13 THE COURT: It says 17th.
 14 MR. COUMOU: On or about is okay.
 15 THE COURT: I will put in here, by
 16 interlineation and by stipulation of the parties, the 17th
 17 day of July, 1998.
 18
 19 (At this time, the Court continued reading
 20 the Jury Instructions to the jury.)
 21
 22 THE COURT: Mr. Coumou, at this time, the
 23 State may proceed with its closing argument.
 24 MR. COUMOU: Thank you, your Honor.
 25 If it please the Court, counsel for the

1 defendant, ladies and gentlemen of the jury, this is our
2 point in the case where the State will be arguing the facts
3 that was presented to you in its case in chief and
4 eventually the defendant will also have its opportunity to
5 make the same argument and then the State will have a final
6 say, which is called the rebuttal, and the reason for that
7 is that the State actually carries the burden of proof in
8 this case, as in all cases here throughout the United
9 States.

10 Before the State starts the closing
11 arguments and arguing to you, in light of the facts and the
12 law that the Court has just read to you, I would like to
13 thank you for your attention and your attendance in this
14 trial. Without your participation in the jury system, the
15 entire criminal justice system would come to a screeching
16 halt and for those reasons, the State, on behalf of all the
17 law abiding citizens, thanks you for your service.

18 In this particular case, over the last five
19 days, actually four, you heard now testimony of the facts
20 that occurred that led to the death of Michael Beasley on
21 July the 16th, 1998. We know that beforehand there existed
22 a group called the L.A. Crazy Riders, to which the
23 defendant was a member and also the leader of this group.

24 We also know that there was some sort of
25 conflict going on between the defendant, the leader, and

1 one of its members, Michael Beasley. We also know that
2 there was, approximately a month before the actual killing,
3 there was a meeting or somewhat of impromptu meeting where
4 the defendant suggested and said, "Should we kill Michael?"
5 Apparently, Michael wanted to get out of the gang or, as we
6 have heard now, the defendant feared that Michael may be
7 taking his stripes, his position of authority, his clout in
8 the gang and so there was some bad blood brewing and we
9 also know this from Tanesha Banks and Crystal Bradley
10 because they were gossiping about that on the morning of
11 July 17th, the morning that Michael Beasley's body was
12 discovered out in that isolated part of the desert here in
13 our valley.

14 So on July 16th, 1998, Jerimiah Deskin goes
15 over to the defendant's house, which was a common gathering
16 place for all these young kids, and then he also meets up
17 with Tommy Burnside and he also meets up with Jotee
18 Burnside and, eventually, he gets called into the garage
19 and he's told, "Go pick up Michael," and the reason why is
20 because the defendant wants to kill him. Again, the motive
21 is there already established. And Tommy places a call to
22 Michael Beasley, says, "Hey, we are going to come pick you
23 up. We are going to take you out. Let's go shoot, maybe
24 smoke a little marijuana," the luring, the lying.

25 And so they get in a car. Jerimiah is

1 driving his own car, this 1991 Cougar, and then he takes
2 Tommy Burnside with him and Jotee Burnside and they drive
3 just a couple blocks down to the street where Michael
4 Beasley lived at the time and they pick him up. We know
5 that that happens because Jomeka Beavers said so and
6 eventually they get back into the car and they drove back
7 after they even saw Michael's newborn baby.

8 And then they get back to the defendant's
9 home and the defendant comes out and he's got the murder
10 weapon in his hand, although it's not the murder weapon
11 yet. It was just a matter of time that that trigger would
12 be pulled and the deadly bullets would be sent out into the
13 body of Michael Beasley by the defendant's fingers.

14 So they all get into the car and they
15 proceed up to the desert, out up Alexander, and they get
16 further on down to where the road ends and the gravel path
17 following the power line. Takes him all the way out to
18 about two miles outside from the main roadway and they come
19 to the wash area.

20 And then we know that Michael Beasley
21 started walking around, he was looking for pieces of wood.
22 You can see the pictures, once you'll have an opportunity
23 to take these photographs. You will see there is a pile of
24 some two-by-fours, wood. He is looking at wood, looking at
25 things to shoot. So are the two Burnside brothers and so

1 is Michael -- not Michael Beasley, but the defendant,
2 Brendan Nasby, he is walking around with the firearm and
3 Jerimiah Deskin is asked, "Hey, can you reposition your car
4 so you aim the headlights down into the desert wash,"
5 because there was some refrigerators in there that they
6 were going to steal and all along, Jerimiah Deskin thought,
7 okay, is he really going to be killed or is he just joking
8 and that's the same thing Tommy Burnside said. He didn't
9 think that was really going to happen, but they knew that
10 they took Michael Beasley up there for the one purpose and
11 that purpose came true when Brendan Nasby came up from
12 behind.

13 Michael Beasley never saw the person who
14 pulled the trigger on that .9 millimeter and he takes a
15 shot into the back and we know, from the testimony of
16 Jerimiah Deskin, he says Michael was going down, holding
17 his hand onto -- into his back neck part and falls onto his
18 knees and eventually rolls over, accounting for, as the
19 coroner explained, there was a bullet that shoots back
20 through the back neck area and comes out in the front chest
21 area.

22 Then Michael Beasley rolls over, falls face
23 up. The photographs will show this from the crime scene
24 where Michael was found. And then they see, as everybody
25 gathers in the car, after witnessing this crime, the

1 defendant gets out of the car again for the final purpose
2 of making sure that he is dead and walks up to him and
3 fires at least two more shots, accounting for a total of
4 three shots that were fired by that firearm.

5 And what does he aim it? To his legs? His
6 toes? No, to his skull, accounting for the entry wound to
7 the left portion by his eye. Michael Beasley died that
8 evening at the hands of the defendant. Michael Beasley
9 also was never able to even see the person's eyes when he
10 pulled the trigger, when the defendant, in a cowardly
11 fashion, walked up to the back of him, shot him, and then
12 returns to shoot one more time as if Michael Beasley was a
13 wounded dog.

14 And then they get in the car and what does
15 the defendant say? "You keep your mouth shut," and then he
16 starts making one more statement about the real motive why
17 is he doing this. Because that guy better know who's got
18 the stuff, who's running the show, something to that
19 effect. That man right there did not want to be taken away
20 from his position of authority in that gang. Apparently,
21 it was too important for him and so he had the motive and
22 he did the ultimate act and he killed Michael Beasley.

23 And then a firearm. The search warrant is
24 executed at the home. A firearm is discovered in his house
25 and the three shells that are found, the shiny ones that

1 did catch the attention of the police and the homicide
2 detectives and also the crime scene analyst, those, as the
3 firearms examiner, the expert stated, they could have been
4 fired; he didn't commit himself, yeah, they did fire. He
5 said they could have been fired, but he goes on to say that
6 the two bullets that came out of the victim's head and the
7 one that rolled out from between the shirt and -- his skin
8 and his shirt that was found, when they were taking off the
9 clothing, he pointed out that once he examined them and he
10 was able to peel back -- because these fragments, the
11 jacket actually bends backward, but once he looks at it
12 and, yeah, it's subjective, but this man is not going to
13 put his whole career on the line to come in and just say,
14 oh, I've got to make this murder case on this guy. He
15 never knew the defendant, he knew never where these bullets
16 came from other than he made the determination that the
17 bullet that came out of Michael's skull and the bullet that
18 came out of the front chest part and on the shirt, between
19 the shirt and the chest of Michael, were fired by the .9
20 millimeter that so happened to be in the defendant's
21 bedroom, the same weapon that the defendant says, oh, are
22 you looking for the .9? The .9 is not there initially to
23 the police, when the police didn't even mention to him that
24 they were looking for a .9 millimeter, but he knew already,
25 when they were there, what they were looking for. They

1 were looking for that .9 millimeter and, at first, he
2 doesn't say anything, but eventually says, "We'll drive
3 back; I'll show you where it is," and the .9 millimeter
4 weapon is discovered in his bedroom.

5 And then he conveniently adds, oh, by the
6 way, I bought this gun from the guy named Sugar Bear after
7 the murder. He knows about the murder. Noticed that too,
8 according to Detective Buczek, he knows about the murder
9 and he adds, "In case my fingerprints are on there, let me
10 tell you why. Because I handled the gun, the magazine, and
11 all the bullets before the murder." Now that's a
12 convenient answer to give to the police when you are the
13 suspect, the prime suspect of the murder.

14 But we know from the firearms fingerprint
15 man, Fred Boyd, trying to get fingerprints on a weapon is
16 rather difficult. You could touch a firearm and your
17 fingerprints won't result on there because of the texture,
18 the surface that these firearms were made, but it didn't
19 reduce the fact that the defendant had the weapon in his
20 bedroom and he makes those statements knowing full well
21 about the murder, but the case doesn't end there. The case
22 continues.

23 He confesses. He tells exactly how Jerimiah
24 Deskin explained to you on the date that he took the
25 witness stand. He exactly told that version to Crystal

1 Bradley, somebody he thought within the gang that he could
2 trust and he explained what happened that night. Maybe he
3 had to get it off of his chest, but, nevertheless, he told
4 her that and then he adds to her, "Oh, I'm going to blame
5 it on the Gersons," the Gerson Park Kingsmen, which is a
6 rival gang of this L.A. Crazy Riders. That's what he told
7 Crystal, after he admitted to her what he did.

8 And then we have a second confession
9 eventually, months later, by the defendant to John Holmes,
10 another guy who is part of this gang, and he says the
11 reason why he killed him is because the guy was going to
12 take away my stripes and he needed to be shown, well, who
13 is the leader.

14 And then he continues on with other
15 witnesses, putting out information if it wasn't the Gersons
16 that did it, then it was Tanesha Banks, Crystal Bradley,
17 and Sugar Bear. They told me this. That's what he tells
18 Brittany Adams and we know also that he tells this fake and
19 false version to Brittany Adams and then he gives her a
20 hammer or encourages her to take a hammer and go and kill
21 Tanesha Banks.

22 Why? Why would he do that? Because he knew
23 at that time that she was the one who called the police
24 because, remember, he was on a three way call with her on
25 the date that the body was discovered, July 17th. And so

1 he has some hatred for Tanesha. She is making life a
2 little bit more difficult for him.

3 And then we continue on. You know the date
4 he actually gets arrested on, that search warrant date,
5 August 4th, continues on. There is more bad information
6 being put out. He encourages, hey, Brittany, come down to
7 the police; tell them what I told you, you know, Sugar Bear
8 is involved again.

9 Police talk to the two Burnside brothers who
10 were there. Yeah, they say, yeah, Sugar Bear was there,
11 but the defendant was also there by the way. So now we
12 know there were six individuals. Well, eventually all that
13 comes crashing down and we know for a fact, from the facts
14 that have been produced here in court, there were five
15 individuals that went up there with the reason being that
16 Michael Beasley was going to be killed. Who was calling
17 the shots that night? The defendant was and four came
18 back, Jotee, Tommie, Jerimiah, and the defendant.

19 Those are the facts that were presented to
20 you in this court. Now the real issue for you then to
21 decide in this case is, is the defendant guilty of
22 conspiracy to commit murder and first degree murder with
23 use of a deadly weapon. Now I know the Court has just read
24 a whole bunch of Instructions, a total of 34 of them.
25 Probably sounded like an ear full, but the good news is you

1 will be able to take all those Instructions back to the
2 deliberating room and you will be able to review them
3 again, but in order to try to put some of these
4 Instructions in context, just briefly, I would like to
5 review and give an example of certain type of fact patterns
6 to explain, for example, premeditation, conspiracy, and so
7 forth.

8 Instructions No. 4, 5, 6, and 7 all talk
9 about conspiracy. A conspiracy is very simple. It is an
10 agreement or mutual understanding between two or more
11 persons to commit a crime. Now that agreement between two
12 or more persons, it has to be an agreement between two
13 guilty minds. You can't have a police officer undercover
14 conspiring with an individual who is a crook and says, hey,
15 let's agree to sell some cocaine on the corner of Bridger
16 and Third Street. You can't have that because you truly
17 don't have two guilty minds in this case because we have
18 the undercover cop. He has no intention to go through with
19 this agreement.

20 And then you also somewhat need an overt
21 act, some steps that are taken forward to this crime, and
22 that's what we have in this case. We have an agreement.
23 Nasby calls Jerimiah out to the garage and we know Tommie
24 was involved in this because he's the one who places the
25 telephone call, by his own admission on the witness stand,

1 for Michael, to be able to lure him out there to the
2 desert. And so that placing of the telephone call, the
3 discussion why are we picking Michael up in the first
4 place, Michael had no intention of leaving home that night
5 because he had his newborn son with him. That was the
6 first night he was going to stay home with his newborn
7 son. It turns out to be his last also.

8 And so that right there is the overt act,
9 actually getting in the car and then driving and picking
10 him up. All that are steps to show that the defendant, as
11 he knew what was happening, is guilty of the conspiracy to
12 commit murder, the agreement to do something unlawful.

13 Deadly weapon Instruction is Instruction No.
14 15. Now that's going to be a very simple Instruction. It
15 attacks on the enhancement to the two charges or just one
16 charge, the murder charge. You can't enhance the
17 conspiracy. It's Instruction No. 15. It clearly points
18 out that a firearm is a deadly weapon. We know that
19 Michael was killed by a firearm, we know the .9 millimeter,
20 the murder weapon, was found in the defendant's bedroom,
21 and so that issue for you to decide is very simple.

22 Now getting to the point of the murder.
23 There were a lot of Instructions read about murder, but
24 keeping in mind that Instruction No. 8, 9, and 10 are
25 general instructions, general definitions of murder. What

1 constitutes murder is the killing of a human being with
2 malice aforethought, whether expressed or implied. The
3 unlawful killing may be effected by any of the various
4 means by which death may be occasioned. That's the general
5 definition of murder, which is No. 8.

6 Instruction No. 9 only goes to the point to
7 define for you what malice aforethought is and then
8 Instruction No. 10 defines to you what express and implied
9 malice is, as it is listed in the general definition of
10 murder.

11 What the State will be asking you to do,
12 though, is start focusing more on Instructions 11, 12, and
13 13, which is the first degree Instructions. First degree
14 murder is very simple. Murder in the first degree is very
15 simple. It's murder which is perpetrated by any kind of
16 wilful, deliberate, and premeditated killing.

17 The premeditation is the key and that will
18 be explained to you or further defined to you in
19 Instruction No. 12. Again, you will be having all these
20 Instructions with you, but premeditation is a design, a
21 determination to kill distinctly formed in the mind. Now
22 it doesn't have to be a day before or an hour before. It
23 can be instantaneous. I will give you some examples as to
24 that.

25 For example, if there's a husband who

1 suddenly develops a relationship with a younger lady, a
2 girlfriend and he knows that if he were to go through a
3 divorce, he would pay dearly because of alimony and child
4 support. So he decides the best thing to do is get rid of
5 the wife. Doesn't like her anyway and so he starts
6 plotting to kill and he starts taking steps. It may take
7 him months for him to finally commit the ultimate act and
8 try to stage it as an accident.

9 Here, we have premeditation that starts
10 well, well before the actual killing, but it can also
11 happen just within an hour. Last week the movie Casino was
12 being played on cable television in two parts and, at the
13 very end, it shows these individuals, who are the target of
14 a beating. They come to this corn field in Indiana and, as
15 they get out and they are greeted, suddenly the assailant
16 has a baseball bat and the beating starts with a baseball
17 bat and a grave eventually gets dug once these guys are so
18 beat up. These two guys get beat up by a bat, a grave gets
19 dug.

20 Well, the determination to kill, they could
21 have maybe left these guys there and, perhaps, they would
22 have survived the beating by the baseball bats in the
23 skull, but, no, they throw -- they are still alive -- the
24 bodies into this grave. Well, that determination, that
25 premeditation to kill was developed eventually once they

1 started digging the grave. That could have happened maybe
2 an hour before, depending upon how long it took them to dig
3 that hole.

4 But then it can also happen instantaneous.
5 For example, very common here in Clark County bar robberies
6 in the middle of the night and a suspect goes in with a
7 gun. He's commanding everybody to lay down, he's trying to
8 steal every coin that he can find in that barroom, and
9 money from the patrons. One patron decides to get brave
10 after a couple of beers that he had been drinking earlier
11 and charges the defendant. Now that person may have never
12 -- the assailant may have never thought in his mind I'm
13 going to go in there and kill, but he fires. He fires
14 because that patron was coming right at him and so he made
15 that determination instantaneous I'm going to kill. So
16 that goes to show you that premeditation can be
17 instantaneous.

18 And then Instruction No. 13 goes on to point
19 out to you that the intention to kill may be ascertained or
20 deduced from the facts and circumstances of the killing,
21 such as the use of the weapon calculated to produce death,
22 the manner it was used, and the intending circumstances
23 characterizing in the act.

24 A weapon, bullets; you know a gun doesn't
25 kill by itself. If it's laying there loaded, it won't

1 kill, but if you pick up the gun and you hold it with the
2 strength of your arm, and then you aim it at somebody
3 else's living, breathing flesh, and then you pull that
4 trigger, not just once, but three times at and towards the
5 body of another human being, those are facts and
6 circumstances that can lead you to show and deduce from the
7 fact that this is a premeditated killing.

8 Finally, Jury Instruction No. 18 simply puts
9 that second degree murder is all other murders still with
10 malice aforethought, as this was defined to you earlier,
11 but not with that added mixture of premeditation. The
12 reason why we are here to ask you to find the defendant
13 guilty of first degree murder is because the facts clearly
14 indicated that this was a premeditated, wilful act with
15 malice aforethought to kill Michael Beasley.

16 How do we know that? Well, we know that
17 there was an agreement to pick up and lure Michael well
18 before part of the conspiracy, as discussed to you earlier,
19 and we know also that the victim Michael felt safe to go
20 with these guys because don't forget, these are his home
21 boys, to use the gang terminology, his friends. We know
22 that Michael didn't go up there with somebody who he didn't
23 like, let's say the Gerson Park gang members, because he
24 had his watch, his jewelry, his personal belongings were
25 still on there. There was no scrape marks on his nails or

1 his arms to show he was bound or that he had a fight out
2 there. No, this victim, Michael, went out to the desert
3 with somebody who he trusted, who he thought he could trust
4 in this case because of the physical evidence. Michael may
5 not be able to talk any more, but his body sure does.

6 And then we know after you make this
7 agreement and you start setting the wheels into motion to
8 go pick Michael up and then come back and then you get
9 yourself in the car, the defendant in this case, and you
10 take a firearm with you, the .9 millimeter, right there
11 shows that you're thinking about the premeditation, you're
12 thinking about what you are going to be doing. You've got
13 the murder weapon in your hands and it's loaded and it's
14 ready to go and look at the sequence of the firing.
15 Michael is looking out into the wash and he's maybe slowly
16 walking back towards the car that Jeremiah had just
17 repositioned. The defendant is behind Michael and he
18 suddenly -- we know the Burnside boys are just off to the
19 right-hand side next to Michael, the Burnside brothers that
20 is, and we know that there's only one person who pulled the
21 trigger that night, which is the defendant, and where does
22 he shoot? He holds it up to the back of Michael. Michael
23 never sees what's happening to him and he fires.

24 Does he shoot in the air? Does he aim for
25 his leg or does he do anything like that? No. He shoots

1 towards vital organs, the torso area, the neck, the spinal
2 cord, the heart, and that bullet, we know from the coroner,
3 as he explained, went through the back and came out in the
4 front. The exit wound and entrance wound, there is a big
5 diagram that the coroner explained to you; you again will
6 be able to take that with you.

7 Then we know that Michael fell to his
8 knees. You know, Crystal Bradley testified to that, as to
9 what the defendant told her in his confession, but we also
10 know that that happened with Jerimiah Deskin and then the
11 second shot, again showing the premeditation. You know,
12 you don't shoot somebody in the back and think, oh, it was
13 an accident. No, it wasn't an accident because he gets out
14 of the car, as they are getting ready to pull out, he walks
15 back up to the body and then he takes two more shots that
16 we know of, one of which goes into the skull and either of
17 those two shots, as the coroner pointed out to you, was a
18 deadly bullet, but you aim a gun at somebody's skull, as
19 they're laying there bleeding from the first bullet that
20 you put into their body, that's not premeditation? Well,
21 it certainly is. He knew what he was doing and that's what
22 he wanted to do.

23 And then, of course, we know that the murder
24 weapon was found in the defendant's room and again, as
25 Detective Buczek testified to you as to his contact on

1 Thursday, last Thursday with the defendant, the things that
2 he says. You know, like, "Oh, yeah, if you are looking for
3 the .9, it's not there." That's the first statement and
4 then kind of feeling bad because the police are at his
5 mom's house, well, I'll show you where the .9 millimeter
6 is. They never mention the fact that they were looking for
7 a .9 millimeter to him, but he knew. Of course, he knew
8 because he was involved, he was there, he used it. Let me
9 show you where the murder weapon is that I used. You can
10 read between the lines as to what he says. Oh, I bought it
11 from Sugar Bear after the murder, but I did handle
12 everything prior to the murder in case Fred Boyd may find a
13 fingerprint. I'm sure that's what his thoughts were.

14 Again, read into those facts, use your
15 common sense. There's an Instruction in here that says you
16 have to use your common sense. Don't leave it outside that
17 door. Bring it back in into your deliberation room.

18 Then you have motive. We know what the
19 motive is. He did not like Michael. Tanesha Banks and
20 Crystal Bradley mentioned that they were gossiping about
21 Michael, about Michael wanting to leave out of the gang,
22 and the first thing that was asked to Michael -- to Brendan
23 on the phone, on the three way call, "Hey, Nasby, is
24 Michael still a L.A. Crazy Rider? No, he is not," and he
25 says that just minutes before he gets Tanesha Banks off the

1 phone and proceeds to confess to what he had just done the
2 previous night. Again, read between the lines, take those
3 facts, use your common sense. This is all actions of
4 somebody who planned and actually perpetrated and committed
5 this crime showing first degree murder.

6 Deceit, spreading bad information, blaming
7 it on everybody. We have got Gerson Park Kingsmen being
8 blamed, we have got Brittany Adams -- not Brittany Adams,
9 but we got Crystal Bradley and Tanesha Banks being blamed,
10 an individual by the name of Sugar Bear blamed. It's very
11 easy to blame everybody in the world except for you, the
12 person who actually did the crime. So keep that in mind
13 too, how he is using this deception, trying to cast out
14 this deception once he gets arrested and even before.

15 And, finally, using all these facts as
16 evidence of premeditation in that the defendant did commit
17 this crime, look at the witness intimidation. Why else
18 would you be doing this? Because you enjoy it? This guy,
19 the leader of the gang, thinks it's neat to give false
20 information to Brittany Adams and then, as she is angry
21 with Tanesha Banks, encourages her to go over there and
22 then he offers her a hammer so he can -- so she can use it
23 and hit her right between the eyes and kill her and what's
24 even more interesting is, as Tanesha Banks is being beat up
25 by Brittany, the defendant is sitting in the car there. He

1 doesn't do anything. No, he can't do the dirty work
2 because now he would have to face somebody. He likes to
3 shoot people in the back. That's what he likes to do, but
4 he sits there and watches everything. Doesn't stop the
5 fight, doesn't want to be seen by anybody, doesn't want to
6 be seen by Tanesha's parents, who are coming out there
7 trying to run and trying to help their daughter out. No,
8 he doesn't want to be seen, but he sits there and watches
9 this fight and then when Brittany gets back in the car, all
10 what he could do is say, "You should have killed her. You
11 should have killed her. You should have killed her, Cuz."
12 He used the terms that were brought out from the witness
13 stand.

14 And then we get a call that's documented
15 from the Clark County Detention Center to Tanesha Banks.
16 Again, Tanesha Banks, the one to first contact the police
17 in this case, "I can have you touched." Intimidation of
18 witnesses coming from an individual who is charged with
19 first degree murder.

20 These are all facts that you should use now
21 to consider in finding the defendant guilty as charged.

22 Thank you.

23 THE COURT: Thank you.

24 Mr. Sciscento, you may present your closing
25 argument.

1 MR. SCISCENTO: Thank you, your Honor.
 2 If it please the Court, opposing counsel,
 3 ladies and gentlemen of the jury, as I said before in my
 4 opening statement, I'll say it again, I'm a little nervous
 5 because I'm here to argue for Brendan Nasby and, as I
 6 argue, I know I'm going to say some things that are wrong,
 7 I'm going to make mistakes, I'm going to forget things. So
 8 I would ask you to bear with me, as I go through this. No
 9 matter how many times we stand in front of you and argue,
 10 it's never easy.

11 As I viewed this case throughout the last
 12 four, five days, one theme came to mind. I talked about
 13 looking at both sides of the pictures, right, both hands,
 14 but this case is about Let's Make a Deal. We will give you
 15 12 to 20, we will give you probation, we will give you a
 16 misdemeanor, we'll give you this, we'll give you that if
 17 you say Brendan Nasby did it. That's what this case boils
 18 down to, let's Make a Deal. I will give you probation.
 19 You can watch your son grow up, not from the confines of a
 20 prison, but from home if you say Brendan Nasby did it.
 21 Forget about your previous statement.

22 Now, if I put a witness up here and I handed
 23 him a hundred dollars and I said testify --

24 MR. COUMOU: Judge, I'm going to object. I
 25 don't like the insinuation that we're paying witnesses --

1 MR. SCISCENTO: Your Honor, if I may.
 2 MR. COUMOU: -- a hundred dollars.
 3 THE COURT: Well, again, I'm sure Mr.
 4 Sciscento is making some sort of analogy here, Mr. Coumou,
 5 which I think is proper for closing argument.

6 Mr. Sciscento, you may proceed.

7 MR. SCISCENTO: Thank you.

8 If I paid that witness \$100 and he testified
 9 in front of you and I told you I paid him \$100 and he said
 10 he paid me \$100 to testify, but I'm going to tell you the
 11 truth, that would be suspect, wouldn't it? You would
 12 suspect that. You would say, well, he's paying him to be
 13 there. Ladies and gentlemen, a hundred dollars, your
 14 freedom, not going to prison, it's compensation, it's
 15 something for something. That's what this is about.

16 They're asking you to forget about the fact
 17 that somebody is facing a life sentence, but he or she is
 18 going to testify and get a misdemeanor and walk or
 19 anticipates getting probation, but that's not bought and
 20 paid for testimony and it is.

21 Jury Instruction No. 27, "The credibility or
 22 believability of a witness should be determined by his
 23 manner upon the stand, his relationship to the parties, his
 24 fears, motives, interests, feelings, his opportunity to
 25 have observed the matter to which he testified, the

1 reasonableness of his statement, the strength or weakness
 2 of his recollections. If you believe that a witness has
 3 lied about a material fact in the case, you may disregard
 4 the entire testimony of that witness or any portion of his
 5 testimony which is not proved by other evidence."

6 The motives to lie, they had motivations to
 7 lie. Jerimiah Deskin for \$100 would setup Michael Beasley
 8 to kill him and you don't think to keep him from going to
 9 prison on a murder wrap with a life sentence behind it that
 10 he wouldn't give up anything? He said that on the stand.
 11 I asked him, "Your son is a year and a half old. You'd do
 12 anything to watch him grow up," and what was his answer?
 13 It's in the transcripts. You heard it. "Yes, I would do
 14 anything." He told you he would setup somebody for \$100 to
 15 have him killed. How believable, how credible is that?
 16 What are his motivations?

17 We're going to get to all those witnesses
 18 and I said in the beginning, watch them because you are
 19 going to see a lot of things over here, but I'm going to
 20 bring out the rest of it. Let's Make a Deal on this one.

21 Physical evidence, see, they kind of brush
 22 over that. At the scene, the examiner, the crime scene
 23 analyst says specifically I go there for one purpose, to
 24 collect evidence which I deem is important. We have other
 25 people there helping us. At one time, he said there was

1 seven people there doing the circular, spiral thing looking
 2 for evidence. What evidence did they find? Three casings,
 3 three shiny, new casings amongst hundreds, numerous other
 4 casings. If you look at the evidence, you will see some
 5 .22s and some other shells, which are shiny and new.

6 Detective Thowsen said we weren't looking
 7 for a .9 millimeter. We were just looking for any new
 8 casings or shells. Well, they missed a few, but they get
 9 three of them, three casings. They really get four of
 10 them, but three they say, ha, these are the murder ones.
 11 Their expert witness, Torrey Johnson, gets on the stand.
 12 What does he say? I cannot include or exclude these
 13 casings as being fired from the gun recovered. That's
 14 their evidence, but they are going to brush over it, they
 15 are going to forget about it. They want you to forget
 16 about it.

17 The shoes, there were seven pairs of shoes
 18 recovered at Mr. Nasby's house, seven pairs of shoes. I
 19 don't know how many that each of you own. Seven pairs,
 20 none of them matched that fresh fingerprint found in the
 21 middle of the desert. Remember, I asked one of the
 22 detectives or crime scene analyst, "What is the weather
 23 like out there?" It's opened, it's exposed. I did that
 24 for a purpose. I did that for one reason, to show you and
 25 you will see in the pictures this is wide opened, it's in

1 the middle of July, the wind is there, no trees to stop
2 this.

3 THE COURT: Excuse me, Mr. Sciscento. Did
4 you mean fingerprints or footprints?

5 MR. SCISCENTO: I'm sorry, footprint. Thank
6 you, your Honor. Again nervous.

7 The footprint, the footprint, it was wide
8 opened; nothing to stop it from being blown away, but it
9 didn't match the seven shoes that Mr. Boyd had to compare,
10 the seven shoes that were found in Mr. Nasby's place, but
11 we don't know if it matched other shoes because there were
12 no other shoes compared. Sugar Bear's wasn't compared,
13 Jeremiah Deskin's wasn't compared. Do we have any evidence
14 to show whose they were? What about the Burnside
15 brothers? There was no shoe prints from them, but we will
16 forget about that, even though the seven that we found at
17 his house do not match. It doesn't matter, overlook it
18 because we have got a bullet. We find a bullet. Now
19 that's amazing. This is what I don't understand and I will
20 not put a spin on this.

21 Dr. Jordan specified and stated up here the
22 bullet came from the back forward. Entrance wound was in
23 the back, exit wound was in the front. The velocity of
24 that bullet to go through that body cutting through muscle,
25 fat, skin, whatever was in its way, they want you to

1 believe that the cotton shirt stopped it. They want you to
2 believe that cotton shirt stopped it from going through and
3 that's how they found it, but read the reports. There were
4 numerous shells, numerous casings found on the back of the
5 body because he was laying where people shoot.

6 Now, Torrey Johnson specifically said the
7 bullets match, but it's a subjective test, not an objective
8 test. In other words, if somebody else was to run that
9 test, it wouldn't come back as the same. There are not
10 enough points. There is not a set number of points. You
11 don't say seven equals a maximum, six equals a no match.
12 He said specifically there isn't a specific point tool mark
13 examination. In tool mark or firearms examination, there
14 isn't a specific point. That means he determined that that
15 was the bullet that was used.

16 Remember, Mr. Santacroce asked him about the
17 different millimeters and what it converts to? Close to a
18 .38, it's a .37 or .67, which is close to a .38 caliber,
19 which is close in size to the .9 millimeters. There is no
20 comparison of that gun found at Mr. Nasby's house that
21 gives you positive proof, beyond a reasonable doubt, that
22 that gun was used. There wasn't enough there. There were
23 no fingerprints found there.

24 I still don't understand about the bullet.
25 Mr. Boyd -- I'm sorry, I think it was McPhail who got up

1 there and said we searched the whole place, we looked
2 around the place, we looked all over for shells and
3 casings. We didn't find anything. We examined the body a
4 little, we took pictures, took numerous pictures, and you
5 have got those pictures, but suddenly between where the
6 body is picked up and the time it gets to Dr. Jordan,
7 there's a bullet found in his shirt. There is no hole in
8 the shirt coming through it. That doesn't make sense.
9 That's all I'm saying. It doesn't make sense and if it
10 doesn't make sense, there is something wrong with the
11 case.

12 Instruction 29, "Although you are to
13 consider only the evidence in this case in reaching a
14 verdict, you must bring to the consideration of the
15 evidence your everyday common sense and judgment as
16 reasonable men and women. Thus, if you are limited -- you
17 are not limited solely to what you see and hear as the
18 witness testifies, you may draw reasonable inferences from
19 the evidence which you feel are justified in the light of
20 common experience. Keeping in mind that such inferences
21 should not be based on speculation or guess."

22 The DA asked you to speculate as to some
23 other things. You can't do that, but you can wonder how a
24 bullet can go through a body, both sides of it, but was
25 stopped by a cotton shirt. You can wonder about that. You

1 can wonder how it got there. You can wonder how those
2 casings don't match the gun.
3 Let's get to the witnesses. There is
4 Crystal Bradley, a very delightful lady got up here and
5 testified. Said she was a gang member, but she didn't know
6 Brendan Nasby that well. She said after a few months they
7 kind of tailed off; maybe the phone calls were down to once
8 a month and that was about it, but she wants you to believe
9 that he is going to -- Mr. Nasby is going to just tell her
10 I did it, I shot. She wants you to believe that.

11 Using your common sense, who do you confide
12 in? Somebody you hardly ever talk to or someone like a
13 girlfriend, boyfriend or lover that you share something
14 more than a common bond of gangship or something to that
15 effect. And Crystal Bradley also was accused by Tanesha
16 Adams as being there involved in the shooting. It's in the
17 transcripts and it is what was stated up here. All you
18 have to do is review them. Crystal Bradley was blamed as
19 being there. That's her motivation. I don't know what
20 else there is.

21 Brittany Adams. Brittany Adams stated Sugar
22 Bear did it. She gave a statement on August 4th, 1998 that
23 Sugar Bear did it. She gave the same exact version that
24 Jotec Burnside and Tommie Burnside gave and that Jeremiah
25 Deskin gave.

1 MR. COUMOU: Judge, I object. That's not
2 true at all. It was different versions.

3 THE COURT: Okay. Now, ladies and
4 gentlemen, what we are going to do here, I'm going to ask
5 Mr. Sciscento to rephrase it as he believes the evidence
6 has shown these particular points and then the jury can
7 test their own recollection. Mr. Coumou can state what he
8 believes the evidence has shown.

9 Go ahead, Mr. Sciscento.

10 MR. SCISCENTO: The statements by the four
11 witnesses were Michael Beasley was brought up there and
12 that somebody shot him in the back and in the head. Both
13 of -- all four of them said that. Three of them said Sugar
14 Bear did it and on August 4th -- Brittany Adams said Sugar
15 Bear did it on August 4th, 1998, but she changes her
16 statement. She goes through this whole thing, yeah, Sugar
17 Bear did it, Sugar Bear did it, and Sugar Bear did it and
18 when does it change? When it's time to make the deal.
19 When you finally realize you're being charged with
20 kidnapping and battery and the kidnapping carries a life
21 sentence from the back end from 10 to life. She thought it
22 was 25 to life.

23 MR. COUMOU: Judge, I object. It's five to
24 life.

25 THE COURT: Okay. Well --

1 MR. SCISCENTO: I will rephrase it if it's
2 five to life. My understanding is it's a ten to live, but
3 if it's five to life, as long as we understand it's a life
4 sentence on the back end.

5 THE COURT: Okay, go ahead.

6 MR. SCISCENTO: If you get a life sentence
7 in the back, means you are never going to get out. Five to
8 life, whatever, means you could stay in there for life.

9 What's her motivation to say Brendan Nasby
10 did it? To get out. She tells you that she liked Michael
11 Beasley, we are homies, I watched his back, I fought for
12 him, he fought for me. Yet she would just jump up and give
13 a statement that Sugar Bear did it because she loved
14 Michael so much that she didn't care the truth about it,
15 because she just wanted to protect Nasby or she wanted to
16 do something else and now she is changing it because the
17 truth must come out. No, she's changing it because she got
18 a misdemeanor, because she wouldn't tell us. I asked her
19 about that. "I tried to contact you over Labor Day to talk
20 about the case. Yes. And you refused to talk to me?"
21 Yes. On the advice of counsel, I refused to talk to you."
22 She changed her story after they arrested her and offered
23 her a deal.

24 John Holmes. I don't know what he's doing
25 here. Again, I don't quite understand this. There's a

1 connection between the three of us and you heard about it.
2 Mr. Holmes contacted my office and I told him I represented
3 Mr. Nasby. Now, Mr. Holmes wants you to believe that when
4 they are in the Clark County Detention Center together,
5 that Brendan comes up and says, "Hey, remember me," and
6 Holmes says, "I don't remember you." They talk a little
7 more, they are playing chess, and that he's just going to
8 open up and spill to him, "I shot Michael Beasley," even
9 though Holmes says Beasley is my buddy, my homie, we were
10 going to ride, my posse was going to ride for my homie.

11 You don't do that. You don't just blurt out
12 I killed somebody. I don't care how crazy people may be.
13 That doesn't make sense. There's something else there.
14 Mr. Holmes, there's something else. Whether he's angry
15 about something, I don't know, but nobody blurts that out.
16 It doesn't make sense.

17 Jerimiah Deskin, Woodpecker. Let's talk
18 about Jerimiah Deskin for a minute. He wasn't in
19 custody. The Burnside brothers were. He knew right away I
20 got arrested in Apple Valley, California, I got brought
21 back here, a deal is cut. Detective Thowsen puts it on the
22 record. There was, I believe, an agreement with the
23 district attorney and your attorney, Mr. Golightly. Do you
24 agree to testify today and what was that agreement? Well,
25 he anticipates probation. What's his motivation to lie?

1 Probation. I said it specifically. "You want to see your
2 child grow up? Yes, I do." Probation. "You'd set
3 somebody up for \$100? Yes. You would do anything not to
4 go to prison?" I mean, if the going price to kill somebody
5 is for \$100, what's the going price to lie? Probation.

6 He admitted he picked Michael up. Another
7 witness said she was there. She saw Jerimiah Deskin pick
8 him up, but Brendan wasn't there. Burnside said we were
9 there, but Brendan wasn't there. See, that's the rub. The
10 three of them can give you the same story, but they can't
11 create something that didn't happen because of the
12 possibility there were other witnesses who may have seen
13 them at Michael Beasley's house. So they all have to say
14 we were at Nasby's house, we left because that's what
15 happened. They went to Michael Beasley's place, the three
16 of them because what if a neighbor saw them? What if
17 somebody else saw them? So they've got to say Brendan
18 wasn't there, but once we leave, then we can bring Brendan
19 back into the car because there were other people there who
20 would discredit that story.

21 And so in order to make the story fit, you
22 have got to say no one else was there when we went out in
23 the middle of the desert to shoot Michael Beasley. That's
24 why it's got to be compartmentalized like that. You have
25 got to have separate places because if somebody else in the

1 middle finds out that there was another witness that
 2 testifies differently, the whole story goes down.
 3 Deskin told us -- we showed that picture of
 4 him in the car with the bullet hole in the back. It took
 5 great pains to have him admit he was from the Sancukas
 6 (phonetic), which is a gang from Las Vegas, and there was a
 7 rivalry between the Crazy Riders or L.A. Riders or
 8 whoever. Now he said he wasn't in the gang during that
 9 time, but he also said he got shot on the back of his car
 10 was shot by a gang member and who was with him? Who was
 11 with him in that car? Sugar Bear was. He said that.
 12 Where did Deskin run to? California. Where did Sugar Bear
 13 go to? According to Deskin, he's from California and we
 14 can't find him locally. Sugar Bear was with him when he
 15 got shot, when the car got shot, because he is a gang
 16 member and he was involved with gangs. He said, "I don't
 17 know what gang it was. It was another gang that shot at
 18 me."
 19 Jomeka Beavers, that was it. She was the
 20 one that was there that said Brendan Nasby wasn't there to
 21 pick up Michael. Jeremiah Deskin was. Deskin says he went
 22 in and saw the baby. Still drove out that night to a place
 23 he had been before, to a place that's not illuminated or
 24 lit up or a place where he decided to have Michael killed
 25 for \$100. That's his motivation. That man has no

1 conscience. If that's all it takes to kill somebody is a
 2 hundred dollars, how much is it to lie?
 3 Jotee Burnside, young kid, 12 months to 30
 4 months he got for this. Monte Hall is at work again.
 5 Monte Hall is basically saying, give up Nasby, but it was
 6 too late. See, what happened, he was in -- he stuck to his
 7 story that Sugar Bear did it and Jeremiah Deskin,
 8 Woodpecker stepped in before him because Jotee Burnside
 9 said specifically I heard that Deskin had cut a deal
 10 already and had testified and he was trying to jump on that
 11 band wagon and he gave that statement. Oh, now Nasby did
 12 it. His first statement, Sugar Bear did it. I made him
 13 say that because it's true. That's what he said, Sugar
 14 Bear did it. Jotee Burnside said I was there. On August
 15 4th, he testified to Detective Buczek and Detective
 16 Thowsen, "I was there, I saw the shooting, I knew it was
 17 going to happen, I knew ahead of time and Sugar Bear was
 18 there. Sugar Bear did the killing," but that's not enough
 19 probable cause, but Jotee Burnside changes his story and
 20 gets 12 months to 20.
 21 Tommie Burnside. You saw him. He came in
 22 here, handcuffs, he wasn't quick enough either. If he
 23 would have changed his story, he would have got probation
 24 probably. His first statement was Sugar Bear did it and he
 25 alluded to it. You saw me go through that long thing. He

1 said, "Yes, I alluded to it. I didn't say specifically
 2 Sugar Bear did it." I said, "You alluded to it, you kind
 3 of made the police believe that he did it? Yes."
 4 Here's the rub. If anything, go back with
 5 this. Tommie Burnside said I was there. Tommie Burnside
 6 said I was there when Michael Beasley was killed. I admit
 7 it. Did the district attorney ever ask him who shot him?
 8 No and I know that. Instruction 33 tells you, "If you
 9 during your deliberation you should desire to be further
 10 informed on any point of law or hear any portion of the
 11 testimony, you must reduce your request in writing signed
 12 by the foreperson. The officer will then return you to
 13 court where the information sought will be given you in the
 14 presence of and after notice to the district attorney and
 15 the defendant and his or her counsel. Readbacks of
 16 testimony are time consuming and are not encouraged unless
 17 you deem it necessary. Should you require a readback, you
 18 must carefully describe the testimony to be read back so
 19 that the court reporter can arrange his or her notes."
 20 You can readback the fact that Tommie
 21 Burnside was never asked that question, even though Tommie
 22 Burnside sat on that stand and said, "I was there when it
 23 happened." You can read that back and find that that
 24 question was never asked of him by the district attorney.
 25 Which leads us back to this. All the

1 evidence that they have, you know, that evidence that
 2 Detective Buczek talked about that had probable cause was
 3 one statement. The physical evidence that Detective Buczek
 4 said we found at the scene didn't match to Mr. Nasby. It
 5 didn't. That's all there is to it.
 6 There is too much reasonable doubt here.
 7 There's too much going on. There's too much questions
 8 unanswered. There are too many players unaccounted for.
 9 You don't have to be convinced a hundred percent. It's not
 10 a question of weighing out the differences because you can
 11 be 99 percent sure of one thing, but if you are one percent
 12 sure, there's reasonable doubt.
 13 MR. COUMOU: Judge, I'm going to object.
 14 That's not the standard.
 15 THE COURT: Sustained. Mr. Sciscento, it's
 16 not the standard.
 17 Ladies and gentlemen, you have been given a
 18 Jury Instruction defining reasonable doubt. Mr. Sciscento
 19 and Mr. Coumou may comment to you on that, but that's the
 20 proper form.
 21 MR. SCISCENTO: If in your deliberation
 22 there is reasonable doubt that he committed this crime, Mr.
 23 Nasby is entitled to a vote of not guilty. Entitled,
 24 entitled to not guilty. If you add it all up and you see
 25 that the physical evidence doesn't come back and match it,

1 it's questionable whether it matches that gun, the
2 motivations for lying are there. If you add all that up,
3 you don't need reasonable doubt. There is no doubt in
4 anybody's mind. There is not enough evidence here because
5 there's too much lying going on up here, there is too much
6 deal making going on up here, and there is too much
7 evidence which shows he didn't do it.

8 You know, there is some questions that he
9 says, oh, the .9 millimeter was at my house. Well, it's a
10 search warrant and I think Detective Thowsen said this
11 specifically about the .9 millimeter. There's a lot of .9
12 millimeters out there, but you've got to be sure that this
13 is the one. It's ridiculous to assume that somebody is
14 going to hand his mother a search warrant and he's there
15 and they are not going to talk about it, his mother and
16 him.

17 Let me read to you again reasonable doubt.
18 "The defendant is presumed innocent until the contrary is
19 proved. This presumption places upon the State the burden
20 of proving beyond a reasonable doubt every material element
21 of the crime charged and that the defendant is the person
22 who committed the offense. A reasonable doubt is one based
23 on reason. It is not mere possible doubt, but is such a
24 doubt as would govern or control a person in the more
25 weighty affairs of life. If the minds of the jurors, after

1 a entire comparison, consideration of all the evidence, are
2 in such a condition that they cannot feel an abiding
3 conviction of the truth of the charge, there is not
4 reasonable doubt. Doubt to be reasonable must be actual,
5 not mere possibility or speculation." You cannot
6 speculate. If you have a reasonable doubt as to the guilt
7 of the defendant, he is entitled to a verdict of not
8 guilty.

9 Every couple of months or so I get
10 disenchanted with the law. It is a tough thing to do
11 because it's time consuming and the law is a jealous
12 mistress and when that comes about, when I get
13 disenchanted, when I just want to chuck it in a hole, I
14 don't know, perhaps some shells down in Spain, I try to go
15 back to my roots, I try to go back to law school, I try to
16 go back to the reason I went to school, to law school. I
17 try everything.

18 MR. COUMOU: Judge, I'm going to have to
19 object. With all due respect, he can't interject
20 personal --

21 MR. SCISCENTO: Your Honor --

22 MR. COUMOU: -- things about the lawyers
23 here and it should be strictly commenting on the facts.

24 MR. SCISCENTO: There is no case law or law
25 that says that.

1 THE COURT: But, Mr. Sciscento, I will allow
2 you to go forward here. You can make some personal
3 antidotes here if you feel it brings home the point you
4 wish to make.

5 MR. SCISCENTO: I'll move on, your Honor.

6 THE COURT: Okay.

7 MR. SCISCENTO: One thing I did, though, a
8 couple weeks ago, month ago, is went to the movie 12 Angry
9 Men. Now regardless of the outcome of that, the one thing
10 that I remembered the most is they sat and deliberated.
11 That's what I have been asking all along, sit and
12 deliberate and ask questions about the evidence. Don't
13 just go in and vote. Question everything, go through all
14 the evidence, question it, use your common knowledge, your
15 everyday experience from what you have heard up here and
16 your beliefs like they did.

17 After everything is done, after all is said
18 and done, it's going to come back that Mr. Nasby did not
19 kill Mr. Beasley because there's too much questions there.
20 Motivations to lie are too great and the motivation to
21 blame it on somebody else is way too great because they
22 keep putting that carrot in front of them. Like Monte
23 Hall, Let's Make a Deal to put somebody else in and you get
24 probation.

25 Mr. Coumou is going to get up in rebuttal

1 now and he's a very good lawyer. I'm not sure what he is
2 going to say, but I know he is going to try to say
3 everything against me and the arguments I have made. What
4 I'd ask you to do in your mind, as I would do, as I'm
5 asking you now in my statements, question what he says.
6 That's all I'm asking, just question. Think about an
7 argument against it. It's what you owe us.

8 If you can do that, if you can question all
9 of our arguments and then make a determination of guilt or
10 innocence, if you can do that, you've done your job.

11 Thank you.

12 THE COURT: Mr. Coumou, the State may
13 present its rebuttal argument.

14 MR. COUMOU: Thank you.

15 Again, if it may please the Court and
16 counsel for the defendant, this is my opportunity now to
17 have that rebuttal that I told you about earlier.

18 Now the defense attorney has just outlined
19 his case and he's questioned you, make you question about
20 certain things, and Mr. Sciscento is a very good lawyer and
21 he has done a fine job in this particular case, but the
22 fact is that the defendant has a good lawyer does not
23 translate to the ultimate decision that you have to make
24 and that is to find the defendant guilty or not guilty, but
25 the facts remain, though, that the evidence is overwhelming

1 to show that the defendant committed this murder of Michael
2 Beasley.

3 Now, the defendant -- defendant's
4 attorney -- through the defendant's attorney, in the
5 beginning he started making in opening statement, talking
6 about magicians, we are going to show you one hand, but we
7 are going to hide from you the other and, again, it was
8 brought up again during closing argument that we are going
9 to show you one hand, but hide the other one. Well, if the
10 State was going to be a magician in this case, we would be
11 unemployed and hungry by now because we don't hide
12 nothing. We didn't hide not a thing about this case.

13 Sure, we presented the fact that there was
14 some cigarette butts there, the police wanted to check it
15 out to see if it is of any evidentiary value, and it turns
16 out that it was not. None of those guys smoke Winstons.
17 It was probably there a couple days earlier. We know the
18 place was frequented a lot.

19 We didn't hide the fact that these
20 witnesses, some of them had some sort of negotiations, had
21 some dirty baggage, which I will talk to you a little bit
22 more in particular later on. We brought that all out,
23 every guy, every lady who took that witness stand who had
24 something about her testimony and her background because
25 they got arrested in connection with this case or not, that

1 was brought out by the State. The State doesn't try to
2 hide these things.

3 And the same thing goes with the shoes. The
4 shoe prints, yeah, they recovered some shoe prints. Maybe
5 it was of some sort of evidentiary value. Turns out that
6 it wasn't, at least the seven pairs that were found in his
7 room. Could have been more shoes in his house, but we
8 don't know. They focused their attention on the room, but
9 we know the defendant was not the only one that was there
10 either. Jeremiah Deskin, we know Jotce was standing right
11 next to Michael. So these are all -- it's just trying to
12 make you -- what the defense is trying to do is make you
13 speculate and guess on things that are not part of this
14 case that have not been admitted into evidence and that's
15 wrong.

16 There are three Instructions in total that
17 actually points to that. Instruction No. 22, the
18 Instruction on reasonable doubt, towards the ends it says,
19 "Doubt to be reasonable must be actual, not mere
20 possibility or speculation." You can't speculate.

21 Same with Instruction No. 26, "You must not
22 speculate to be true any insinuation suggested by questions
23 asked of a witness." A lot that was brought up now were
24 suggestions during the questioning by the defense. That's
25 not evidence. Those aren't facts. That's speculation what

1 he wants you to do.

2 Again, the Instruction on common sense, No.
3 29, "You may draw reasonable inferences from the evidence
4 to which you feel are justified in light of common
5 experience. Keeping in mind that such inferences should
6 not be based on speculation or guess," and what he's trying
7 to do right now with everything that he just pointed out to
8 you is he's speculating, speculate on this, speculate on
9 that. You can't do that. Take everything that was
10 introduced into evidence, the actual physical, concrete
11 stuff, then you take all the evidence that was presented to
12 you, the verbal from the witness stand, the testimony, you
13 got the opportunity to watch every witness testify by the
14 State, those with some sort of baggage and those with not
15 any baggage. You saw their body language, their
16 mannerisms. That's for you to decide.

17 That's credibility and believability. The
18 State agrees with the defense attorney making that Jury
19 Instruction stand out to you. The credibility and
20 believability of every witness is for you to determine and,
21 in this particular case, every single witness corroborates
22 another witness and another witness and another witness.
23 All their testimony comes down to one person where the
24 fingers keep on pointing, as to the perpetrator of this
25 crime, and it's that man sitting right there, the

1 defendant.

2 And it is so easy that once you are charged
3 with murder and all this evidence that is starting to go
4 against you, it is so easy nowadays to just stand there and
5 say, hey, it wasn't me, it was somebody else and just leave
6 it at that; Sugar Bear, Gerson Park. It's so easy to do
7 that and what's interesting too, it's easy to pick a guy
8 who is bad. You know, let's say it makes him more
9 believable. If the defendant started arguing or started
10 throwing out the suggestion, well, maybe it was Governor
11 Guinn or President Clinton, you know, that's just not
12 believable, but you pick one of your own home boy gang
13 bangers, now it becomes a little bit more believable.

14 It's possible if you start accusing Al
15 Capon, if he were still alive, or Ted Kazynski (phonetic),
16 if he got out of prison right now, the Una Bomber, yeah,
17 bad guys. It's believable, these are bad guys, but you
18 can't fall into that trap where it's so easy to say, hey,
19 it was this and that person, it wasn't me, it was this gang
20 that did the killing. Take a step back, look at everything
21 again, and where do the fingers -- where does the trail of
22 evidence always come back to? One person, the defendant,
23 and it always comes back to the two Burnside brothers, and
24 it comes back to Jeremiah Deskin and so forth.

25 He talks about this whole issue about the

1 bullet in the shirt. Yeah, bullets come out with a lot
2 velocity, but the bullet that penetrated the back of
3 Michael's back and then came out through the front, it's
4 possible that the bullet that was there, no, it didn't get
5 stopped by the cotton T-shirt. I seriously doubt that, but
6 velocity may have just come to an end at that point where
7 it hit the skin and it surfaced out. Possible or possibly
8 it was the bullet shot -- the second shot into the ground
9 that apparently caused a crater right next to the face. I
10 don't know.

11 All I know is when Torrey Johnson examined
12 that bullet, along with the bullet that entered the skull,
13 if these bullets are so powerful, then why didn't the
14 bullet that went into the skull come out? No, they
15 recovered that one, but all the State can tell you is that
16 bullet also had blood it on consistent with the other
17 bullet that came out of the victim's skull, had blood on
18 it.

19 So, again, speculating, guessing, I don't
20 know where this is from. That's what he wants you to do.
21 He wants you to take away everything that was presented in
22 here and just brand yourself a big question mark. Can we
23 trust these guys or can we not trust these guys? You know,
24 he's talked about, you know, the Burnside brothers, you
25 know, they are trying to jump on the band wagon, that

1 everybody is trying to make a deal. Brittany Adams, let's
2 make a deal, John Holmes, he can't explain John Holmes
3 other than let's face it, the guy is in jail, they know
4 each other. Who knows, maybe the defendant's conscience is
5 just eating him alive about the fact that he had committed
6 this crime and killed one of his own gang bangers. Maybe
7 his conscience ate him alive or, perhaps, maybe he was
8 saying that to John Holmes while he is in jail so he can
9 get his status of, hey, I'm tough, I'm cool, I'm the leader
10 to protect himself in jail.

11 I don't know, but all I do know is that --
12 all the State knows is that everything John Holmes
13 testified to corroborates with the physical evidence. Did
14 John Holmes go and talk to the detectives in this case?
15 Did he go talk to the crime scene analyst? Did he go talk
16 to Crystal Bradley? No. He only spoke to one person and
17 that person told him what happened. What happened was is
18 that there was a murder out there and, sure enough, there
19 was a murder and all the physical evidence corroborates the
20 defendant was there. Of course, he would know John Holmes
21 who would know exactly what happened. He told him.

22 This whole issue of the State trying to be
23 magicians and trying to show you one hand and hide the
24 other hand is just absolutely ludicrous. I pointed out we
25 would be unemployed and hungry right now, not to mention if

1 the State was into hiding evidence and lying and putting on
2 all that kind of stuff, well, the whole criminal justice
3 system would fall apart and not one person in the United
4 States would be safe from prosecution if suddenly the State
5 became the judge, jury, and executioner of every case.
6 That's ludicrous. That whole thought, speculation placed
7 by the defendant's attorney is wrong. You can't do that.
8 The defendant's attorney is very good, but, again, it does
9 not translate into giving the defendant an acquittal in
10 this case.

11 Now, a lot has been talked about these
12 witnesses. Some of them have baggage, sure. That was
13 brought out by the State. Jerimiah Deskin, Brittany Adams,
14 the Burnside brothers, John Holmes pointed out that he was
15 in jail at the time on a robbery charge, but he mentioned
16 that nothing was resolved of that case and he is still --
17 it's still in the process.

18 This case is a murder case and it involves
19 the defendant killing one of his own members of his gang
20 and if you are going to think that the story from hell has
21 angels as characters, that's not the case. Stories from
22 hell do not have angels as characters. Sure, Jerimiah
23 Deskin, he has a negotiation. Sure, everybody wants
24 probation, but that sentencing, as pointed out to you
25 during the testimony, is up to the Court to make that

1 determination. He hasn't been sentenced yet, but he
2 cooperated to the extent of his involvement in this case.
3 He pled guilty to accessory to murder, as an accessory to
4 this case, not the actual puller of the trigger, but an
5 accessory. He has pled guilty to that and he has told the
6 police, pursuant to that negotiation, what happened and
7 what happened is corroborated by every other individual
8 witness that knows what happened on that night.

9 It's obvious from Jerimiah Deskin, as he was
10 saying, that he was there, he knows he was there, you know
11 that he was there, and this kid said there were three
12 shots. He then corroborated with the homicide detectives
13 beforehand or Kelly Neil if there were three shell
14 casings? No, he didn't do that. He talked about the
15 sequence of the firing, first shot hit on the back, he saw
16 Michael grab his back, go down on his knees holding with
17 one hand, and then roll over and then he saw the defendant
18 take two more shots, one of which was aiming towards the
19 head. We know that happened. That Jerimiah Deskin get
20 together with the coroner in this case, Dr. Jordan,
21 beforehand? Do you think Dr. Jordan is going to get
22 together with a gang banger and say, hey, let's make up a
23 story, let's solidify it a little bit better? No.

24 Sure, Jerimiah Deskin has pled guilty and he
25 is guilty of his culpability in this crime and, sure, he

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Tracie K. Lindeman

VS.

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END OF CONCORDANCE

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ORDR
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FILED

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690

Defendant.

C154293

Case No. ~~C143293~~
Dept No. VII
Docket P

ORDER

DATE OF HEARING: 10-7-99
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 7th day of October, 1999, the Defendant being present, represented by JOSEPH SCISCENTO, Esq., the Plaintiff being represented by STEWART L. BELL, District Attorney, through FRANK JOHAN COUMOU, Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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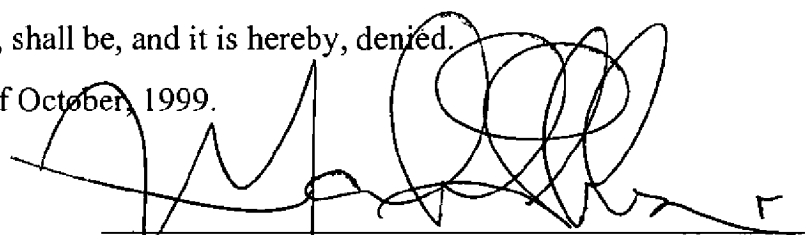
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C43293


1 IT IS HEREBY ORDERED that the Defendant's Motion in Limine to Preclude Evidence
2 of Other guns not used in the Crime, shall be, and it is granted;

3 AND, IT IS HEREBY ORDERED, that the Defendant's Motion in Limine to Preclude
4 Evidence of Witness Intimidation, shall be, and it is hereby, denied.

5 DATED this 12 day of October, 1999.


DISTRICT JUDGE

10 STEWART L. BELL
11 DISTRICT ATTORNEY
12 Nevada Bar #000477

13 BY 
14 FRANK JOHAN COUMOU
15 Deputy District Attorney
16 Nevada Bar #004577

28 msr

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JOSEPHINE BONN DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
BRENDAN JAMES NASBY,)
)
Defendant.)

Case No. C154293
Dept. No. VII
Docket No. P

VOLUME II

Before the Honorable Mark Gibbons
Tuesday, October 12, 1999, 11:00 a.m.
Reporter's Transcript of Proceedings

EVIDENTIARY HEARING
JURY TRIAL

CONDENSED TRANSCRIPT

APPEARANCES:

(See separate page)

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

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APPEARANCES

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200 South Third Street
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330 South Third St. #860
Las Vegas, Nevada 89101

ACCUSCRIPTS (702) 391-0379

Las Vegas, Nevada, Tuesday, October 12, 1999, 11:00 a.m.

(The following proceedings were had in open court outside the presence of the prospective jury panel.)

THE COURT: This is the continuation of Case Number C154293, the State of Nevada versus Brendan James Nasby.

Let the record reflect the presence of the defendant, together with his attorneys Joe Sciscento and Frederick Santacroce. The State of Nevada is represented by Frank Counou, deputy District Attorney.

The prospective jury panel is not present.

Okay. Mr. Counou, we're going to have a hearing now regarding the issue of the witnesses, then like that, whether there was any intimidation of any witnesses.

So do you want to call your first witness.

MR. COUNOU: Yes, Judge.

The State will call John Holmes.

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THE COURT: Okay. Lisa.

THE BAILIFF: I'm sorry?

MR. COUNOU: John Holmes.

THE COURT: Mr. Holmes, just step around to your right here; and if you could face me and raise your right hand, please.

Whereupon,

JOHN R. HOLMES

having been called as a witness by the Plaintiff and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Thank you. You may be seated.

THE COURT: Mr. Holmes, could you state your name and spell your last name for the record, please.

THE WITNESS: John Robert Holmes;

H-o-l-m-e-s

THE COURT: Thank you.

Mr. Counou, you may proceed.

MR. COUNOU: Thank you.

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DIRECT EXAMINATION

BY MR. COUMOU:

Q Mr. Holmes, this is a limited hearing on certain -- evidentiary hearing. Okay?

I'm going to focus your attention to the time that you were in the Clark County Detention Center, around November of 1998, last year.

Were you housed in the same module at the Clark County Detention Center with somebody that you see here in court today?

A Yes.

Q And who is that person, sir?

A Brendan Nasby.

Q Can you please point to him and tell me what he is wearing today in court.

A A blue tuxedo with a white shirt and a tie.

MR. COUMOU: Judge, if the record could reflect the witness has identified the defendant.

THE COURT: The record will so reflect.

BY MR. COUMOU:

Q Now, during the course of knowing the defendant at the Clark County Detention Center -- you knew him prior to being at the C.C.D.C., correct?

A Yes.

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THE COURT: How do you know that he wanted her scared?

THE WITNESS: That's what he told me. He said have her scared, killed or just -- so she wouldn't come to court. He didn't want her to come to court.

THE COURT: Okay.

BY MR. COUMOU:

Q Was it just one female on the list?

A No, there was a couple, like three, four, females.

MR. COUMOU: If I could just mark for this hearing, mark this --

THE COURT: Yes.

MR. COUMOU: I had a better document, Judge. I think I left that one upstairs. Left me just make sure. I apologize that I ripped it out.

THE COURT: Okay. This will be marked as State's Exhibits, what, 1 and 2 for --

MR. COUMOU: No, I think it will be -- I have it 58 and 59 on my list.

(Whereupon, a sotto voce at this time.)

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Q And during this time, did he reveal to you anything as to why he was there?

A In the beginning, he didn't. Like, a month or two after I was in there with him, he did.

Q Okay. And what -- what did he reveal to you?

A That -- we were sitting out playing chess, and -- he basically killed Michael Beasley.

Q Okay. Now, during the time that you spent, did he give you two documents that he wanted to do something with?

A Yes, he did.

Q And what two documents are they?

A He gave me a piece of paper with a list of some females' numbers and addresses and stuff on it. He wanted them scared so they wouldn't come to court and testify against him.

Then he made another little statement, about three pages long, that he wanted me to give to a female, to have her come to court and testify in his behalf that he did not do the --

THE COURT: Okay. Let me ask you this, Mr. Holmes: You said the first female, he wanted her scared?

THE WITNESS: Scared.

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MR. COUMOU: Oh, you want, just for the hearing -- mark it differently for the hearing?

THE COURT: Separate -- separate it.

MR. COUMOU: Okay.

THE COURT: Okay. Let's mark it just for the hearing. We'll remark it for trial.

MR. COUMOU: Okay. Good.

BY MR. COUMOU:

Q While this is being marked, you said he gave you a three-page document.

What did he want with that three-page document?

A He wanted me to give it to one of my females, so they would come to court. They was supposed to read it and come to court and say that, um, they was with a guy named Sugar Bear; and they was supposed to say they met him on Fremont or whatever; and they -- the whole paper was based on Sugar Bear doing the murder and that he wasn't nowhere in sight.

Q And he wanted one of your girls --

A Uh-huh.

Q -- to come in and lie as to what that statement is, right?

A Yes.

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1 Q Did you obtain originals of these
2 statements?
3 A I had the original and they just made copies
4 of it.
5 Q Okay. What did you do with the original?
6 A I gave it back to him.
7 Q Is that what the defendant wanted?
8 A Yeah.
9 MR. COUMOU: Okay. If the record could
10 reflect, I'm showing the defense State's Proposed Exhibits 1
11 and 2 to the defense.
12 THE COURT: Okay.
13 MR. COUMOU: If I may approach, Your Honor?
14 THE COURT: Yes, you may.
15 (State's Exhibits 1 and 2
16 marked for identification.)
17 BY MR. COUMOU:
18 Q Look at State's Proposed Exhibits 1 and 2.
19 Do you recognize those?
20 A Yes.
21 Q And what is that that's in front of you?
22 A One of them is the three page letter that he
23 wanted the female to come to court and say. Another is the
24 list of names he wanted scared, so they wouldn't come to

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1 number, I wrote.
2 Q Okay. So there is handwritings of yours
3 and --
4 A Mine and his.
5 Q -- and the defendant's on that second
6 document?
7 A On the first one.
8 Q Or the first -- what is that one, marked
9 Number 1?
10 A Number 1; uh-huh.
11 Q Okay. And you said that he wanted -- of
12 those witnesses that are listed, read those names of the
13 witnesses that he wanted scared, intimidated, killed, so
14 that they don't come to court.
15 A Crystal Marie Bradley, Tanesha Banks,
16 Brittney and Keshia Adams, Porsche and Kelly, Kelly and
17 Sherell.
18 Q Okay. And those are all witnesses that you
19 know of in this case, correct?
20 A Uh-huh.
21 THE COURT: Say yes.
22 THE WITNESS: Yes.
23 MR. COUMOU: I'll pass the witness, Judge.
24 THE COURT: Mr. Sciscento.

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1 court.
2 Q Okay. And do they accurately and fairly
3 depict the copies that you had?
4 A Yes.
5 MR. COUMOU: Okay. Judge, I move to admit
6 them as State's 1 and 2.
7 THE COURT: Any objection?
8 It's for the purposes of the
9 hearing only.
10 MR. SCISCENTO: For purposes of the hearing,
11 we have no objection.
12 THE COURT: Okay. Proposed 1 and 2 will be
13 received.
14 (State's Exhibits 1 and 2
15 admitted into evidence.)
16 BY MR. COUMOU:
17 Q Now, you said -- on the list of names,
18 did you write everything -- take that back.
19 Did Brendan Nasby write
20 everything on that name of -- lists with addresses and
21 telephone numbers and Social Security numbers?
22 A The one where it has the address and the
23 phone numbers and the Social Security numbers, he wrote.
24 The ones with just the name and

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1 (Whereupon, a sotto voce at this time.)
2
3 CROSS-EXAMINATION
4 BY MR. SCISCENTO:
5 Q Mr. Holmes, what were you in custody for in
6 the Clark County Detention Center?
7 A Robbery with the use.
8 Q And is that case subsequently over now?
9 A No.
10 Q It's still going on?
11 A Yes. It's in trial.
12 Q It's in trial?
13 A Uh-huh.
14 Q When did you first contact the police
15 officer or the District Attorney regarding this case, on
16 what date?
17 A Um, I can't remember the date.
18 Q Was it before or after you received this
19 three page letter?
20 A It was after.
21 Q It was after?
22 A Uh-huh.
23 Q How many days after, do you know?
24 A No, I don't.

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1 Q "You were in the same module as Mr. Nasby?
 2 A Yes.
 3 Q Were you in the same cell with him?
 4 A No, I wasn't.
 5 Q Did you have access to his cell?
 6 A No, unless he called me up there to his door
 7 or something.
 8 Q So there is no way that you can go into his
 9 cell uninvited?
 10 A If -- well, at free time, if I wanted to go
 11 in there, I had to have somebody click the door, but then I
 12 could get locked in there.
 13 Q Somebody would click the door and let you
 14 in?
 15 A Uh-huh.
 16 Q And you could have access to that?
 17 A Yeah, if one of the guards clicked the door.
 18 Q And if Brendan was in there, he could let
 19 you in there too?
 20 A Yeah.
 21 Q And let you out too, during free time; is
 22 that correct? Is that a yes?
 23 A Yes.
 24 Q Okay. So there is a possibility that you

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1 possibility or a chance that they'd let you in that room?
 2 A You would have to hold your hand up so they
 3 could see you in the door.
 4 Q You would hold up the hand so they would see
 5 you.
 6 It's a black and white camera;
 7 is that correct?
 8 A There is no cameras in the module.
 9 Q So you wave your hand, they will let you in
 10 that room?
 11 A Yes.
 12 Q So, again, there is a possibility that you
 13 could have been in Brendan Nasby's room without Brendan
 14 knowing about it --
 15 A Yes.
 16 Q -- by simply walking up and waving your hand
 17 in front of the door and they would let you in.
 18 A Yes.
 19 Q Okay. So there is a possibility that you
 20 could have grabbed this document without Mr. Brendan Nasby
 21 knowing about it?
 22 A No.
 23 Q There's no possibility?
 24 A No --

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1 could have gone in there without Brendan knowing that you
 2 were in his cell; isn't that correct?
 3 A Not really.
 4 Q Well, you just told me that you could get
 5 into a person's cell, even if you weren't invited, if you
 6 just stood in front of the door and asked them to click it.
 7 A Yeah.
 8 Q Okay. Let me go through the scenario.
 9 There is a module inside the
 10 Clark County Detention Center. It's a room -- a big room
 11 that everyone -- it's a rec room of some sort; am I correct?
 12 A Yes.
 13 Q And on the sides are all the cells, along
 14 the edges of this room; am I correct?
 15 A Yes.
 16 Q Okay. And the rooms are just a door with a
 17 little window in there; is that correct?
 18 A Yes.
 19 Q And somebody who controls it is in a control
 20 room? If you know this.
 21 A Yes.
 22 Q And if you wanted to get in somebody's cell,
 23 you would merely walk in front of the door and you could
 24 knock on -- or you could wave to the camera and there is a

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1 THE COURT: Mr. Sciscento, let him finish
 2 his sentence.
 3 Go ahead and finish.
 4 THE WITNESS: He kept the paper in his
 5 pocket at all times. When he went to court, when he went to
 6 the rec yard, when he was at free time, or whatever, he kept
 7 all paperwork regarding this case in his pockets because he
 8 didn't want nobody in his room going through his stuff.
 9 MR. SCISCENTO: Court's indulgence for one
 10 moment.
 11
 12 (Whereupon, a sotto voce at this time.)
 13
 14 BY MR. SCISCENTO:
 15 Q This letter then, this three page letter,
 16 which is marked Exhibit 2, is that in Brendan Nasby's
 17 handwriting?
 18 A Yes.
 19 MR. SCISCENTO: Could I have the Court's
 20 indulgence for one more moment?
 21 THE COURT: Yes.
 22
 23 (Whereupon, a sotto voce at this time.)
 24

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BY MR. SCISCENTO:

Q Let me ask you this, Mr. Holmes: You photocopied the letter from Mr. Brendan Nasby?

A Yes.

Q Where did you photocopy it?

A An officer did.

Q An officer --

A Uh-huh.

Q -- photocopied it?

A (Nods head affirmatively.)

Q Did the officer read it?

A No.

Q You just handed it to --

A I asked him to make copies for another officer and they made copies. They gave them back to me and I took them back in the cell.

Q And what did you do with the original?

A I held it and gave it to him when we went to dinner.

Q Okay. So let me see if I understand this: You went in and you asked Brendan for the original document?

A He gave me the original to -- to recopy in my handwriting, to mail it to one of my females.

Q But you didn't do that?

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killed your home boy?

A Yeah.

Q Okay. What actions did you take to work with the police on November 5th?

A What actions?

Q Yes. What did you do -- you decided you were going to work with the police.

What did you do to facilitate you working with the police?

A Well, I just told them everything he told me.

Q You told the police everything that he told you?

A Yeah.

Q Okay. When did you receive this letter? (Indicating)

A When he gave it to me. Before -- when he told me that he had did it and he wanted me to switch it up and make it seem like Sugar Bear did it --

Q Was that -- let me stop you there.

Was that before November 5th or after November 5th?

A That was after November 5th.

Q Are you sure about that?

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A I didn't do that.

Q What did you do?

A I held on to it and when we went out to free time, I asked the guard to make a copy of it, so I could give it to another police officer.

Q When did you make the decision to work with the police officers in this case?

A When he came forward to me and told me he killed my home boy.

Q When was that?

A Shoot, it was a -- I can't remember the date.

MR. SCISCENTO: Okay.

(Whereupon, a sotto voce at this time.)

BY MR. SCISCENTO:

Q November 5th, does that sound like a correct date?

A Yes.

Q So November 5th, you made a decision to work with the police officers?

A Yes.

Q Because Mr. Brendan Nasby told you that he

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A Yeah.

Q Okay. So after November -- prior to November 5th, you went up to these officers and you told them you wanted to work with them.

What did the officers say to you?

A They asked me about what; and I just told them what happened.

Q Did they ask you then to try to gather information? What did they say to you?

A They asked me what did I know; and I told them everything I know; and they said: Will he still tell you stuff? I said yeah.

Q I'm sorry. They asked you what?

A They asked me what did I know and I told them.

Q Okay.

A And then they said: Would it be hard for you to get more information?

Because they needed some more to state that he did it.

Q Okay. So now they asked you to go in and work -- and grab some information from Brendan?

A Uh-huh.

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1 Q And this was prior to November 5th?
 2 A Yes.
 3 Q Okay. Now, you had a -- a criminal charge
 4 pending?
 5 A Uh-huh.
 6 Q Did you get any -- did they promise you any
 7 consideration for that?
 8 A No, they didn't.
 9 Q Okay. So they didn't say: Listen, if you
 10 got some information, we'll give you a break; we'll give you
 11 probation?
 12 A No.
 13 Q They didn't say any of that?
 14 Have you received any kind of
 15 benefit from your testimony -- testimony today?
 16 A No, I haven't.
 17 Q Do you anticipate receiving any -- any
 18 benefits?
 19 A Hey, if I get it, I get it.
 20 Q Okay.
 21 A It's not a choice -- or it's not a matter.
 22 Q You contacted my office at one time; isn't
 23 that correct?
 24 A For a lawyer --

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1 behalf?
 2 A No.
 3 Q Why not?
 4 A I don't know. I just felt I was doing it
 5 because I wanted to do it.
 6 Q You don't think they asked you to go get
 7 information for them?
 8 A Kind of; kind of not.
 9 Q Kind of, kind of not?
 10 What do you mean, kind of, kind
 11 of not?
 12 A They want -- they wanted the information, I
 13 guess, so they could win the case or whatever. But then it
 14 wasn't really like they told me we're going there and get
 15 all this information; just don't get yourself hurt or
 16 whatever.
 17 Q Did they say that?
 18 A No, they didn't.
 19 Q What did they say?
 20 A They asked did I have any more information;
 21 could I get any more information?
 22 Q They said specifically: Can you get any
 23 more information?
 24 A Yes.

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1 Q To represent you in a case?
 2 A -- yes.
 3 Q I informed you that I was representing Mr.
 4 Brendan Nasby; is that correct?
 5 A Yes.
 6 Q When did you contact my office, do you
 7 recall?
 8 A I don't remember.
 9 Q You don't remember?
 10 A No, I don't.
 11 Q These numbers that you have here, you wrote
 12 some of them down?
 13 A The bottom half, where it starts at "T-Pot"
 14 and "DJ."
 15 Q Okay. Now, I want to see if I understand
 16 this: Prior to November 5th -- prior to getting this
 17 letter, (indicating) -- you agreed with the police that you
 18 were going to work with them and they asked you, in fact, to
 19 work for them, correct?
 20 A They asked me can I get them information.
 21 Q Okay. So they asked you to go out and get
 22 them information?
 23 A Yes.
 24 Q Do you think you were working on their

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1 Q Okay.
 2 A They said: If you get any more information,
 3 give us a call.
 4
 5 (Whereupon, a sotto voce at this time.)
 6
 7 BY MR. SCISCENTO:
 8 Q After November 5th, did he give you --
 9 Brendan Nasby give you any more information about this case?
 10 A Yeah.
 11 Q Did he talk to you?
 12 A Uh-huh.
 13 Q How did the talking begin? Did you ask him
 14 questions?
 15 A Yes. He need -- the talking started -- he
 16 said did I mail the letter off to one of my girls? I said
 17 yeah.
 18 And he asked which girl did I
 19 mail it out to? And the girl I was in the phone with, I
 20 told her to say I mailed the letter, so I told her so she
 21 knew what was going on if he started talking to her.
 22 Q After November 5th, did you ever institute,
 23 begin, any conversations with Mr. Brendan Nasby regarding
 24 this case?

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1 A Yes.
 2 Q When and where did you begin those
 3 conversations?
 4 A I can't remember when, but we was in the
 5 module.
 6 Q Okay. It was in the module?
 7 A Uh-huh.
 8 Q What did you say to begin the conversations?
 9 A Why did he kill my home boy?
 10 Q You asked him that?
 11 A Uh-huh.
 12 Q And what did he say?
 13 A 'Cause he felt that, ah, my home boy was
 14 trying to take his stripes.
 15 Q Did you ever tell the police about that
 16 conversation?
 17 A Yes.
 18 Q Okay. And what other conversations did you
 19 have after November 5th?
 20 A Basically, we was just having conversations
 21 on the whole case. I was trying to figure out -- get out
 22 what I could get.
 23 Q So you were now attempting to get
 24 information so you could give it to the police, even though

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1 Q Okay. And you have not received any kind of
 2 benefits whatsoever; Mr. Coumou or the District Attorney's
 3 Office has not promised you any benefits for testifying
 4 today?
 5 A (Nods head affirmatively.)
 6 MR. SCISCENTO: We have no further
 7 questions, Your Honor.
 8 THE COURT: Did you answer?
 9 THE WITNESS: No. The answer is no.
 10 THE COURT: Mr. Coumou.
 11
 12 REDIRECT EXAMINATION
 13 BY MR. COUMOU:
 14 Q Just to clarify, you haven't made any deals
 15 with me, right?
 16 A No.
 17 Q And explain to the Court why is it that you
 18 came forward?
 19 A Because it was wrong, and he's trying to pin
 20 the case on somebody else that don't have nothing to do with
 21 it.
 22 MR. COUMOU: Thank you. Nothing further.
 23 THE COURT: Mr. Sciscento?
 24 MR. SCISCENTO: Nothing, Your Honor.

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1 you weren't going to get any information -- I'm sorry --
 2 even though you weren't going to get a benefit?
 3 A Yes.
 4 Q Okay. So I want to make sure I understand
 5 this: You were not going to receive a benefit, but you, in
 6 fact, were going to try to get information for the police,
 7 right?
 8 A Yes.
 9 Q Okay. And so you were attempting -- in
 10 order to get that information, you were trying -- you were
 11 asking them questions, prompting Mr. Nasby to talk; is that
 12 correct?
 13 A Yes.
 14 Q And with this information, you were going to
 15 give this to the police?
 16 A Yes.
 17 Q And they knew you were going to give this
 18 information to them, correct?
 19 A Yes.
 20 Q Is that a yes?
 21 A Yes.
 22 Q And they asked you to get additional
 23 information; isn't that correct?
 24 A Yes.

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1 THE COURT: Okay. Thank you, Mr. Holmes.
 2 Does the State have any
 3 additional witnesses?
 4 MR. COUMOU: Yes, Judge.
 5 Jan Kelly.
 6 MR. SCISCENTO: Your Honor --
 7
 8 (Whereupon, a sotto voce at this time.)
 9
 10 MR. SCISCENTO: -- as to the last statement,
 11 Your Honor, we move to strike per speculation.
 12 THE COURT: Well, I think you asked him that
 13 question multiple times, didn't you?
 14 The motion is denied.
 15 Miss Kelly, come on over here.
 16 THE WITNESS: Sorry, sir.
 17 THE COURT: Okay. Miss Kelly, if you could
 18 face me and raise your right hand, please.
 19
 20 Whereupon,
 21 JAN SEAMAN-KELLY
 22 having been called as a witness by the Plaintiff and
 23 having been first duly sworn to tell the truth, the
 24 whole truth and nothing but the truth, was examined

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and testified as follows:

THE CLERK: All right. Please be seated.

THE COURT: Okay. Ma'am, would you state your name and spell your last name for the court reporter.

THE WITNESS: Yes, sir. Jan, J-a-n; Seaman, S-e-a-m-a-n; Kelly, K-e-l-l-y.

THE COURT: Mr. Coumou.

MR. COUMOU: Thank you.

DIRECT EXAMINATION

BY MR. COUMOU:

Q Miss Kelly, could you state to the Court how are you employed?

A Yes, sir. I am employed as a forensic document examiner with the Las Vegas Metropolitan Police Department.

Q And how long have you been in this line of profession, not necessarily with -- with the Las Vegas Metropolitan Police Department, but just in general?

A For 13 years, since 1986.

Q Have you ever been asked -- or have you ever been recognized as an expert in this field?

A Yes.

Q And how many times?

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two documents; ask if you recognize them.

Counsel, State's 1 and 2.

BY MR. COUMOU:

Q See if you recognize both of them.

A Yes, sir. State's Exhibit 1 is a two page, um, document that was a copy, submitted along with a three page -- along with State's Exhibit 2, which is a copy of a three page letter that starts off with "The Girls' Statement."

Q Now, in your line of work, if you are requested to make a handwriting examination, as to who is the author of those documents, how do you go about that?

A Well, for a document examination to be conducted, I will study each document separately to determine the individual characteristics or habits, and the combination of their image document, and then do a side by side comparison to determine if they are a common authorship, if all of it is of one author or -- in order just to try and determine how many writers I do have.

Q And now on this particular event number, who were you asked, and by who were you asked, to see who's the author of those two documents?

A By Detective Jim Buczek; and Tommy Thowsen, submitted the documents, along with some known writing from

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A Ah, in Oklahoma, which is where I first started, 56 times in District Court and federal court; and I've testified here in Clark County three times.

Q Okay. And you've been recognized here then in the Eighth Judicial District Court?

A Yes, sir, the Eighth, and the last time District XVI.

MR. COUMOU: Okay. Judge, since this is a limited hearing, for this purpose, I'd ask if the -- unless the defendant -- if defense counsel would like to have more specifics, which I would normally go into --

THE COURT: Okay. Mr. Sciscento, for the purposes of this hearing only, would you stipulate to the witness' expertise as a handwriting examiner?

MR. SANTACROCE: For the purposes of this hearing only.

THE COURT: Thank you.

Okay. Mr. Coumou.

MR. COUMOU: Thank you.

BY MR. COUMOU:

Q Miss Kelly, were you asked to examine two documents in Event Number 980717-0541?

A Yes, sir.

MR. COUMOU: And if I could show you those

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a fellow by the name of Brendan Nasby, and asked me to compare them to these questioned documents.

Q How did you get your hands on these known writings?

A Detective Buczek and Detective Thowsen submitted them. I advised them what I needed and they went to the appropriate departments in Metro P.D. and obtained the documents for known writing.

Q And what -- did you recognize what type of known writing this was?

A Yes, sir.

Q And what -- what are those documents?

A One was a -- what's called a -- a Metro Personal Information Form, which we call two-sheet. They also submitted nine Metro request grievance forms that we nickname kites.

Q Okay. And these were your templates or, so to speak, your known -- this is what you're going to go by as to comparing then and examining these two questioned documents?

A Yes.

Q Now, what are you looking for when you -- when you start studying the subject's handwriting with the questioned documents?

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1 A Okay. For the known writing, when I first
2 get a case, I will examine the known writing in order to
3 determine if they are all of one author.

4 As I stated, nine kites were
5 submitted between the dates of August '98 through July of
6 '99, so various dates, giving me a good range of printed
7 material and the signature of Brendan Nasby.

8 In my examination, in order to
9 understand and to identify the combination of habits that
10 were in the writing, there was one request grievance form,
11 or kite, that did not fit the -- the text did not fit. It
12 fell outside of the range and I did not use that. So that
13 left eight. And then I made a notation in my report, the
14 signature lined up with Mr. Nasby's, but the text didn't.

15 So once I felt that I had eight
16 of the kites that were authored by one writer, that was
17 labeled to me as Brendan Nasby, as well as the two-sheet,
18 which also fit within the range of the kites, I then will
19 conduct an examination on the -- on the questioned documents
20 individually, the letter by itself, and then the two-page
21 document that's labeled as number two on my -- on my report.

22 Again, the same thing, study
23 and learn the combination of habits, and once that is
24 completed, I then will do a side by side comparison between

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1 A The entries 5641106, the name Kelly,
2 K-e-l-l-y, Sherrill, S-h-e-r-r-i-l-l, Leo, L-e-o, 432-3727,
3 identified Brendan Nasby as the writer of those entries.

4 And that was on the page that I
5 had designated as a Q-4. (Indicating)

6 Q Okay.

7 A Okay. The remaining entries -- the
8 remaining entries that were on this page, the Vince,
9 V-i-n-c-e, 565-9499, 564-7162, and the name Angel, I issued
10 a qualified conclusion that he did not -- that Brendan Nasby
11 did not write that; that is by another writer; as well as
12 the entry Com, c-o-m, with the number above that 4590150,
13 I also gave a qualified opinion that Mr. Nasby did not write
14 those entries.

15 The remaining entries on this
16 page, I did not reach a conclusion because of the copy
17 quality.

18 Q Okay.

19 A Okay.

20 Q And the fact that these are copies that you
21 examined, does that hinder, in your opinion, as to who the
22 author was as to the first document that you referred to,
23 and then the second document that you have now stated has
24 been written partially by Brendan Nasby?

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1 the difference sets in order to determine what writing was
2 authored by one writer or if I have different writers.

3 Q Okay. Focus your attention first on the
4 three-page document --

5 A Yes, sir.

6 Q -- did you come to the conclusion as to who
7 the author is of that document?

8 A Yes, sir, I did.

9 Q Who is that?

10 A For the three page letter, that is labeled
11 State's Exhibit Number 2, I identified Brendan Nasby as the
12 writer.

13 Q And as to the second document, did you come
14 to a conclusion, in your opinion, as to who the author is of
15 that document?

16 A Yes, sir. For State Exhibit 1, I came to
17 different conclusions.

18 Q Okay. You say different conclusions.

19 Was Brendan Nasby eliminated as
20 the author of portions of document -- the two-page document?

21 A Yes. There is a qualified elimination. I
22 was able to identify him positively -- and if I may refer to
23 my report to make sure I get the sections correct.

24 Q Yes, please.

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1 A If the quality -- what I based it on, if --
2 because some parts of this is -- is the -- the copy,
3 particularly on the two page note -- well, first, let me
4 address the three page letter.

5 The three page letter, the copy
6 quality is fine. There wasn't a problem with that. I'm
7 able to see the letter formations and how everything relates
8 to it.

9 The second one, that is the two
10 page that has all the various names and phone numbers, parts
11 of it, you just can't see; parts of it are very clear.

12 The entries that were clear,
13 that I could conduct an examination, this part I identified
14 Brendan Nasby on, on the first page, and that is the name of
15 Marie Bradley, Wildflower Apartments, W. Washington, Keshia,
16 K-e-s-h-i-a, Adams slash Porsche, P-o-r-s-c-h-e, Nichols,
17 Honey Lake, H phone, T-Pot, 233-0822, I identified Mr. Nasby
18 as the author of those entries.

19 I gave a qualified conclusion
20 of a highly probable that Mr. Nasby wrote the following
21 entries on the same page: The 3136 dash H phone, 2651 Napa
22 Drive, and the name Tanesha Banks.

23 Q Okay.

24 A Now, the reason those -- those entries are

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1 qualified as to highly probable is that maybe part of the
2 letter form is missing, but everything else was there.

3 And I'm comfortable that the
4 writer, but we -- we step back in our profession to the -- a
5 more conservative level, which would be highly probable.

6 Q Okay. And then to just sum up then, for
7 this hearing only, the first document, the three page
8 document, you have come to -- reached a conclusion that
9 Brendan Nasby is the author of that document, correct?

10 A Yes, sir.

11 Q And the second document, the two-page
12 document, half portions -- or I'm just saying approximately
13 half of the writing has been identified of -- that of
14 Brendan Nasby, correct?

15 A Yes, sir.

16 Q And then you've identified somebody else's
17 handwriting in there, that you don't know who it is,
18 correct?

19 A Yeah. I found another writer, and with
20 that, I just -- I gave the qualified elimination of Mr.
21 Nasby, again, because it's a copy.

22 Q Okay. And so am I safe to say that you've
23 identified two writers then --

24 A Yes.

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1 characteristics that are within a writing. They tend to be
2 more of the minute detail, not the pictorial appearance of a
3 writing.

4 An examiner will study, once
5 that -- some start with the question; some start with the
6 known, to determine the combination of habits or
7 characteristics that are within that writing.

8 Once they determine that, they
9 then will do a side by side comparison to the other set,
10 after they determine that set, to see if both sets have the
11 same combination or if there are differences.

12 Q Okay.

13 A I mean, that's basically it.

14 Q But you go by -- you -- you mentioned that
15 you use some language here "highly probable, qualified."

16 A Yes, sir.

17 Q Where does that language come from?

18 A Part of it is from the ASTM standards for --

19 Q And what is that, ASTM?

20 A For the -- American -- oh, man, my brain
21 just went nuts. ASTM, it's a National Standard for
22 Terminology, in the way a lot of things work, not just on
23 documents, but engineering and just various fields, even
24 asphalt. But it is a criteria that we use for our language

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1 Q -- on that second document?

2 A Yes, sir. (Indicating)

3 Q Did you know -- were you told beforehand
4 that there were two writers on that document, possibly two
5 writers on that document?

6 A No, sir.

7 MR. COUNOU: Okay. I'll pass the witness,
8 Judge.

9 THE COURT: Mr. Santacroce.

10 MR. SANTACROCE: Thank you.

11 CROSS-EXAMINATION

12 BY MR. SANTACROCE:

13 Q Miss Kelly, may I see those exhibits,
14 please. Thank you.

15 Can you tell me what standards
16 and guidelines you use when evaluating handwriting examples?
17 You have some standards or guidelines that you go by, do you
18 not?

19 A We have a procedure in the field.

20 Q And what is that procedure? How do you
21 identify that procedure?

22 A Okay. Handwriting identification or
23 elimination is based on a combination of habits or
24

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1 definitions.

2 Also there is a current
3 committee called -- they call it TWC Dot, Technical Working
4 Group, that deals with document examiners; and that is the
5 standard that is in it right now in the guideline, as well
6 as the -- and you were asking a procedure, that's the
7 procedure that is issued in that.

8 Q Now, you received various writing samples
9 from one of the detectives, Buczek, I believe you stated; is
10 that correct?

11 A Detective Buczek?

12 Q Yes.

13 A Yes.

14 Q And you were -- you were given Exhibits 1
15 and 2, State's Exhibits 1 and 2; and you were also given
16 nine kites, I believe you identified; is that correct?

17 A Nine kites were submitted, yes, sir.

18 Q And Buczek told you that those writings were
19 from Brendan Nasby; didn't he tell you that?

20 A He labeled them as Brendan Nasby, yes, sir.

21 Q So you went into the examination with a -- a
22 notion that these were Brendan Nasby's writings; isn't that
23 correct?

24 A No, sir.

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Q "You did not?"

A No. I go into it that they're labeled Brendan Nasby, and that's why I do a comparison, to make sure that they're all written by one writer.

Q But you never saw Brendan Nasby write the kites, did you?

A No, sir.

Q And isn't it true that when you have a comparison, you would typically get an exemplar from the person that you were examining?

A Well, the kites are, of course, a business writing. It is a form of an exemplar.

I also had the two-sheet or personnel form, which is a -- a requested exemplar that is obtained from an individual.

Q My point is: You didn't see Brendan write the kites?

A I didn't.

Q So all you are comparing is that the writings matched certain writings of the kites?

A Eight of them, yes, sir.

Q Eight of them.

You excluded one of the kites?

A The -- the body, the text. It's Mr. Nasby's

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of those are in agreement with the personnel form.

Q And you --

A I mean, I can't eliminate him, like I said, as the one of the ninth one. I have no idea. He may have written the text. I don't know.

Q And he may not have?

A And he may not have, but he signed it.

Q And where are the documents that you compared? Who has those?

A I gave them back to Detective Buczek or Detective Thowsen -- pretty sure it was Detective Buczek -- when I completed the exam.

Q Okay. Now, with regard to examining a photocopy, you said you had no problem with Exhibit -- I believe it was Exhibit 2; is that correct?

A Is that the three page letter?

Q I'm going to show you Exhibits -- State's Exhibits 2 and 3.

A Okay.

Q Tell me which one you didn't have problems with, as far as a photocopy.

A Okay. State's Exhibit 2.

Q State Exhibit 2?

A Uh-huh. And portions of State Exhibit 1;

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signature at the bottom, but the -- the text, I -- I did not exclude him. I did not use it. It fell outside of the range of the other writings.

Q And what does that mean in layman's talk?

A Well, what that means -- this particular kite, the -- the printing is all upper case. It's more like stick writing.

And I -- quite honestly, I don't know if that's a different style of Mr. Nasby's. I don't know if someone else wrote the text out for him. But it did not fall within the range of all the other writings that I had.

Q What if that was, in fact, Mr. Nasby's writing? Then would that eliminate your comparisons?

A No, sir.

Q It would not?

A No.

Q So if the one you excluded was, in fact, Mr. Nasby's writings, someone else may have written those other kites or these documents here; isn't that a possibility?

A No, I really don't think so.

And the reason being is I have a two-sheet that is a separate writing, that is not a kite. The kites also go over a time frame of almost a year and all

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but State Exhibit 2 definitely.

Q And you felt that was a true and accurate copy, at least in order to give you -- in order to make an opinion as to these writings; is that correct?

A Yes, sir.

Q Now, isn't it true that when you photocopy documents, there is a certain amount of distortion in the writing?

A Not distortion. There may be a reduction or an enlargement; there may not be anything.

Q Doesn't that affect the characteristics in the writing?

A No, sir.

Q That does not?

A No, sir. That will -- that will affect the -- the pictorial. It will not affect the minute detail that I'm looking at.

Q And why are you saying that Exhibit 1 affected that?

A Well, if you will look on it, sir, on part of it, you can't even see the names or you can see part of the names, just some of the letters. That gives me a problem. If I can't see what I'm examining, I'm not going to make an identification or an elimination.

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Q You did make some identifications regarding State Exhibit Number 1, did you not?

A Yes, I did.

Q And the fact that it was a poor quality did not affect your opinion or conclusion?

A For some reason, that whole document is not a poor quality. You see some of the names are very clear, which -- the entries Kelly Sherrill, that I first read off, they're very clear.

Q Then do you have an explanation as to why that might be, that portions of this document are clear and other portions are not?

MR. COUMOU: Judge, objection. That calls for speculation.

MR. SANTACROCE: She's an expert and she has --

THE COURT: Overruled. Ma'am, you can go ahead and answer that.

THE WITNESS: Well, there is a couple of reasons: One may be that different writing instruments were used; if it's a pencil or blue ink pen or a red ink pen, those do not tend to photocopy as well.

BY MR. SANTACROCE:

Q Could they have been written at different

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photocopier, would you conclude that there was a problem with the photocopier?

A I don't know if they were copied on the same copier.

Q I'm asking you to assume that -- that hypothetical.

A I'm not going to assume. All I can do is look at the two different sets of documents. The one is a three-page document of continuous writing. I don't have a problem with the document that is three pages of continuous writing.

Q In your report, under Conclusion A, the three page letter designated page one, and then you have in parentheses "Q-1, Q-2, Q-3," what does that mean?

A That was just for my marking, true designated. It's a three page letter and they submitted -- the two detectives submitted the three page letter and then the two separate pages that have the various names and numbers on them, and they submitted that as one document.

So I listed it under number two, but I went ahead and did a sub-designation, especially since I started to have to go ahead on the document listed on page two, give -- give different conclusions. It wasn't just one conclusion all the way through. It was -- it was

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times?

A Oh, any of them could have been written at different times, but that wouldn't cause the copy to be poor.

There also could be a problem with the copier that it was copied on. So there is just a myriad of possibilities right there.

Q Now, you also notice on State's Exhibit Number 1 that there is dark blotches on that on that photocopy.

A Yes, sir.

Q Could there have been, perhaps, papers in those areas when this was photocopied, like little sticky notes perhaps?

A There may have been a sticky note; there could be something, again, wrong with the copier; if there was some type of trash blockage like on the glass platen.

There could have been some type of contamination on the paper itself that ends up showing up. That could be a blocked out area, that there was writing and, you know, scratched out. I don't know. I don't know what's caused that.

Q But if these two documents, for the sake of argument and hypothetically, were copied on the same

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just for my purpose.

Q So I understand this, State's Exhibit 2, which is the three page letter you are referring to, you looked at certain portions of that and were able to identify that as Brendan Nasby's writing; is that correct?

A The three page letter?

No, sir. I examined the entire letter and determined that he wrote it.

Q Okay. What I'm trying to get at is your conclusions under your report and I'd ask you to take a look at that report.

A Yes, I see that.

Q Do you see that?

A Yes, sir.

Q "My conclusion that Brendan Nasby printed the text on the following documents: The three page letter designated Q-1, Q-2, Q-3 listed in number one."

A Yes.

Q So it was your first -- it was your first conclusion or opinion that he wrote the entire three entire three page letter; is that correct?

A Yes.

Q Then you go on to say:

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1 "The entries 46 -- 564-1106" -- I won't read
2 it all. You have it there in front of you -- "on
3 the document designated page four, listed in
4 number two."

5 So then you went on to refer to
6 a different document; is that correct?

7 A Yes.

8 Q And the same with your conclusion under
9 Number C?

10 A Yes, sir.

11 Q And then your next conclusion is that it was
12 highly probable that Brendan Nasby wrote the following
13 entries:

14 "3136 H phone, 2651 Napa Drive, and Tanesha
15 Banks" on the document designated page five."

16 That would have been the
17 State's Exhibit Number 1; is that correct?

18 A Yes.

19 THE COURT: Mr. Santacroce, how much longer
20 do you have?

21 MR. SANTACROCE: Just a couple minutes.

22 THE COURT: The reason being I want to give
23 you all the time you need for both sides here, but I know
24 the staff has to take a break before we start in with jury

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1 document.

2 A Okay. On the highly probable?

3 Q Yes.

4 A Right up here, the 3136 dash H phone, that
5 is sitting above -- well, it would be "Crystal," which you
6 see part of the letter goes out, "Marie Bradley."

7 Then 2651 Napa Drive, right
8 there, (indicating), in about the middle of the page.

9 And Honey Lake -- oh, I'm
10 sorry. I skipped -- I'm sorry. And "Tanesha Banks," which
11 is just right across, (indicating), on the side there.

12 Q Okay. I'm sorry. Go ahead.

13 And you were saying something?

14 A No. That one's highly probable.

15 Q I didn't mean to interrupt you.

16 A You are fine, sir.

17 Q And those were the only markings you could
18 identify in State's Exhibit Number 1 as being highly
19 probable that Brendan Nasby wrote those, correct?

20 A Yes.

21 Q Okay.

22 Q And can you just tell me the difference
23 between highly probable and your conclusion that he did
24 write that?

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1 selection.

2 MR. COUMOU: I still have three witnesses,
3 real brief witnesses, but I didn't think cross-examination
4 was going to be this long for this hearing.

5 THE COURT: I think what we're going to have
6 to do, Mr. Coumou, is maybe pick it up tomorrow morning then
7 like that.

8 I apologize, but there is no
9 way they can work all afternoon doing jury selection and all
10 without a break.

11 MR. COUMOU: No, I understand, Judge.

12 THE COURT: Okay.

13 MR. SCISCENTO: I need to speak to him.

14 THE COURT: Go ahead, Mr. Santacroce.

15 MR. SANTACROCE: Do you want me to finish up
16 here?

17 THE COURT: Please. Let's get Miss Kelly
18 done.

19 BY MR. SANTACROCE:

20 Q I was asking you about the highly probable
21 conclusion you made regarding Brendan Nasby on the following
22 entries: 3136.

23 And if you would, I'd ask you
24 if you could show me what you were referring to on the

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1 A Yes, sir.

2 If the copy quality of the text
3 allows me to conduct the examination, I identified Mr. Nasby
4 if I found all the combination of habits and characteristics
5 present.

6 If you will look at "Tanesha
7 Banks," for example -- that's a real good example -- or the
8 "3136 H phone," you will see part of it goes out. Okay?

9 I think in the "Tanesha," part
10 of the "N." I know on "phone" that's part of the N. It
11 just didn't copy that well.

12 I'm just more comfortable in
13 dropping to a more conservative level of highly probable
14 that he -- that he authored it.

15 Q So, in one document, you can say some of the
16 writings were from Brendan Nasby conclusively; some of it
17 was highly probable; and some of it didn't come from him at
18 all?

19 A On -- on Exhibit Number 1, yes, sir, that's
20 correct.

21 MR. SANTACROCE: Thank you.

22 I have no further questions.

23 THE COURT: Mr. Coumou.

24 MR. COUMOU: I have nothing further for this

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1 witness.

2 I would ask if I could just
3 call one more witness, which would be brief, but I will
4 leave it up to the Court. It's just a detective to come in
5 and testify as to -- I'm taking him out of order, but I'll
6 leave it up to you, Judge.

7 THE COURT: Well, how brief is it, five
8 minutes?

9 MR. COUNOU: Well, I don't know how long
10 cross-examination is.

11 THE COURT: Okay. Could we do it -- the
12 other option is we could do it -- we could pick the jury
13 today and finish this up this afternoon, instead of opening
14 statements.

15 Do you want to do that?

16 MR. COUNOU: My -- my -- my hesitancy about
17 this whole thing is that, you know, these witnesses -- I
18 specifically brought them in, knowing they're going to have
19 to come back, you know, before the trial. I don't want them
20 to get, you know, aggravated by --

21 THE COURT: Okay. I will give you your
22 options: Do you want to do them later this afternoon or
23 would you rather do them tomorrow morning or do you want to
24 go talk to them and see.

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1 MR. COUNOU: Yeah, just -- this -- this
2 detective, he should be very quick, but he's got a whole
3 slew of things that he needs to do this afternoon, and
4 that's why I'm --

5 THE COURT: Okay. So you want to finish
6 this hearing this afternoon then?

7 MR. COUNOU: Yeah, I'd like to --

8 THE COURT: Fine.

9 MR. COUNOU: -- but I don't know if you
10 would allow me to call this detective, because he says he
11 has a slew of thing he needs to do this afternoon.

12 THE COURT: Well, like, how long is he going
13 to be?

14 MR. COUNOU: Not even a minute.

15 THE COURT: Fine. Go get him. Let's get it
16 done.

17 (Pause in proceedings.)

18 THE COURT: Okay.

19 MR. COUNOU: Thank you, Judge, for
20 accommodating me.

21 THE COURT: Detective, do you want to come
22 on up here, please. Just step on over to your right. Go
23
24

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1 Either way, I will do it. I
2 will try to do it at their convenience. So the options
3 would be like 3:30 or so this afternoon.

4 MR. COUNOU: Finish up at 3:30?

5 THE COURT: Or, alternatively, at eleven
6 a.m. tomorrow morning.

7 MR. COUNOU: Yeah. Because I think what we
8 could possibly do, Judge, is finish picking the jury, do
9 opening statements, and then let -- start the witnesses
10 tomorrow and then finish this hearing later on that
11 afternoon.

12 THE COURT: That's fine.

13 MR. SCISCENTO: I have no objection to that.

14 THE COURT: Okay. That's fine.

15 MR. COUNOU: Shall we just do that then?

16 THE COURT: Yeah, let's do that.

17 MR. SCISCENTO: Okay.

18 MR. COUNOU: Okay.

19 MR. SCISCENTO: Your Honor, so 1:30 is when
20 we continue this hearing or not?

21 THE COURT: Well, this hearing will be --
22 you are saying tomorrow.

23 MR. COUNOU: This afternoon.

24 THE COURT: Oh, this afternoon.

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1 ahead and put that down there.

2 Detective, if you could face me
3 and raise your right hand, please.

4
5 Whereupon,

6 THOMAS D. THOWSEN

7 having been called as a witness by the Plaintiff and
8 having been first duly sworn to tell the truth, the
9 whole truth and nothing but the truth, was examined
10 and testified as follows:

11 THE CLERK: Thank you. You may be seated.

12 THE COURT: Detective, could you state your
13 name for the record and spell your last name, please.

14 THE WITNESS: Thomas D. Thowsen;

15 T-h-o-w-s-e-n.

16 THE COURT: Mr. Counou.

17 MR. COUNOU: Thank you.

18 DIRECT EXAMINATION

19 BY MR. COUNOU:

20 Q Detective, you are assigned to investigate
21 this case, the State of Nevada versus Brendan Nasby,
22 correct?
23

24 A That's correct.

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1 Q And during your investigation, have you
2 contacted a witness by the name of Tanesha Banks?
3 A Yes.
4 Q Okay. And you contacted this young lady on
5 two separate occasions, correct?
6 A Yes.
7 Q And drawing your attention to the second
8 occasion, which is on or about September the 23rd, 1998.
9 Did you go and contact this --
10 this witness Tanesha Banks for the second time?
11 A Yes.
12 Q And what was the purpose for that contact?
13 A She had received a telephone call.
14 Q And what was the telephone call about?
15 A It was from somebody that was --
16 MR. SCISCENTO: I'm going to object as
17 hearsay in this matter.
18 THE COURT: Mr. Coumou.
19 MR. COUMOU: Judge, it's not hearsay. It
20 doesn't go to the truth of the matter asserted. He's not
21 stating -- he's just telling us --
22 THE COURT: Well, the jury is not here. I
23 will allow you to move to strike it, Mr. Sciscento, just see
24 if it's the truth -- or just showing how the detective

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1 THE COURT: Okay. I will let Mr. Sciscento
2 move to strike it. Let's get right to it.
3 BY MR. COUMOU:
4 Q At any rate, did you verify if there was a
5 call from the jail made to Tanesha Banks' home?
6 A Yes.
7 Q And how did you do that?
8 A She showed me her caller I.D. machine;
9 showed me a telephone number on the caller I.D.
10 Q Okay.
11 A And --
12 Q Do you remember what that number was?
13 A I believe it was 315-4415 --
14 Q Okay.
15 A -- off the top of my head.
16 Q Now, subsequent to that, Detective, had you
17 taken that number and seen where does that number come from
18 or where is that number designated to?
19 A Yes.
20 Q And where is that?
21 A That is one of the numbers that is utilized
22 by the jail inmates in the Clark County Detention Center.
23 Q And, now, as of this morning, have you
24 learned if this number has reappeared at Tanesha Banks'

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1 responded.
2 Go ahead and tell us about the
3 phone call.
4 THE WITNESS: It was concerning a telephone
5 call from Brendan Nasby made from the jail.
6 BY MR. COUMOU:
7 Q Okay. And what was the nature of this
8 telephone call?
9 A Um --
10 Q That she told you.
11 A This particular one, I need to look at my --
12 Q Okay. Well, was it an intimidation call?
13 A Yes.
14 Q That was.
15 MR. SCISCENTO: I'm going to object as
16 leading, Your Honor.
17 THE COURT: Well, it is leading.
18 MR. SCISCENTO: And I want the record to
19 reflect that I am objecting as to everything that is said in
20 this as hearsay.
21 THE COURT: It sounds like hearsay, though,
22 Mr. Coumou.
23 MR. COUMOU: Well, let me get to the meat of
24 why he's here.

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1 home?
2 A Yes, it has.
3 Q And is that the same number as you've just
4 referred to as 315-4415?
5 A That's correct.
6 MR. COUMOU: Pass the witness, Judge.
7 THE COURT: And I'll tell you right now, Mr.
8 Sciscento, I'm not going to consider the content of the
9 conversation --
10 MR. SCISCENTO: Okay.
11 THE COURT: -- only for the fact that the
12 calls were made.
13
14 (Whereupon, a sotto voce at this time.)
15
16 CROSS-EXAMINATION
17 BY MR. SCISCENTO:
18 Q Detective -- Thowsen?
19 A Yes.
20 Q Is that -- did I pronounce it correctly,
21 Thowsen?
22 This number you said, 381 --
23 that's a general population number.
24 A I don't know what 381 is. That's -- that's

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1 not the right number.

2 Q The number you gave us --

3 A The one I was talking about?

4 Q Yeah.

5 A What they explained to me at the jail, it
6 was on a rotary system and they have over a hundred numbers,
7 and when you pick up various phones in the inmate areas, it
8 grabs whatever number is free.

9 Q And you are saying that number appeared on
10 Miss Tanesha Banks' phone number --

11 A Yes.

12 Q -- caller I.D.?

13 A Her caller I.D.

14 Q But that doesn't identify which of the
15 thousand inmates in Clark County Detention Center that made
16 that call, does it?

17 A No.

18 Q And any -- Clark County Detention Center
19 probably has about a thousand people at any given time;
20 would that be correct?

21 A That's correct.

22 Q That being the inmates?

23 A Yes.

24 Q And each of those inmates, unless they're in

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1 A I don't know.

2 Q Okay. What about somebody who is in
3 protective custody?

4 A I don't know that either.

5 Q What about somebody who is in the hole, so
6 to speak?

7 A In the hole, I would assume they probably
8 would not have phone access, but I don't know that for a
9 fact.

10 Q You are saying there was a phone call made
11 last night. You subsequently learned something this
12 morning, that there was a phone call made?

13 A That's correct.

14 Q From the Clark County --

15 A From -- from that number to Tanesha Banks'
16 number.

17 Q Do you know what time that was made?

18 A That information is available. I don't have
19 that personally, no.

20 The information from last night
21 also records exactly what location that phone call was
22 placed from.

23 Q And where was that?

24 A I don't have that. I didn't get that from

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1 protective custody or something like that, have access to a
2 phone?

3 A Not to all the phones, but to a phone.

4 Q But a phone then can go into this rotary and
5 then that number, 381 or whatever -- that would show up in
6 caller I.D.?

7 A Yes.

8 Q Okay. So, again, then, anybody -- any of
9 the inmates who have access to a phone in there could call a
10 number and that number, the 381 number, would show up?

11 A I don't know if that specific number could
12 or if it could only show up in a certain area. I -- I don't
13 know --

14 Q Okay.

15 A -- to be honest with you.

16 Q So we don't know where that phone call came
17 from?

18 A On that particular date, at this point, we
19 don't know.

20 Q Okay.

21 A Only that it was from the Clark County
22 Detention Center.

23 Q Do you know anybody who is in lockdown, if
24 they have access to phones?

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1 the individual. I got that right before I came here, a few
2 minutes before I got here.

3 MR. SCISCENTO: No further questions, Your
4 Honor.

5 MR. COUNOU: Nothing by the State.

6 THE COURT: Thank you, Detective.

7 You are excused, then like
8 that.

9 Okay. We'll be in recess on
10 this hearing until the conclusion of the opening statements
11 today.

12 MR. COUNOU: Thank you. And I appreciate
13 you accommodating the detective.

14 THE COURT: Very good. Always happy to
15 accommodate them.

16 MR. SCISCENTO: Your Honor, for the last
17 statement, I do move to strike any of the statements made by
18 a third party as hearsay in this matter.

19 THE COURT: Motion is granted. I mean, as
20 far as the alleged statement made by the --

21 MR. COUNOU: Tanesha Banks.

22 THE COURT: -- Tanesha Banks to the
23 detective, that is hearsay and it would be offered for the
24 truth of the matter, so that motion is granted.

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(Recess in proceedings.)

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call phase three now, which is the peremptory challenge phase. Now, in this phase, the attorneys have a right to request that people be excluded as jurors without having to give a reason for that.

So, again, if the peremptory challenges are exercised, please don't be offended by that, ladies and gentlemen. It's just part of the jury selection process. It happens at every jury trial throughout the United States.

Okay. At this time, does the State wish to exercise its first peremptory challenge?

MR. COUNOU: Yes, Judge.

The State would like to thank, but excuse the juror seated in seat Number 7, Badge Number 138, Mrs. McNeal.

THE COURT: Okay. Miss McNeal, if you would come on down. Thank you very much for being here yesterday and today. I'm sorry we had to bring you back today, but we need to go through this particular process. But we sure your participation, and we appreciate your candor and all in your answers to all the questions then.

If you check in downstairs and let them know that you have been excused then.

Okay. The clerk will call the

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Las Vegas, Nevada, Tuesday, October 12, 1999, 1:30 p.m.

* * * * *

THE COURT: Okay. Good afternoon again, ladies and gentlemen. Thank you for being back today.

This is the continuation of Case Number C154293, the State of Nevada versus Brendan James Nasby.

Let the record reflect the presence of Mr. Nasby, together with his attorneys Mr. Sciscento, Mr. Santacroce; the State of Nevada represented by Frank Counou, deputy District Attorney.

This is the time set for the continuation of the trial and jury selection.

Mr. Counou, will you stipulate to the presence of the prospective jury panel?

MR. COUNOU: The State does.

THE COURT: Mr. Sciscento?

MR. SCISCENTO: Yes, Your Honor.

THE COURT: Okay. We left off yesterday, ladies and gentlemen, as I told you, we completed phase two of our jury selection process.

We're going to start what we

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next name.

THE CLERK: Badge Number 150, James Corwin.

THE COURT: Okay. Mr. Corwin, if you would come on up and sit in that last chair in the back row, please.

Okay. Mr. Corwin, good afternoon.

MR. CORWIN: Good afternoon.

THE COURT: Do you know of any reason why you couldn't be a completely fair and impartial juror if selected to serve in this case?

MR. CORWIN: No.

THE COURT: Can you wait in forming your opinion, as to the guilt or innocence of the defendant, until all the evidence has been heard?

MR. CORWIN: I believe so.

THE COURT: Can you -- have you or anyone close to you, such as a family member or friend, ever been arrested for a crime?

MR. CORWIN: Yes. It will be myself. It was about 34 years ago, at the end of my first marriage --

THE COURT: Was that with your wife?

MR. CORWIN: Yeah, a little overnight type of a thing with -- it was dismissed, but --

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1 THE COURT: Okay.
 2 MR. CORWIN: That was about the extent of
 3 it.
 4 THE COURT: Was that here in Clark County?
 5 MR. CORWIN: No. I was in Orange County --
 6 or San Bernardino County, California.
 7 THE COURT: Have you or anyone close to you,
 8 such as a family member or friend, ever been the victim of a
 9 crime?
 10 MR. CORWIN: My daughter was a victim of
 11 armed robbery at a convenience store in Las Vegas about 12
 12 years ago.
 13 THE COURT: Okay. And do you know if the
 14 police caught whoever was responsible for the robbery?
 15 MR. CORWIN: I believe so, yes.
 16 THE COURT: Okay. Is there anything about
 17 that experience your daughter's gone through which would
 18 affect your ability to be fair and impartial to both the
 19 State and the defendant in this case?
 20 MR. CORWIN: No.
 21 THE COURT: Can you base your verdict solely
 22 on the evidence brought out at the trial and the law that
 23 applies, as stated in my instructions to you, without fear
 24 of criticism or popular opinion?

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1 affect it in a positive manner. I think it reinforced the
 2 fact that I feel that I could be objective.
 3 THE COURT: Okay. So you feel it would help
 4 you, based upon that experience to be fair and impartial to
 5 both the State and the defendant in this case?
 6 MR. CORWIN: Yes.
 7 THE COURT: If you were a party in this
 8 case, would you be comfortable with 14 jurors just like
 9 yourself?
 10 MR. CORWIN: Yes.
 11 THE COURT: Thank you.
 12 Mr. Coumou.
 13 MR. COUMOU: Thank you.
 14 afternoon, Mr. Corwin.
 15 Could you please tell me: What
 16 are you retired from?
 17 MR. CORWIN: I'm retired from an oil
 18 company, Chevron Products company, 30 years.
 19 MR. COUMOU: And what were your duties
 20 working for Chevron Oil Company?
 21 MR. CORWIN: I worked in marketing for
 22 the -- the extent of my tenure with the company. I worked
 23 here for about ten years, a retail manager, beginning 1981;
 24 and then at the end of my career, I went back to California

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1 MR. CORWIN: Yes.
 2 THE COURT: Have you ever served as a juror
 3 before?
 4 MR. CORWIN: Yes.
 5 THE COURT: On how many occasions?
 6 MR. CORWIN: California, twice, back to
 7 back.
 8 THE COURT: Were they civil or criminal
 9 cases?
 10 MR. CORWIN: Criminal cases.
 11 THE COURT: Without telling what the
 12 verdicts were, did your juries reach verdicts?
 13 MR. CORWIN: Yes; on the first case, yes.
 14 THE COURT: Okay. How about on the second
 15 case?
 16 MR. CORWIN: The second was lack of
 17 evidence. It was thrown out.
 18 THE COURT: Okay. Were you elected the
 19 foreperson of that first jury?
 20 MR. CORWIN: No.
 21 THE COURT: Is there anything about that
 22 experience you had in jury duty which you feel would affect
 23 your ability to be fair and impartial in this case?
 24 MR. CORWIN: I think it would probably

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1 as a senior training specialist in marketing.
 2 MR. COUMOU: And so you've been with the
 3 same company then for 30 plus years, is that correct?
 4 MR. CORWIN: Yeah, 30 years, up to three
 5 years ago when I retired --
 6 MR. COUMOU: I see.
 7 MR. CORWIN: -- and moved back to Vegas.
 8 MR. COUMOU: Now, you indicated that 30 plus
 9 years ago, there was some skirmish that you had.
 10 You don't harbor any ill
 11 feelings towards law enforcement or anything like that?
 12 MR. CORWIN: No, not at all.
 13 MR. COUMOU: So you can be fair and
 14 impartial as you sit right now in this particular case?
 15 MR. CORWIN: Yes.
 16 MR. COUMOU: Okay. Also, sir, the crime of
 17 murder, the charge itself, does that bring up any feelings
 18 that you may think may hinder you from being able to be a
 19 fair and impartial juror?
 20 MR. CORWIN: I don't believe so.
 21 MR. COUMOU: Okay. And were there -- or if
 22 there comes a chance that you have to impose sentence, could
 23 you be able to impose a penalty on that man right there?
 24 (Indicating)

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1 MR. CORWIN: Yes.
 2 MR. COUNDU: Okay. Thank you.
 3 Judge, I'll pass for cause.
 4 THE COURT: Mr. Sciscento.
 5 MR. SCISCENTO: Yes. Thank you, Your Honor.
 6
 7 Mr. Corwin.
 8 MR. CORWIN: Yeah.
 9 MR. SCISCENTO: You mentioned that you have
 10 been on a jury previously -- twice before.
 11 MR. CORWIN: Yes. They were concurrent
 12 cases.
 13 MR. SCISCENTO: And those were both in
 14 California?
 15 MR. CORWIN: Right.
 16 MR. SCISCENTO: What part of California was
 17 that?
 18 MR. CORWIN: It would be Orange County,
 19 Santa Ana.
 20 MR. SCISCENTO: Okay. And both of them were
 21 criminal matters?
 22 MR. CORWIN: Yes.
 23 MR. SCISCENTO: One of them went to
 24 deliberation and came back with a verdict?

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1 MR. SCISCENTO: You understand that there is
 2 going to be evidence presented in this case which the judge
 3 is going to instruct you not to consider until the time of
 4 deliberation.
 5 Can you do that?
 6 MR. CORWIN: Yes.
 7 MR. SCISCENTO: And you can hold back any
 8 feelings you have of guilt or innocence until the time for
 9 deliberation?
 10 MR. CORWIN: Yes.
 11 MR. SCISCENTO: That's a hard thing to do.
 12 MR. CORWIN: I know.
 13 MR. SCISCENTO: It's -- I -- I can't
 14 understand how somebody can say that they can hold back
 15 deliberations until -- or hold back their feeling of guilt
 16 or innocence until the time --
 17 MR. CORWIN: I feel -- I feel -- like I did
 18 indicate to the judge, I think that first experience was a
 19 lasting -- lasting experience, that I felt like I'm
 20 confident that I can put all the bits and pieces together
 21 and hold them until such time as we make a primary judgment.
 22 MR. SCISCENTO: And did you do that before
 23 in the other jury?
 24 MR. CORWIN: I think so.

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1 MR. CORWIN: Yes, it did.
 2 MR. SCISCENTO: Okay. How long did you
 3 deliberate for?
 4 MR. CORWIN: Oh, about a day and a half.
 5 MR. SCISCENTO: Okay. And the second one
 6 though, you said, was dismissed for lack of evidence?
 7 MR. CORWIN: Yes; uh-huh.
 8 MR. SCISCENTO: Now, how was it dismissed,
 9 by the Court, by the prosecution, or did you guys --
 10 MR. CORWIN: I believe it was prosecution.
 11 MR. SCISCENTO: Okay. So you never really
 12 deliberated on that?
 13 MR. CORWIN: No, no.
 14 MR. SCISCENTO: How much of the evidence did
 15 you hear?
 16 MR. CORWIN: Oh, very little.
 17 MR. SCISCENTO: Okay.
 18 MR. CORWIN: We just -- I think about a half
 19 a day.
 20 MR. SCISCENTO: Okay. Do you think that in
 21 the first jury matter, you deliberated properly?
 22 MR. CORWIN: Yes,
 23 MR. SCISCENTO: And for a long enough time?
 24 MR. CORWIN: Yes.

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1 MR. SCISCENTO: Okay. And so you are okay
 2 with it, that you can put aside any biases you may have
 3 against either the defense or the prosecutor?
 4 MR. CORWIN: If I had any biases, yes, sir.
 5 MR. SCISCENTO: I don't know. Maybe you
 6 don't like blond haired, blue eyed guys.
 7 But I just want to make sure --
 8 I find that a hard proposition to believe, but try to
 9 understand, because I can't do it.
 10 I have no further questions,
 11 Your Honor. We'll pass for cause;
 12 THE COURT: Thank you very much.
 13 Okay. At this time, does the
 14 defense wish to exercise its first peremptory challenge?
 15 MR. SANTACROCE: Your Honor, may we approach
 16 first?
 17 THE COURT: Yes.
 18 (Unreported discussion at the bench.)
 19
 20 MR. SANTACROCE: The defense would like to
 21 thank and excuse Juror Number 142, Mrs. Thomas.
 22 THE COURT: Okay. Mrs. Thomas, thank you
 23 very much for being here. We certainly appreciate your
 24

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1 candor in answering all the questions here yesterday and
2 wish you the best.

3 If you go check in downstairs,
4 they will give you further instructions on what to do then.

5 MS. THOMAS: Thanks.

6 THE COURT: Okay. The clerk will call the
7 next name.

8 THE CLERK: Badge Number 151, Tony
9 Scaggiari.

10 THE COURT: Okay. Mr. Scaggiari, if you
11 could go in that third chair in the first row, please.

12 And before we go ahead and and
13 ask Mr. Scaggiari some questions, I think, yesterday -- Mr.
14 Watson is Juror Number 160. Is he present?

15 Mr. Watson, did you tell me you
16 had the plane reservation on Tuesday?

17 MR. WATSON: Yes, that's correct.

18 THE COURT: Okay. I met with the attorneys
19 last night. We feel pretty comfortable we can complete it
20 in the time range, but we're not a hundred percent sure, you
21 know, with that.

22 What I will do, I will excuse
23 you if you want, you know like that or if you can --

24 MR. WATSON: Not at this time.

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1 such as a family member or friend, ever been arrested for a
2 crime?

3 MR. SCAGGIARI: No, sir.

4 THE COURT: Have you or anyone close to you,
5 such as a family member or friend, ever been the victim of a
6 crime?

7 MR. SCAGGIARI: Ah, yes. I -- I'm sorry. I
8 had my car stolen a year ago.

9 THE COURT: Okay. Was that in Las Vegas?

10 MR. SCAGGIARI: No, in Denver.

11 THE COURT: Okay. Did the police catch
12 whoever stole the car?

13 MR. SCAGGIARI: No.

14 THE COURT: Do you feel they did what they
15 could under the circumstances trying to find that person?

16 MR. SCAGGIARI: No.

17 THE COURT: Okay. Well, that's what we need
18 to know, then like that.

19 Let me ask you though: Despite
20 the fact you've been the victim of a crime, having your car
21 stolen, do you still feel you can be fair and impartial to
22 both the State of Nevada and the defendant if you are
23 selected as a juror in this case?

24 MR. SCAGGIARI: Yes, sir.

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1 THE COURT: Okay. You are okay on that?

2 MR. WATSON: That particular issue, yes.

3 THE COURT: Do you want me to excuse you or
4 not?

5 MR. WATSON: Yes.

6 THE COURT: You would like to be excused.

7 Okay. I will excuse you then.

8 Thank you for being here. And, again, I'm doing that
9 because you have a confirmed plane reservation in advance,
10 then like that.

11 MR. WATSON: Thank you.

12 THE COURT: Okay. Let's go back and -- Mr.
13 Scaggiari, good afternoon.

14 Again, thank you for your
15 patience being here yesterday and again today.

16 Do you know of any reason why
17 you couldn't be a completely fair and impartial juror if
18 selected to serve in this case?

19 MR. SCAGGIARI: No.

20 THE COURT: Can you wait in forming your
21 opinion, as to the guilt or innocence of the defendant,
22 until all the evidence has been heard?

23 MR. SCAGGIARI: Yes, sir.

24 THE COURT: Have you or anyone close to you,

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1 THE COURT: Thank you. Can you base your
2 verdict solely on the evidence brought out at the trial and
3 the law that applies, as stated in my instructions to you,
4 without fear of criticism or popular opinion?

5 MR. SCAGGIARI: Yes, sir.

6 THE COURT: Have you ever served as a juror
7 before?

8 MR. SCAGGIARI: No, sir.

9 THE COURT: If you were a party to this
10 case, would you be comfortable with 14 jurors just like
11 yourself?

12 MR. SCAGGIARI: Yes, sir.

13 THE COURT: Thank you.

14 Mr. Coumou.

15 MR. COUMOU: Thank you.

16 Mr. -- Scaggiari?

17 MR. SCAGGIARI: Yes, sir.

18 MR. COUMOU: Could you tell me: What are
19 you retired from, sir?

20 MR. SCAGGIARI: I retired from Public
21 Service Company-Colonado, which was a gas and electric
22 company, 30 years.

23 MR. COUMOU: Thirty years.

24 And you chose to retire to this

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1 location then?

2 MR. SCAGGIARI: Yes, sir.

3 MR. COUNOU: Along with your spouse,
4 correct?

5 MR. SCAGGIARI: Yes, sir.

6 MR. COUNOU: What was your spouse's
7 occupation?

8 MR. SCAGGIARI: She was a -- a bookkeeper.

9 MR. COUNOU: Okay. Did you have any
10 children?

11 MR. SCAGGIARI: Yes, sir, I have two.

12 MR. COUNOU: What are their ages?

13 MR. SCAGGIARI: I have a boy in Denver 32;
14 and a girl in Oklahoma, 31.

15 MR. COUNOU: And what are they doing with
16 their lives?

17 MR. SCAGGIARI: My son is an electrician;
18 and my daughter is married to a minister.

19 MR. COUNOU: Okay. And she's the one in
20 Oklahoma?

21 MR. SCAGGIARI: Yes, sir.

22 MR. COUNOU: Okay. Now, you've never been a
23 prior juror, correct?

24 MR. SCAGGIARI: No.

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1 MR. SCAGGIARI: Right.

2 MR. COUNOU: Is that correct?

3 MR. SCAGGIARI: Right, right, right.

4 MR. COUNOU: And because of this experience
5 that occurred to you personally, will it -- will it, by any
6 chance, bring up or harbor any feelings that you are going
7 to listen to police that testify in this case and wonder:
8 Well, did they do everything? Did they do this? Did they
9 do that? You know --

10 MR. SCAGGIARI: I -- I don't think so.

11 MR. COUNOU: Okay.

12 MR. SCAGGIARI: I hope not.

13 MR. COUNOU: Why not?

14 MR. SCAGGIARI: Well, I -- I would hope that
15 they're going to tell the truth and I would like to listen
16 to it; and I -- you know, I'm not going to think bad because
17 of my experience.

18 MR. COUNOU: Okay.

19 MR. SCAGGIARI: That -- that wouldn't be
20 right.

21 MR. COUNOU: Okay. And you realize we're
22 dealing with separate police agencies and totally different
23 type of crimes, a property crime versus a homicide?

24 MR. SCAGGIARI: Yes, sir.

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1 MR. COUNOU: Okay. Now, you had just
2 indicated about your car being stolen and you were a little
3 unhappy with the Denver police.

4 MR. SCAGGIARI: Yes, sir.

5 MR. COUNOU: Okay. Could you explain why?

6 MR. SCAGGIARI: Well, they called, like, a
7 week later and said they found it, and I had to go, like,
8 thirty miles to go get it.

9 And then when I did get it
10 back, it was wrecked and they -- they called and said we're
11 not going to pursue this because, ah, our luck so far with
12 thefts have not been real good, and we're just -- if it's
13 okay with you, we'll just let it go.

14 And I said: Well, I'm not
15 happy with that. And they said: Well, that's the best we
16 can do. So --

17 MR. COUNOU: And that was the Denver Police
18 Department or the Sheriff's Department for the County?

19 MR. SCAGGIARI: Inglewood police, Arapajo
20 County.

21 MR. COUNOU: Okay. Is it fair to say that
22 you are un- -- you were unsatisfied with the police
23 investigation that happened to your car, not because they
24 didn't fix it up for you and bring it to you?

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1 MR. COUNOU: Can you promise me and the
2 defendant that you will be fair and impartial during this
3 entire proceeding if you were to be selected as a juror?

4 MR. SCAGGIARI: Yes, sir.

5 MR. COUNOU: Judge, I'll pass for cause.

6 THE COURT: Thank you, Mr. Santacroce.

7 MR. SANTACROCE: Good afternoon, Mr.
8 Scaggiari. How are you today?

9 MR. SCAGGIARI: Good. Thank you.

10 MR. SANTACROCE: I notice from your juror
11 questionnaire that you have only been in Clark County for
12 about a year; is that correct?

13 MR. SCAGGIARI: Yes, sir.

14 MR. SANTACROCE: And you came from Denver, I
15 assume?

16 MR. SCAGGIARI: Yes, sir.

17 MR. SANTACROCE: Okay. And what brought you
18 to Las Vegas?

19 MR. SCAGGIARI: The weather and the
20 gambling.

21 MR. SANTACROCE: Okay. Do you have any
22 other kind of recreational activities that you enjoy?

23 MR. SCAGGIARI: I like to fish, and we've
24 been traveling quite a bit, so --

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1 MR. SANTACROCE: Plan on staying in Clark
2 County --
3 MR. SCAGGIARI: Yes, sir.
4 MR. SANTACROCE: -- for some time?
5 MR. SCAGGIARI: Yes, sir.
6 MR. SANTACROCE: You've never been a juror
7 before?
8 MR. SCAGGIARI: No. I've been called, like,
9 four times, but I've never been on a jury.
10 MR. SANTACROCE: Is it something that you
11 want to experience? Would you like to serve on this jury?
12 MR. SCAGGIARI: Not really.
13 MR. SANTACROCE: Not really.
14 And why do you say that?
15 MR. SCAGGIARI: Oh, I -- I don't know. I'm
16 just kind of nervous about the whole thing.
17 MR. SANTACROCE: Okay. If we were to give
18 you a chance to get off of this jury, what could you tell me
19 that would disqualify you?
20 MR. SCAGGIARI: I -- I really can't. I --
21 you know, I would enjoy the experience. If you are asking
22 me would I truly enjoy it and -- I'm -- I don't know. I've
23 never been on a jury before.
24 MR. SANTACROCE: But you expressed to me

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1 and he may be going on longer than you think he should be,
2 are you going to hold that against my client?
3 MR. SCAGGIARI: No, sir.
4 MR. SANTACROCE: I expect that there is
5 going to be some very emotional testimony in this trial.
6 Do you think you would be able
7 to set aside sympathy and bias and prejudice and give Mr.
8 Nasby a fair hearing?
9 MR. SCAGGIARI: Yes, sir.
10 MR. SANTACROCE: Do you think you will be
11 influenced by some emotional testimony? Would that, in and
12 of itself, sway you?
13 MR. SCAGGIARI: I don't know. I can't
14 answer that.
15 MR. SANTACROCE: I need you to answer that.
16 I need you to tell me if there is a witness on the stand
17 who's crying --
18 MR. SCAGGIARI: Yes, it would probably
19 influence me.
20 MR. SANTACROCE: That, in and of itself,
21 would influence you?
22 MR. SCAGGIARI: Probably.
23 THE COURT: Let me ask you this, sir: Could
24 you -- we're going to hear probably a lot of witnesses in

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1 that you wouldn't want to do it.
2 MR. SCAGGIARI: Oh, well --
3 MR. SANTACROCE: Why?
4 MR. SCAGGIARI: I don't have any reason why.
5 I just -- if you are asking me would you like to serve, no.
6 MR. SANTACROCE: You would not.
7 MR. SCAGGIARI: But I would if -- if I have
8 to, I will, yes.
9 MR. SANTACROCE: Okay. So if we force you,
10 you'll do it?
11 MR. SCAGGIARI: Yes, sir.
12 MR. SANTACROCE: But if you have a choice,
13 you don't want to do it?
14 MR. SCAGGIARI: Yes, sir.
15 MR. SANTACROCE: Okay. Do you think with
16 that -- and I appreciate your honesty.
17 Do you think with that
18 attitude, you could give my client a fair trial?
19 MR. SCAGGIARI: Yes, sir.
20 MR. SANTACROCE: Okay. If you don't want to
21 be here?
22 MR. SCAGGIARI: Yes, sir, I do.
23 MR. SANTACROCE: If you are thinking about
24 fishing and Mr. Sciscento is cross-examining some witness,

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1 this case.
2 Could you fairly evaluate the
3 testimony of all the witnesses that testify in this case and
4 evaluate their credibility regardless of the emotion
5 involved here? I mean, you need to look at the whole issue.
6 Could you do that?
7 MR. SCAGGIARI: I would think so.
8 THE COURT: Okay. Mr. Santacroce.
9 MR. SANTACROCE: In your employment with the
10 gas company -- gas and electric -- I guess it was a public
11 utility?
12 MR. SCAGGIARI: Yes, sir.
13 MR. SANTACROCE: -- did you have people that
14 worked for you? Were you a supervisor?
15 MR. SCAGGIARI: No. I was a trainer.
16 MR. SANTACROCE: You were a trainer?
17 MR. SCAGGIARI: Yes. And then I became a
18 buyer for the last two years.
19 MR. SANTACROCE: And you have children?
20 MR. SCAGGIARI: Yes, sir.
21 MR. SANTACROCE: Thirty-two and 31 years
22 old?
23 MR. SCAGGIARI: Yes.
24 MR. SANTACROCE: And none of them have been

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1 in the criminal justice system?

2 MR. SCAGGIARI: No, sir.

3 MR. SANTACROCE: Do they have college
4 degrees?

5 MR. SCAGGIARI: Yes, sir.

6 MR. SANTACROCE: Your Honor, may we
7 approach?

8 THE COURT: Yes.

9
10 (Unreported discussion at the bench.)

11 MR. SANTACROCE: Thank you, Mr. Scaggiari.
12 I appreciate your answers.

13 THE COURT: Okay. And I will allow you to
14 make it for the record, Mr. Santacroce, at a later time.

15 MR. SANTACROCE: Thank you.

16 THE COURT: Okay. At this time, does the
17 State wish to exercise its second peremptory challenge?

18 MR. COUNOU: Yes, Judge. Thank you.

19 We would like to thank, but
20 excuse the juror seated in seat Number 6, Badge Number 137,
21 Mr. Kostusak.

22 THE COURT: Okay. Sir, if you would come on
23 down. And thank you very much, Mr. Kostusak, for your
24

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1 serve in this case?

2 MR. MOULTRAY: No.

3 THE COURT: Can you wait in forming your
4 opinion, as to the guilt or innocence of the defendant,
5 until all the evidence has been heard?

6 MR. MOULTRAY: Yes.

7 THE COURT: Have you or anyone close to you,
8 such as a family member or friend, ever been arrested for a
9 crime?

10 MR. MOULTRAY: Yes.

11 THE COURT: Could you tell me about that,
12 please.

13 MR. MOULTRAY: I can.

14 THE COURT: Who was that?

15 MR. MOULTRAY: My young son.

16 THE COURT: What was he arrested for?

17 MR. MOULTRAY: Two instances: One was a
18 curfew violation; and one was minor in possession of a
19 controlled substance.

20 THE COURT: Was that here in Clark County?

21 MR. MOULTRAY: It was, indeed.

22 THE COURT: So he was dealing with the
23 juvenile authorities with those particular problems?

24 MR. MOULTRAY: Yes, indeed,

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1 attendance here yesterday and today.

2 MR. KOSTUSAK: You're welcome.

3 THE COURT: We appreciate your candor in
4 letting us know some of these experiences you went through.
5 And we appreciate it very much, then like that.

6 Okay. You are excused. If you
7 will go check in downstairs, they will give you further
8 instructions on what to do.

9 MR. KOSTUSAK: Thank you, Your Honor

10 THE COURT: The clerk will call the next
11 name.

12 THE CLERK: Badge Number 152, Kenneth
13 Moultray.

14 THE COURT: Okay. Mr. Moultray, if you
15 would go in that second to the last chair in the back row,
16 please.

17 Mr. Moultray, good afternoon.

18 Again, I appreciate you
19 patiently waiting all yesterday afternoon and today. I did
20 notice you were sitting in the front, then like that, and I
21 do appreciate your patience and all being here.

22 MR. MOULTRAY: Thank you.

23 THE COURT: Do you know of any reason why
24 you couldn't be a fair and impartial juror if selected to

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1 THE COURT: And I believe the -- the
2 juvenile court, also the District Attorney's Office is
3 responsible for juvenile court as well.

4 Do you feel he was dealt with
5 fairly with the system there?

6 MR. MOULTRAY: More than fairly.

7 THE COURT: Okay. So you wouldn't hold any
8 animosity against the juvenile courts or the District
9 Attorney's Office based upon your son's involvement with
10 that?

11 MR. MOULTRAY: No.

12 THE COURT: Have you or anyone close to you,
13 such as a family member or friend, ever been the victim of a
14 crime?

15 MR. MOULTRAY: No.

16 THE COURT: Can you base your verdict solely
17 on the evidence brought out at the trial and the law that
18 applies, as stated in my instructions, to you without fear
19 of criticism or popular opinion?

20 MR. MOULTRAY: Yes.

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

23 MR. MOULTRAY: Yes.

24 THE COURT: On how many occasions?

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1 MR. MOULTRAY: One.
 2 THE COURT: Was it a civil or criminal case?
 3 MR. MOULTRAY: Civil.
 4 THE COURT: Without telling us what the
 5 verdict was, did your jury reach a verdict?
 6 MR. MOULTRAY: Yes.
 7 THE COURT: And were you elected the
 8 foreperson of that jury?
 9 MR. MOULTRAY: No.
 10 THE COURT: Is there anything about that
 11 experience you had on civil jury duty which you feel would
 12 affect your ability to be fair and impartial in this case?
 13 MR. MOULTRAY: No.
 14 THE COURT: And you've heard me mention to
 15 one of the other prospective jurors yesterday that there is
 16 a different burden of proof in a civil case; that is, a
 17 preponderance of the evidence versus a criminal case, where
 18 the State must prove a defendant's guilt beyond a reasonable
 19 doubt.
 20 So you understand that
 21 difference?
 22 MR. MOULTRAY: I do.
 23 THE COURT: Okay. If you were a party to
 24 the case, would you be comfortable with 14 jurors just like

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1 20 some years.
 2 MR. COUNTOU: And you just indicated earlier
 3 about that our office treated your son more than fairly.
 4 MR. MOULTRAY: Please excuse me. That's a
 5 father's comment because he got more than what the District
 6 Attorney's Office handed down.
 7 MR. COUNTOU: Oh, okay. All right.
 8 So you are not saying we were
 9 lenient on him or anything like that?
 10 MR. MOULTRAY: Not at all.
 11 MR. COUNTOU: Okay. And you don't harbor any
 12 feelings toward the District Attorney's Office as to how
 13 they handled your son or anything like that?
 14 MR. MOULTRAY: No.
 15 MR. COUNTOU: Okay. Now, I don't want to be
 16 long winded, but you've heard me ask a lot of questions to
 17 the rest of these jurors.
 18 Of any of those questions that
 19 I have asked previously to these jurors, potential jurors,
 20 do any of those questions stand out in your mind --
 21 MR. MOULTRAY: No.
 22 MR. COUNTOU: -- that you'd like to answer?
 23 No?
 24 MR. MOULTRAY: No.

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1 yourself?
 2 MR. MOULTRAY: Certainly.
 3 THE COURT: Thank you.
 4 Mr. COUNTOU.
 5 MR. COUNTOU: Thank you.
 6 Mr. Moultray, could you explain
 7 what exactly are your duties? It just lists your occupation
 8 as general manager.
 9 MR. MOULTRAY: I work for Federal Sign
 10 Company. We're one of the companies in town that build the
 11 big displays you see up and down the Strip.
 12 MR. COUNTOU: Okay. Those big ones, the
 13 Donrey kind?
 14 MR. MOULTRAY: No.
 15 MR. COUNTOU: Not Donrey?
 16 MR. MOULTRAY: The illuminated kind.
 17 MR. COUNTOU: Okay. And how long have you
 18 been in that line of work?
 19 MR. MOULTRAY: Better -- almost 30 years --
 20 MR. COUNTOU: Okay.
 21 MR. MOULTRAY: -- plus or minus.
 22 MR. COUNTOU: Have you lived a long time in
 23 Blue Diamond?
 24 MR. MOULTRAY: I've been in Blue Diamond for

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1 MR. COUNTOU: Okay. Judge, I'll pass for
 2 cause then.
 3 THE COURT: Thank you.
 4 Mr. Sciscento.
 5 Mr. -- Moultray?
 6 MR. MOULTRAY: Yes.
 7 MR. SCISCENTO: Do you have any biases
 8 towards people of different races?
 9 MR. MOULTRAY: No.
 10 MR. SCISCENTO: You wouldn't have any biases
 11 towards Mr. Nasby here because of his race?
 12 MR. MOULTRAY: No.
 13 MR. SCISCENTO: Thank you.
 14 And there is -- in your
 15 deliberations, you wouldn't take into it the fact of the
 16 race of Mr. Nasby or anybody else who testifies in here?
 17 MR. MOULTRAY: No.
 18 MR. SCISCENTO: Okay. You were a prior
 19 juror for civil matters?
 20 MR. MOULTRAY: Correct.
 21 MR. SCISCENTO: And how long did you
 22 deliberate on that? Do you remember?
 23 MR. MOULTRAY: Yes. Approximately three or
 24 four hours.

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MR. SCISCENTO: Okay. Did you wait for all the evidence to come in before you began deliberation?

MR. MOULTRAY: Did the very best I possibly could.

MR. SCISCENTO: I know it's tough.

MR. MOULTRAY: There is an ebb and flow.

MR. SCISCENTO: In this case, there is going to be some pictures that are going to be placed into evidence and they are going to be very graphic and they're going to show somebody who is dead, and it's an emotional picture.

Is that going to have an effect on you to make a decision? Is that going to enrage you inside to then turn to Mr. Nasby and just forget all the rest of the evidence and rule one way or the other?

MR. MOULTRAY: No, sir. I have some experience with that over the past 20 some years.

MR. SCISCENTO: So these pictures that come in, even if they enrage you, you promise that you won't make a decision based on your anger?

MR. MOULTRAY: Excuse me. I don't know that it would make me angry, first of all.

MR. SCISCENTO: Okay.

MR. MOULTRAY: And I would not base my

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Your Honor.

THE COURT: Okay. At this time, does the defense wish to exercise its second peremptory challenge?

MR. SANTACROCE: We do, Your Honor.

We would like to thank and excuse Juror Number 147, Miss Leavitt.

THE COURT: Okay. Miss Leavitt, if you would come on down. And thank you very much for being here yesterday and again today and we sure appreciate your participation in the process.

Do you ever see your ex-husband anymore?

MS. LEAVITT: Not intentionally.

THE COURT: I was going to say to say hello to him for me, but I'll take that one back.

MS. LEAVITT: Did you know him, Your Honor?

THE COURT: Okay. Yes.

But thank you very much for being here. We sure appreciate that.

Okay. The clerk will call the next name.

THE CLERK: Badge Number 153, Carole

Manschreck.

THE COURT: Okay. Miss Manschreck, if you

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judgments purely on photographs.

MR. SCISCENTO: What I'm trying to get at, I guess, is: I want to make sure -- I would like a jury member who is more like Mr. Spock than Captain Kirk; that being someone who is analytical and not emotional, because there is going to be emotions.

Can you do something to that effect?

MR. MOULTRAY: To the best of my ability as a human being, I certainly can. I'm no Spock, that's for sure.

MR. SCISCENTO: I always try to do that.

So based on that, people crying on the stand won't have -- I'm not going to say an effect on you -- but it won't affect your judgment as to the guilt or innocence of Mr. Nasby?

MR. MOULTRAY: No, sir. At the moment, more than likely, any of us as human beings would be affected by emotion, but at the end of the day, it's everything put together.

MR. SCISCENTO: Okay. So you promise me that you would try to do that?

MR. MOULTRAY: I can make that promise.

MR. SCISCENTO: Okay. We'll pass for cause,

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go in that second chair in the front row, please.

MS. MANSCHRECK: Will do.

THE COURT: Okay. Miss Manschreck, good afternoon.

MS. MANSCHRECK: Hi.

THE COURT: Do you know of any reason why you couldn't be a completely fair and impartial juror if selected to serve in this case?

MS. MANSCHRECK: No.

THE COURT: Can you wait in forming your opinion, as to the guilt or innocence of the defendant, until all the evidence has been heard?

MS. MANSCHRECK: Yes, I can.

THE COURT: Thank you.

Have you or anyone close to you, such as a family member or friend, ever been arrested for a crime?

MS. MANSCHRECK: No.

THE COURT: Have you or anyone close to you, such as a family member or friend, ever been the victim of a crime?

MS. MANSCHRECK: Just had my car stolen once; and my mother was knocked down by a purse snatcher. That's back about 15 years ago.

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1 THE COURT: Where was your car stolen?
 2 MS. MANSCHRECK: In Chicago.
 3 THE COURT: Did the police catch whoever did
 4 it?
 5 MS. MANSCHRECK: No, but they helped me. We
 6 got it back, but it didn't have the tires and all that kind
 7 of stuff on it.
 8 THE COURT: So it was kind of vandalized
 9 then after you found it?
 10 MS. MANSCHRECK: Right.
 11 THE COURT: And now you said your mother was
 12 the victim of a purse snatch?
 13 MS. MANSCHRECK: Right. She was grabbed
 14 from behind twice in the neighborhood and a kid took her --
 15 a young kid took her purse.
 16 THE COURT: Where did that take place?
 17 MS. MANSCHRECK: In Chicago.
 18 THE COURT: Again, do you feel any of those
 19 experiences would affect your ability to be fair and
 20 impartial to both the State and the defendant in this case?
 21 MS. MANSCHRECK: No.
 22 THE COURT: Can you base your verdict solely
 23 on the evidence brought out at the trial and the law that
 24 applies, as stated in my instructions to you, without fear

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1 MS. MANSCHRECK: No.
 2 THE COURT: And were you the foreperson of
 3 that jury?
 4 MS. MANSCHRECK: No.
 5 THE COURT: If you were a party to this
 6 case, would you be comfortable with 14 jurors just like
 7 yourself?
 8 MS. MANSCHRECK: Yes, I would be.
 9 THE COURT: Thank you.
 10 Mr. Coumou.
 11 MR. COUMOU: Thank you, Judge.
 12 Good afternoon, Miss
 13 Manschreck.
 14 MS. MANSCHRECK: Good afternoon.
 15 MR. COUMOU: Can you tell me a little bit
 16 about yourself?
 17 MS. MANSCHRECK: Um, let's see. I -- right
 18 now, I work as a dispatcher for my son-in-law's air
 19 conditioning company and I have to do all the other stuff
 20 that goes with it since it's a small company.
 21 MR. COUMOU: Okay.
 22 MR. MANSCHRECK: Up until, I guess, the last
 23 two years, up until then, I took care of my mother and
 24 father until they passed away out here.

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1 of criticism or popular opinion?
 2 MS. MANSCHRECK: Yes, I could.
 3 THE COURT: Okay. Have you ever served as a
 4 juror before?
 5 MS. MANSCHRECK: Yes, I did.
 6 THE COURT: On how many occasions?
 7 MS. MANSCHRECK: Just on one.
 8 THE COURT: Was that a civil or criminal
 9 case?
 10 MS. MANSCHRECK: What it was was to
 11 determine whether a person was mentally competent to stand
 12 trial or not; and whether we felt that he should be put back
 13 in the mental institution or not.
 14 THE COURT: I see. So that was in, what, a
 15 circuit court in Illinois?
 16 MS. MANSCHRECK: Right.
 17 THE COURT: Okay. And without telling us
 18 what the verdict was, did your jury reach a verdict in that
 19 case?
 20 MS. MANSCHRECK: Yes, we did.
 21 THE COURT: Is there anything about that
 22 experience you had on jury duty which you feel would affect
 23 your ability to be fair and impartial to both sides in this
 24 case?

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1 And then before that, I used to
 2 be in data processing in Chicago, doing surveys and market
 3 research.
 4 MR. COUMOU: How about your spouse?
 5 It lists here --
 6 MS. MANSCHRECK: I left him in Chicago.
 7 MR. COUMOU: You left him in Chicago?
 8 MS. MANSCHRECK: Best place for him.
 9 MR. COUMOU: Okay. Cold place for a cold
 10 soul, probably.
 11 MS. MANSCHRECK: It was ten years ago I left
 12 him there.
 13 MR. COUMOU: Okay. Well, what did he do for
 14 a living?
 15 MS. MANSCHRECK: He was a carpenter.
 16 MR. COUMOU: Okay. Now, you said you're
 17 dispatcher for your son-in-law's --
 18 MS. MANSCHRECK: Right.
 19 MR. COUMOU: -- company here.
 20 How many children do you have
 21 then?
 22 MS. MANSCHRECK: I have three and they all
 23 moved out here too and left him. They all came out here.
 24 MR. COUMOU: Okay.

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1 MS. MANSCHRECK: One is a nurse and two are
2 working for the Post Office; one in Henderson and one in
3 Summerlin.

4 MR. COUMOU: Now, again, as before, all the
5 questions I have asked before to all these prospective
6 jurors, are there any of these questions that may stand out
7 to you while you were sitting back here that you would like
8 to answer?

9 MS. MANSCHRECK: No. I feel that I could do
10 a pretty good job.

11 MR. COUMOU: Okay. Do you think you could
12 promise that you will be fair minded and listen to all the
13 evidence as -- as it is presented to you?

14 MS. MANSCHRECK: Yes, I could.

15 MR. COUMOU: And you mentioned about this
16 car being stolen and the tires are gone.

17 You are not going to get
18 together with your neighbor next to you and stew about how
19 these crooks left your cars, are you?

20 MS. MANSCHRECK: No, 'cause it -- it's a
21 fact of life: Cars get stolen.

22 MR. COUMOU: Okay.

23 MS. MANSCHRECK: And I know police don't
24 have that as priorities -- priorities because there are so

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1 northwest side, around Cicero Avenue and Fullerton, the old
2 Craigin district, if you are familiar with Chicago.

3 MR. SANTACROCE: And --

4 MS. MANSCHRECK: I lived there all my life
5 until, like I said, I moved out here ten years ago.

6 MR. SANTACROCE: And what brought you out
7 here?

8 MS. MANSCHRECK: I wanted to move out here
9 in '68, because -- if everybody would have listened to me,
10 we would have been rich today, because I just liked it. I
11 just wanted to come out here. I liked the town. I liked
12 the people. I liked the idea that there is people from all
13 over the United States here, and I also felt that most
14 people that came here wanted to come here, so we all have
15 the same ideas in a lot of basic things. And I liked it
16 because it's such a mixture of people from all over.

17 MR. SANTACROCE: I notice on your jury
18 questionnaire that you have 15 years of education; is that
19 correct?

20 MS. MANSCHRECK: Right.

21 MR. SANTACROCE: And can you tell me a
22 little bit about your educational background?

23 MS. MANSCHRECK: I went through -- I started
24 in college, and then I got married after the -- I was going

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1 many other things that were more involved.

2 I thought if we could get it
3 back, we would be lucky and we still got it back. But I
4 didn't lose that much money. It was an older car. They
5 just wanted the tires. They were brand new tires and they
6 just wanted them.

7 MR. COUMOU: Was that back in Chicago?

8 MS. MANSCHRECK: Yeah. And that was about
9 15 years ago.

10 MR. COUMOU: So you don't harbor any
11 feelings as to they should have done this, they should have
12 done that?

13 MS. MANSCHRECK: No.

14 MR. COUMOU: Okay. Thanks a lot.

15 I'll pass for cause, Judge.

16 THE COURT: Okay. Thank you.

17 Mr. Santacroce.

18 MR. SANTACROCE: Thank you, Your Honor.

19 Good afternoon, Mrs.

20 Manschreck.

21 MS. MANSCHRECK: Good afternoon.

22 MR. SANTACROCE: What part of Chicago did
23 you live in?

24 MS. MANSCHRECK: I lived around the

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1 to go into teaching. And then I'm glad I didn't because I
2 decided I didn't want to go into teaching.

3 So, in the meantime, I've been
4 taking extra courses, like I've been taking chemistry and a
5 few other courses. But I haven't finished my degree yet. I
6 don't know what I want to do yet. I'm still young.

7 MR. SANTACROCE: And I notice when the judge
8 questioned in the jury venire, you stated that you had a
9 brother-in-law that was a retired police officer?

10 MS. MANSCHRECK: Right. And I haven't seen
11 him in ten years either. I left him back with his --

12 MR. SANTACROCE: So if -- I'm going ask you
13 the same question you've heard over and over again: If a
14 police officer testifies, are you going to give that police
15 officer extra weight because he's a police officer?

16 MS. MANSCHRECK: They don't get any more
17 weight one way or the other.

18 I try to be very -- I don't
19 judge. Even when I see something in the paper or on TV, I
20 don't make a judgment until I hear everything, because you
21 just can't do that.

22 MR. SANTACROCE: Did you hear anything in
23 the media about this particular case?

24 MS. MANSCHRECK: No, I haven't.

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1 MR. SANTACROCE: You say that you have one
2 daughter that's a nurse?
3 MS. MANSCHRECK: Right. She works for Clark
4 County. She's a visiting nurse.

5 MR. SANTACROCE: And do you ever talk to her
6 about her occupation, about some of the stories or patients
7 or things that she's encountered?

8 MS. MANSCHRECK: Sometimes, she'll tell me.
9 Mostly it's not to do with the patients as much as it has to
10 do with the bureaucracy.

11 MR. SANTACROCE: Does she treat patients
12 that may be subject to violent crime?

13 MS. MANSCHRECK: Sometimes, because
14 sometimes she has some places where she has to go in the
15 neighborhood that are not considered the best, but, usually,
16 she's never had any trouble in those areas.

17 She's had her car ripped off,
18 but in the poorer neighborhoods, they take care of her.

19 MR. SANTACROCE: I expect there may be some
20 female witnesses testifying in this trial, and I expect that
21 either Mr. Sciscanto or myself may become very zealous with
22 those female witnesses in our questioning. They may become
23 very emotional. We may not let up.

24 Are you going to hold that

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1 Okay. The clerk may call the
2 next name.

3 THE CLERK: Badge Number 157, Daniel
4 Huerbin.

5 THE COURT: Hang on a second, Mr. Huerbin.
6 I think we have somebody before you. I just want to check
7 that.

8 Okay. The clerk will recall
9 that.

10 THE CLERK: Badge Number 155, Linn Smith.

11 THE COURT: Okay. Miss Smith, if you could
12 come on up. And if you could go sit in that second chair in
13 the back row, please.

14 Okay. Miss Smith, good
15 afternoon.

16 Do you know of any reason why
17 you couldn't be a completely fair and impartial juror if
18 selected to serve in this case?

19 MS. SMITH: No.

20 THE COURT: Can you wait in forming your
21 opinion, as to the guilt or innocence of the defendant,
22 until all the evidence has been heard?

23 MS. SMITH: For the most part, I think so.

24 THE COURT: Okay. Well, we need -- that's

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1 against my client if we vigorously question, perhaps, a
2 female witness?

3 MS. MANSCHRECK: No, I would not.

4 MR. SANTACROCE: Do you have any medical
5 problems that would cause you to perhaps not pay attention
6 to the evidence or anything like that?

7 MS. MANSCHRECK: No.

8 MR. SANTACROCE: Thank you very much.

9 We pass for cause.

10 THE COURT: Thank you.

11 At this time, does the State
12 wish to exercise its third peremptory challenge?

13 MR. COUNOU: Yes, Judge.

14 At this time, the State would
15 like to thank, but excuse juror seat Number 2, 132, badge
16 number, Mr. Sprouse.

17 THE COURT: Okay. Mr. Sprouse, if you would
18 come on down here. Thank you very much for being here
19 yesterday and today. We appreciate your participation in
20 the process, all your answers to the questions we asked
21 yesterday.

22 Thank you again. If you would
23 go downstairs and check in and let them know you've been
24 excused.

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1 an important question, so what we need -- the reason we ask
2 this question is that -- you know the old story, there is
3 two sides to every story, that old axiom?

4 Now it's important in this
5 particular case. The State gets to go first and then the
6 defense gets to go after the State rests their case. So
7 it's important that everybody keep an open mind and hear the
8 whole story, not decide this case until we go back back to
9 the jury room and discuss it with your fellow jurors.

10 So do you feel you could do
11 that?

12 MS. SMITH: Well, the reason I say for the
13 most part is because I would probably tend to start feeling
14 one way or another after hearing both sides of the point,
15 but I might be starting to be swayed one way or another
16 before the end. But I -- ultimately, I would wait and hear
17 everything.

18 THE COURT: Okay. We just want you to keep
19 an open mind; let each side present their case; and then,
20 you know, you may have some thoughts about it, but then go
21 back -- and we're going to tell you to keep them all to
22 yourself until you go back to the jury room and --

23 MS. SMITH: Yeah, that will be fine.

24 THE COURT: -- and exchange them with your

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1 fellow jurors,* then like that.

2 So you feel you could do that?

3 MS. SMITH: Yes.

4 THE COURT: Have you or anyone close to you,
5 such as a family member or friend, ever been arrested for a
6 crime?

7 MS. SMITH: Yes, I have.

8 THE COURT: What for?

9 MS. SMITH: It was when I was about 17 and
10 it was -- people that I lived with in the apartment, it was
11 a drug raid of sorts; but from what I understood, they had a
12 warrant for some kind of weapon. I don't know what the
13 incident was. I never did find out for sure. And I was --
14 I was there, so I was arrested and the charges were dropped.

15 THE COURT: So it's like being at the wrong
16 place at the wrong time?

17 MS. SMITH: Definitely.

18 THE COURT: But I think that brings out a
19 point, you know like that. I think it's important for all
20 the jurors to keep in mind that guilt or innocence is
21 decided in the courtroom.

22 People can be arrested or they
23 can be charged, but they're presumed innocent throughout our
24 country unless the State proves their guilt beyond a

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1 MS. SMITH: Yes, they did.

2 THE COURT: And that person was prosecuted?

3 MS. SMITH: Yes.

4 THE COURT: And, again, despite having been
5 the victim of a crime, and a serious crime like kidnapping,
6 do you feel you can be fair and impartial, to both the State
7 and the defense in this case?

8 MS. SMITH: Yes.

9 THE COURT: You also mentioned your car was
10 stolen.

11 MS. SMITH: Uh-huh.

12 THE COURT: It looks like everybody here has
13 had stolen cars.

14 MS. SMITH: Quite common.

15 THE COURT: Was that in Las Vegas?

16 MS. SMITH: Yes -- actually, North Las
17 Vegas.

18 THE COURT: And did the police catch ever
19 whoever did it?

20 MS. SMITH: Yes, they did.

21 THE COURT: And what kind of shape was the
22 car in?

23 MS. SMITH: It was totally wrecked. The car
24 was six months old. I got a new car. I came out ahead on

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1 reasonable doubt. So your experience is probably one that
2 we all need to keep that in mind.

3 So you feel you could do that,
4 keep an open mind until all the evidence is presented?

5 MS. SMITH: Oh, yeah.

6 THE COURT: Have you or anyone close to you,
7 such as a family member or friend, ever been the victim of a
8 crime?

9 MS. SMITH: Yes.

10 THE COURT: Okay. What --

11 MS. SMITH: I was kidnapped when I was five
12 years old and I've had a car stolen and I've had my house
13 broken into twice.

14 THE COURT: Okay. How about the kidnapping,
15 where did that take place?

16 MS. SMITH: In Las Vegas.

17 THE COURT: Was that -- was that a parent
18 dispute or what? What happened?

19 MS. SMITH: No; no, it wasn't.

20 THE COURT: It was like somebody abducted
21 you?

22 MS. SMITH: Uh-huh.

23 THE COURT: And did the police catch whoever
24 did that?

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1 that.

2 THE COURT: So the insurance company had to
3 pay for the new car and all?

4 MS. SMITH: Right.

5 THE COURT: Is there anything about that
6 experience which would affect your ability to be fair and
7 impartial to both the State and the defense in this case?

8 MS. SMITH: No.

9 THE COURT: Can you base your verdict solely
10 on the evidence brought out at the trial and the law that
11 applies, as stated in my instructions to you, without fear
12 of criticism or popular opinion?

13 MS. SMITH: Yes.

14 THE COURT: Have you ever served as a juror
15 before?

16 MS. SMITH: No.

17 THE COURT: If you were a party to this
18 case, would you be comfortable with 14 jurors just like
19 yourself?

20 MS. SMITH: Yes. I probably should mention
21 that I do know one of the potential jurors; not well, but I
22 do know one of them.

23 THE COURT: Who is that?

24 MS. SMITH: Eloise.

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THE COURT: Okay. So that's Juror Number 4, or prospective Juror Number 4.

Do you work together?

MS. SMITH: No.

MS. DOMINGUEZ: We have the same manicurist.

THE COURT: Okay. Well, let me ask you this: Now, let's say both of you are selected to this jury.

Do you feel that you can -- you can independently evaluate the evidence the way you saw it, even -- even if Juror Number 4, Miss Dominguez, saw it differently?

MS. SMITH: Yes.

THE COURT: So you feel you could exercise your own independent judgment in that regard?

MS. SMITH: Yes.

THE COURT: Okay. Thank you very much.

Mr. Coumou.

MR. COUMO: Thank you.

Miss Smith, could you tell me a little bit about yourself?

MS. SMITH: What would you like to know?

MR. COUMO: It just shows here office manager is your occupation. Start off with that.

MS. SMITH: Okay. I work at the Plumbers

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mean, it sounds like it was actually more of a positive experience than negative.

MS. SMITH: It was, yeah.

MR. COUMO: But tell me about what was the dealings that you had with the police in this case?

MS. SMITH: Um, they were quite humorous, obnoxious.

MR. COUMO: Why was that?

MS. SMITH: Well, I was at a dance studio. I was robbed. They called me the Waltzing Matilda who leaves her keys on the desk because that's what happened.

MR. COUMO: Okay. So you don't harbor any feelings as to how they handled their investigation on the case or anything like that?

MS. SMITH: No.

MR. COUMO: And, again, a lot of questions have been asked by myself, but, basically, the same question of each potential prospective juror here: While you've been sitting here, was there any of those questions that struck you that you now think, yeah, I would like to answer that question or I need to answer that question?

MS. SMITH: Not that I can think of.

MR. COUMO: If you take that oath to be fair and impartial, can you be, in fact, fair and impartial

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and pipe fitters union hall. I've been there almost 21 years and doing pretty much everything there is to do or have done in the office, other than signing checks and attending union meetings.

MR. COUMO: Okay. And you said you've been doing this for 21 years?

MS. SMITH: Uh-huh, 21 years.

MR. COUMO: What got you in to that line of work?

MS. SMITH: I've done office work since I started working at the age of 17.

MR. COUMO: Okay. And you indicated that you felt like you got ahead with this car.

Could you explain that?

MS. SMITH: Well, because the car was only six months old and when they found it, it was so badly wrecked that the insurance company ended up just letting me have a brand new car.

And the agent that I had to work -- well, it wasn't the agent. I guess it was the adjuster -- tended to not listen to me and I ended up having to go to a supervisor, and in all the confusion, they got me a newer car than what I had.

MR. COUMO: You said that you were -- I

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to both sides?

MS. SMITH: Yes.

MR. COUMO: Thank you.

Judge, I'll pass for cause.

THE COURT: Thank you.

Mr. Sciscento.

MR. SCISCENTO: Yes. Thank you.

Miss Smith, you mentioned that you were arrested for a crime, and later, it was dismissed?

MS. SMITH: Uh-huh.

MR. SCISCENTO: How long ago was that?

MS. SMITH: I was 17 years old; and I'm almost 45 now.

MR. SCISCENTO: I didn't mean to bring that out.

MS. SMITH: I have no problem with age.

MR. SCISCENTO: And you were at a place where somebody else was committing crimes?

MS. SMITH: Yeah, I was -- there were drugs in the apartment and I was aware of that, but they had had some warning ahead of time that this might happen, so the place was entirely cleaned out.

And when I came home from doing laundry, I went ahead and went in anyway, because I knew

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1 that there was no problem. But we were arrested anyway and
2 had to go through some of the process.

3 MR. SCISCENTO: So you were in a place where
4 you knew there was people using drugs or selling drugs or
5 manufacturing drugs or something like that?

6 MS. SMITH: Yes, I knew that.

7 MR. SCISCENTO: And you had some knowledge
8 of that?

9 MS. SMITH: Uh-huh.

10 MR. SCISCENTO: But they didn't prosecute
11 you on that?

12 MS. SMITH: No.

13 MR. SCISCENTO: Do you think that was fair?

14 MS. SMITH: Yes, under the circumstances, I
15 do.

16 MR. SCISCENTO: Okay. And why is that?

17 MS. SMITH: Because they went in -- from
18 what I understand -- with the wrong kind of warrant and got
19 a little overzealous, I guess.

20 MR. SCISCENTO: Blew down the door?

21 MS. SMITH: They kicked in the door and it
22 was unlocked, from what I understand.

23 MR. SCISCENTO: Did they knock and announce
24 first?

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1 way, but not quite on the same level.

2 MR. SCISCENTO: So different degrees?

3 MS. SMITH: Yeah.

4 MR. SCISCENTO: So there was different
5 crimes committed?

6 MS. SMITH: Right.

7 MR. SCISCENTO: Knowledge of one and
8 actually doing another --

9 MS. SMITH: Right.

10 MR. SCISCENTO: -- is two separate matters?

11 MS. SMITH: Yes.

12 MR. SCISCENTO: Okay. And I asked another
13 juror this before, but do you believe in that adage: Birds
14 of a feather flock together?

15 MS. SMITH: For the most part, yes.

16 MR. SCISCENTO: So somebody who is a drug
17 dealer, people who hang around them are drug dealers?

18 MS. SMITH: For the most part; not always
19 true.

20 MR. SCISCENTO: But that wasn't true in your
21 case.

22 MS. SMITH: Not always exactly.

23 MR. SCISCENTO: So when you are set to
24 deliberate, you are going to hopefully remember that,

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1 MS. SMITH: I wasn't there, so I don't know
2 for sure, but I was told that they didn't.

3 MR. SCISCENTO: You think because you were
4 involved with these people though you should also be in
5 trouble?

6 MS. SMITH: No.

7 MR. SCISCENTO: Okay. Why is that?

8 MS. SMITH: Well, I wasn't actually doing
9 any of the drugs at the time.

10 MR. SCISCENTO: Okay.

11 MS. SMITH: I was responsible for knowing
12 about it, however.

13 MR. SCISCENTO: Okay. Do you think you
14 should hold each person, for their own individual actions,
15 specifically in that house that -- or apartment or wherever
16 you were at, do you think each person should be held to
17 their own responsibilities?

18 MS. SMITH: Yes.

19 MR. SCISCENTO: That being one person maybe
20 who is selling, manufacturing, doing all of the illegal
21 dealings, and the other people who know about it, would you
22 agree that maybe they should be held to the same standards?

23 MS. SMITH: Not -- not the -- probably --
24 they were -- each -- we were each responsible in our own

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1 that --

2 MS. SMITH: Oh, of course.

3 MR. SCISCENTO: -- that just because this
4 person over here and I was living there doesn't mean I'm
5 him --

6 MS. SMITH: Right.

7 MR. SCISCENTO: -- or he is me?

8 MS. SMITH: Right.

9 MR. SCISCENTO: Okay. I've asked all the
10 questions of all the jurors.

11 Is there anything you want to
12 tell us about you --

13 MS. SMITH: Not anything that --

14 MR. SCISCENTO: -- that you think would be
15 important for us to know?

16 MS. SMITH: I don't think so.

17 MR. SCISCENTO: Okay. No biases or anything
18 like that?

19 MS. SMITH: No.

20 MR. SCISCENTO: Nothing we should know
21 about?

22 MS. SMITH: No.

23 MR. SCISCENTO: We'll pass for cause, Your
24 Honor.

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1 THE COURT: Thank you very much.
 2 At this time, does the defense
 3 wish to exercise its third peremptory challenge?
 4 MR. SANTACROCE: Yes, we do.
 5 The defense would like to thank
 6 and excuse Number 148, Juror Number 14, Miss O'Rourke.
 7 THE COURT: Okay. Miss O'Rourke, if you
 8 would come on down. And thank you very much for being here
 9 yesterday and today. We sure appreciate your participation
 10 in the process. You go check in downstairs and let them
 11 know you've been excused.
 12 MS. O'ROURKE: Okay.
 13 THE COURT: The clerk will call the next
 14 name.
 15 THE CLERK: Badge Number 157, Daniel
 16 Huerbin.
 17 THE COURT: Okay. This time, it's for real,
 18 Mr. Huerbin. If you will go sit in that third chair in the
 19 front row, please.
 20 Okay. Good afternoon, Mr.
 21 Huerbin.
 22 MR. HUERBIN: Hi.
 23 THE COURT: Do you know of any reason why
 24 you couldn't be a completely fair and impartial juror if

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1 MR. HUERBIN: No.
 2 THE COURT: Have you or anyone close to you,
 3 such as a family member or friend, ever been the victim of a
 4 crime?
 5 MR. HUERBIN: No.
 6 THE COURT: Can you base your verdict solely
 7 on the evidence brought out at the trial and the law that
 8 applies, as stated in my instructions to you, without fear
 9 of criticism or popular opinion?
 10 MR. HUERBIN: Yes.
 11 THE COURT: Have you ever served as a juror
 12 before?
 13 MR. HUERBIN: No, I haven't.
 14 THE COURT: If you were a party to this
 15 case, would you be comfortable with 14 jurors just like
 16 yourself?
 17 MR. HUERBIN: Yes.
 18 THE COURT: Thank you.
 19 Mr. Coumou.
 20 MR. COUMOU: Thank you.
 21 You just said that -- that you
 22 would feel comfortable to have 14 jurors such as yourself.
 23 Why do you say that? Why did
 24 you give that affirmative answer to that?

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1 selected to serve in this case?
 2 MR. HUERBIN: No reason, no.
 3 THE COURT: Can you wait in forming your
 4 opinion, as to the guilt or innocence of the defendant,
 5 until all the evidence has been heard?
 6 MR. HUERBIN: Can I wait until --
 7 THE COURT: Yes.
 8 MR. HUERBIN: Yes; I can, yes.
 9 THE COURT: Have you or anyone close to you,
 10 such as a family member or friend, ever been arrested for a
 11 crime?
 12 MR. HUERBIN: I was arrested about 25 years
 13 ago for possession of a small quantity of marijuana.
 14 THE COURT: Okay. Was that here in Las
 15 Vegas?
 16 MR. HUERBIN: No, it was in New Jersey.
 17 THE COURT: What was the disposition of
 18 those charges?
 19 MR. HUERBIN: The -- it was reduced. I paid
 20 a fine of -- it was \$1500.
 21 THE COURT: Was there anything about that
 22 experience you had dealing with the criminal justice system
 23 which you feel would affect your ability to be fair and
 24 impartial to both the State and the defense in this case?

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1 MR. HUERBIN: I feel like I would give fair
 2 judgment and I would hope that everyone else would do the
 3 same.
 4 MR. COUMOU: Okay. What -- what makes you
 5 say that? What about your -- in your background that makes
 6 you feel like you are fair and that you will do that?
 7 MR. HUERBIN: I guess it's a self
 8 evaluation. I feel like I'm an honest person and --
 9 MR. COUMOU: Okay.
 10 MR. HUERBIN: -- and would render a fair
 11 judgment.
 12 MR. COUMOU: Could you tell me what your
 13 line of work is, sir?
 14 MR. HUERBIN: I'm a service engineer. I do
 15 installation and service of medical equipment, MRI scanners.
 16 MR. COUMOU: And how long have you been in
 17 this work?
 18 MR. HUERBIN: About 22 years.
 19 MR. COUMOU: And are you in charge of
 20 employees or are strictly --
 21 MR. HUERBIN: No.
 22 MR. COUMOU: -- self or working on your own,
 23 type of stuff?
 24 MR. HUERBIN: I work under a manager. I'm

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1 not the manager, no.

2 MR. COUMOU: Okay. And you indicated that
3 you have a brother who is -- who is a police officer?

4 MR. HUERBIN: Yes.

5 MR. COUMOU: Where is that?

6 MR. HUERBIN: Pittsburgh, Pennsylvania.

7 MR. COUMOU: And how long has he been a
8 police officer?

9 MR. HUERBIN: Um, about four years now.

10 MR. COUMOU: Is he a younger brother?

11 MR. HUERBIN: Yes, he is.

12 MR. COUMOU: And do you ever talk to him
13 about why he chose a career in law enforcement?

14 MR. HUERBIN: Um, actually, he was a
15 paramedic and he transferred into the police force, mainly
16 because of the situation with the city and the way they
17 handled paramedics versus police. It is just a better
18 opportunity for him.

19 MR. COUMOU: More money, maybe?

20 MR. HUERBIN: It was more money; the
21 retirement was different; a number of things.

22 MR. COUMOU: Okay. And do you ever sit down
23 and talk to him or does he talk to you about cases that he
24 has worked on or what his impressions are about law

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1 MR. HUERBIN: No.

2 MR. COUMOU: Can you promise, sir, that you
3 will be fair to both sides?

4 MR. HUERBIN: Yes.

5 MR. COUMOU: Judge, I'll pass for cause.

6 THE COURT: Thank you.

7 Mr. Santacroce.

8 MR. SANTACROCE: Thank you, Your Honor.

9 Good afternoon, Mr. Huerbin.

10 MR. HUERBIN: Hi.

11 MR. SANTACROCE: Service engineer, can you
12 tell me a little bit about your occupation?

13 MR. HUERBIN: If you are familiar with the
14 medical equipment, MRI scanner, similar to a CT scanner, a
15 whole different technology, but I work for General Electric,
16 who is the manufacturer, and I install the equipment and I
17 take care of it, service it, once it's installed.

18 MR. SANTACROCE: And what kind of an
19 educational background do you have for that kind of job?

20 MR. HUERBIN: I've got 12 -- well, I -- high
21 school education, plus two years of technical school and a
22 lot of training with the company.

23 MR. SANTACROCE: In that technical school,
24 can you tell me a little bit about what you learned in that?

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1 enforcement?

2 MR. HUERBIN: Occasionally, he might make a
3 comment when we're talking on the phone, but not at any
4 great length.

5 MR. COUMOU: Okay. Do you feel that if you
6 hear testimony on this -- in this case from -- from police
7 officers and non-police officers, do you feel like you need
8 to return a guilty verdict just so you don't anger your
9 little brother?

10 MR. HUERBIN: No, not at all.

11 MR. COUMOU: You can be independent on that?

12 MR. HUERBIN: Yes.

13 MR. COUMOU: Can you also tell me about this
14 incident that you had in the past, not going in to detail,
15 but I just want to ask you if you harbor any feelings
16 towards law enforcement?

17 MR. HUERBIN: No, it was against the law and
18 I broke it.

19 MR. COUMOU: You feel you were dealt with
20 fairly?

21 MR. HUERBIN: Yes.

22 MR. COUMOU: And you don't sit there late at
23 night, once in a while, thinking about how angry you still
24 are with some cop who arrested you back in New Jersey?

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1 Did you actually look at MRIs? Did you look at medical
2 documents?

3 MR. HUERBIN: No. The school that I went to
4 is basically for electronics. It wasn't specifically for
5 the MRI.

6 MR. SANTACROCE: Are MRIs infallible?

7 MR. HUERBIN: No.

8 MR. SANTACROCE: Do police officers make
9 mistakes sometimes?

10 MR. HUERBIN: Everybody makes mistakes.

11 MR. SANTACROCE: If we have a coroner on the
12 stand that testifies, are you going to give that coroner
13 more weight than you would other testimony from average
14 people?

15 MR. HUERBIN: No.

16 MR. SANTACROCE: Are you going to supplement
17 what you hear from the stand, perhaps, with your technical
18 background or are you going to rate the evidence as its
19 presented?

20 MR. HUERBIN: I think I will just listen to
21 the evidence and form an opinion based on what is presented.

22 MR. SANTACROCE: Now, your wife, what does
23 she do?

24 MR. HUERBIN: She does sales for the Review

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Journal?

MR. SANTACROCE: And do you have children?

MR. HUERBIN: No.

MR. SANTACROCE: Thank you very much.

We'll pass for cause.

THE COURT: Thank you very much.

At this time, does the State wish to exercise its fourth peremptory challenge?

MR. COUNOU: Your Honor, the State would like to waive its fourth.

THE COURT: Okay. And at this time, does the defense wish to exercise its fourth peremptory challenge?

MR. SCISCENTO: Court's indulgence.

(Whereupon, a sotto voce at this time.)

MR. SANTACROCE: The defense would like to thank and excuse Juror Number 131, Mrs. Ibe.

THE COURT: Okay. Thank you very much, Miss Ibe, for being here yesterday and today. We sure appreciate your patience and participation in the process, then like that.

You go check in downstairs and

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teenager for pet theft and arrested about ten years ago for D.U.I.

THE COURT: Okay. Now, were those in Clark County?

MS. PETER: No, California.

THE COURT: As far as the pet theft, that was when you were a juvenile.

MS. PETER: Uh-huh.

THE COURT: So you had to go to juvenile court on that?

MS. PETER: No, actually the case was dropped.

THE COURT: Okay. How about the D.U.I.; where did that take place?

MS. PETER: In California.

THE COURT: And were you able to work that out with the prosecutor?

MS. PETER: Yes.

THE COURT: Okay. And did you pay, what, a fine and a -- a --

MS. PETER: Uh-huh.

THE COURT: Suspension?

MS. PETER: A fine and had to go to class.

THE COURT: Okay. Is there anything about

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they will give you further instructions on what to do.

Okay. The clerk will call the next name.

THE CLERK: Badge Number 158, Melissa Peter.

THE COURT: Miss Peter, if you will go all the way to that very first chair in the back row, please.

Okay. Miss Peter, good afternoon. And thank you for being here yesterday and today as well.

Do you know of any reason why you couldn't be a completely fair and impartial juror if selected to serve in this case?

MS. PETER: No.

THE COURT: Can you wait in forming your opinion, as to the guilt or innocence of the defendant, until all the evidence has been heard?

MS. PETER: Yes.

THE COURT: Have you or anyone close to you, such as a family member or friend, ever been arrested for a crime?

MS. PETER: Yes.

THE COURT: Could you tell me about that, please.

MS. PETER: I was arrested as a young

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those experiences you had both as a juvenile and as an adult that you feel would affect your ability to be fair and impartial to both the State of Nevada and the defendant in this case?

MS. PETER: No.

THE COURT: Okay. Have you or anyone close to you, such as a family member or friend, ever been the victim of a crime?

MS. PETER: Not that I'm aware of.

THE COURT: Can you base your verdict solely on the evidence brought out at the trial and the law that applies, as stated in my instructions to you, without fear of criticism or popular opinion?

MS. PETER: Yes.

THE COURT: Have you ever served as a juror before?

MS. PETER: No.

THE COURT: If you were a party to this case, would you be comfortable with 14 jurors just like yourself?

MS. PETER: Yes.

THE COURT: Thank you.

Mr. Counou.

MR. COUNOU: Thank you.

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Miss Peter, could you explain your duties? It just lists as a manager.

MS. PETER: I'm a human resource manager for a title company.

MR. COUMOU: For a title company?

MS. PETER: Uh-huh.

MR. COUMOU: And how long you been doing that line of work?

MS. PETER: About 15 years.

MR. COUMOU: And has this been -- not the entire time here in Clark County, has it?

MS. PETER: No.

MR. COUMOU: Okay. Is it the same company that you've been working at?

MS. PETER: No. I work -- I've been working for three years at one company; and prior to that, I worked nine and a half years in California for another company.

MR. COUMOU: What part of California?

MS. PETER: Santa Barbara.

MR. COUMOU: Okay. And what about your husband, could you explain to me what his duties are?

MS. PETER: He's an engineer for a casino.

MR. COUMOU: Okay. And how long has he been doing that work; also three years or --

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don't harbor any ill feelings about that?

MS. PETER: No.

MR. COUMOU: Was that -- you said ten years ago?

MS. PETER: It was -- I think it was 1990.

MR. COUMOU: 1990?

MS. PETER: '89 or '90.

MR. COUMOU: And this was in California, right?

MS. PETER: Yes.

MR. COUMOU: Don't you have -- you can actually demand a jury trial for D.U.I. cases?

MS. PETER: You could, but I was guilty.

MR. COUMOU: Okay. So you -- do you think you got treated fairly?

MS. PETER: Oh, certainly.

MR. COUMOU: And did you harbor any feelings towards the prosecution who filed a complaint against you, a criminal complaint?

MS. PETER: No, actually, I saw him the next night at dinner, and he came up and talked to me, and I told him I appreciated him pulling me over before something happened.

MR. COUMOU: Okay. Can you promise to be

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MS. PETER: He's been here three years; and prior to that, he was in California about 15 years at one time.

MR. COUMOU: Did you guys meet and married in California; moved out here?

MS. PETER: Uh-huh.

MR. COUMOU: Is that a yes?

MS. PETER: Yes.

MR. COUMOU: Okay. She has to take everything down. I don't think she has an uh-huh key.

Now, what brought you -- what brought both of you out here?

MS. PETER: My husband was working for a company in Los Angeles; moved to Santa Barbara. The supervisor from the Los Angeles company moved over here and decided to take my husband over here.

MR. COUMOU: Okay. And do you think it was a positive move for you?

MS. PETER: It was a great move.

MR. COUMOU: Okay. What about children, do you have any children?

MS. PETER: Not yet.

MR. COUMOU: Not yet.

And now this D.U.I. thing, you

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fair and impartial in this case?

MS. PETER: Certainly.

MR. COUMOU: And of any other questions that I've had of your previous prospective jurors over here, any of those questions stand out in your mind as you are sitting here behind me?

MS. PETER: No.

MR. COUMOU: Thank you very much.

Judge, I'll pass for cause.

THE COURT: Thank you.

Mr. Sciscento.

MR. SCISCENTO: Mrs. -- Peter?

MS. PETER: Mrs. Peter.

MR. SCISCENTO: This prior D.U.I. that you had, you said that you saw the prosecutor or the police at a restaurant?

MS. PETER: The next day, my mom took me out to dinner to console me and I saw him. And he tried to hide and I went up and talked to him --

MR. SCISCENTO: That was the prosecutor or the police officer that pulled you over?

MS. PETER: The police officer.

MR. SCISCENTO: And you told him thank you for pulling me over --

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1 MS. PETER: Yes. Thank you for -- I was --
 2 I was guilty.
 3 MR. SCISCENTO: Okay. And you have no ill
 4 will toward him or the system or anybody like that?
 5 MS. PETER: No, not at all.
 6 MR. SCISCENTO: That's odd. Most people,
 7 that would be hard to do.
 8 MS. PETER: It was an expensive lesson, but
 9 that's the way it goes.
 10 MR. SCISCENTO: So you believe that if you
 11 are guilty for what you did, you should be punished for what
 12 you did?
 13 MS. PETER: Yes.
 14 MR. SCISCENTO: What if you're not guilty
 15 for something that somebody else did?
 16 MS. PETER: Then you shouldn't be punished.
 17 MR. SCISCENTO: Even if you were there?
 18 MS. PETER: If you are guilty of something,
 19 you should be punished; but if you are not guilty of
 20 something, you shouldn't be punished.
 21 MR. SCISCENTO: So if you didn't actually
 22 participate or agree with this, but you were there, you
 23 shouldn't be found guilty for actions of somebody else;
 24 would you agree with that?

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1 MS. PETER: I -- I guess it depends on what
 2 it is. If I was the driver -- the passenger of a drunk
 3 driver, I would not -- I shouldn't be taken in.
 4 MR. SCISCENTO: Okay. If this -- the
 5 evidence comes out, do you promise to wait until the very
 6 end before you make a decision?
 7 MS. PETER: Yes.
 8 MR. SCISCENTO: I find -- that's very hard
 9 to do.
 10 Do you understand that?
 11 MS. PETER: Uh-huh.
 12 MR. SCISCENTO: Because I -- like I said,
 13 I've said this numerous times, I can't do it. And I am the
 14 first to admit that I have a bias.
 15 MS. PETER: Uh-huh.
 16 MR. SCISCENTO: Different reasons, but there
 17 are biases that I have and I understand that and I accept
 18 that.
 19 But if you have any biases --
 20 you don't, do you?
 21 MS. PETER: I do not.
 22 MR. SCISCENTO: At all?
 23 MS. PETER: No.
 24 MR. SCISCENTO: If you did though, would you

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1 able to put them aside?
 2 MS. PETER: Sure.
 3 MR. SCISCENTO: Could you put them aside
 4 because of the color of the skin -- the color of the skin of
 5 the victims, the emotions, the pictures, could you put all
 6 of that aside, all your emotions aside, and make a
 7 determination?
 8 MS. PETER: Yes.
 9 MR. SCISCENTO: If family members are
 10 sitting out here crying because their son is dead, could you
 11 forget about that and come back with a not guilty plea?
 12 MS. PETER: I could probably -- I would
 13 probably be all right with that.
 14 MR. SCISCENTO: Will it affect your ability
 15 to deliberate?
 16 This is a very important trial;
 17 do you agree with that?
 18 MS. PETER: I do.
 19 MR. SCISCENTO: If it comes back that you
 20 determine that Mr. Nasby is not guilty, but there is family
 21 members sitting right next to you crying, could you walk
 22 past them, knowing that you had made the right decision?
 23 MS. PETER: Yes.
 24 MR. SCISCENTO: Could you promise not to

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1 cave in to the rest of the jury members if you believe that
 2 somebody is innocent or guilty?
 3 MS. PETER: I could.
 4 MR. SCISCENTO: You could do that?
 5 MS. PETER: Yes.
 6 MR. SCISCENTO: And you could stand up to 11
 7 other people if you believe they're wrong?
 8 MS. PETER: Yes.
 9 MR. SCISCENTO: Could you be that bold in
 10 the --
 11 MS. PETER: If I need to be, sure.
 12 MR. SCISCENTO: And you are not just saying
 13 that so you can be on this jury?
 14 MS. PETER: No. Actually, I would rather
 15 not be on this jury.
 16 MR. SCISCENTO: We'll pass for cause, Your
 17 Honor. Thank you.
 18 THE COURT: Mr. Coumou, at this time, does
 19 the State wish to exercise it's fifth peremptory challenge?
 20 MR. COUMOU: No, Judge. The State would
 21 like to waive its fifth peremptory challenge.
 22
 23 (Whereupon, a sotto voce at this time.)
 24

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1 THE COURT: Thank you.
 2 At this time, does the defense
 3 wish to exercise its fifth peremptory challenge?
 4 MR. SANTACROCE: We'll waive five.
 5 THE COURT: Okay. At this time, does the
 6 State wish to exercise its sixth peremptory challenge?
 7 MR. COUNOU: Judge, we'll waive it.
 8 THE COURT: Okay. At this time, does the
 9 defense wish to exercise its sixth peremptory challenge?
 10
 11 (Whereupon, a sotto voce at this time.)
 12
 13 MR. SANTACROCE: Court's indulgence.
 14 We'll waive our sixth, Your
 15 Honor.
 16 THE COURT: At this time, does the State
 17 wish to exercise its seventh peremptory challenge?
 18 MR. COUNOU: The State will also waive.
 19 THE COURT: At this time, does the defense
 20 wish to exercise its seventh peremptory challenge?
 21 MR. SCISCENTO: No, Your Honor.
 22 We will waive our seventh.
 23 THE COURT: At this time, does the State
 24 wish to exercise its eighth peremptory challenge?

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1 next name.
 2 THE CLERK: Badge Number 159, Rawlin Blake.
 3 THE COURT: Okay. Mr. Blake, if you would
 4 come on up, please; and if you would sit in that last chair
 5 in the front row, please.
 6 Okay. Mr. Blake, good
 7 afternoon.
 8 MR. BLAKE: Good afternoon.
 9 THE COURT: Do you know of any reason why
 10 you couldn't be a completely fair and impartial juror if
 11 selected to serve in this case?
 12 MR. BLAKE: No, I do not.
 13 THE COURT: Can you wait in forming your
 14 opinion, as to the guilt or innocence of the defendant,
 15 until all the evidence has been heard?
 16 MR. BLAKE: Yes, I can.
 17 THE COURT: Have you or anyone close to you,
 18 such as a family member or friend, ever been arrested for a
 19 crime?
 20 MR. BLAKE: Yes, my son.
 21 THE COURT: What for?
 22 MR. BLAKE: Mostly for drugs.
 23 THE COURT: Okay. So there has been several
 24 arrests?

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1 MR. COUNOU: We also waive it.
 2 THE COURT: At this time, does the defense
 3 wish to exercise its eighth peremptory challenge?
 4 MR. SCISCENTO: No, we waive.
 5 THE COURT: At this time, does the State
 6 wish to exercise its alternate challenge?
 7 MR. COUNOU: We waive it.
 8 THE COURT: At this time, does the defense
 9 wish to exercise its alternate challenge?
 10 MR. SCISCENTO: May we approach for a
 11 moment?
 12 THE COURT: Yes.
 13
 14 (Unreported discussion at the bench.)
 15
 16 THE COURT: Okay. Mr. Santacroce.
 17 MR. SANTACROCE: Yes, the defense would like
 18 to thank and excuse Juror Number 146.
 19 THE COURT: Okay. That is --
 20 MR. SANTACROCE: Mr. Schlieman.
 21 THE COURT: Okay. Mr. Schlieman, thank you
 22 very much for being here yesterday and today. We sure
 23 appreciate your participation in the process.
 24 Okay. The clerk will call the

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1 MR. BLAKE: Yes.
 2 THE COURT: And were they here in Clark
 3 County?
 4 MR. BLAKE: Yes, they were.
 5 THE COURT: And was your son under 18 when
 6 this happened?
 7 MR. BLAKE: Yes.
 8 THE COURT: So he was dealt with by the
 9 juvenile court authorities?
 10 MR. BLAKE: Yes.
 11 THE COURT: Is there anything about those
 12 experiences that your son has gone through which you feel
 13 would affect your ability to be fair and impartial to both
 14 the State and the defendant in this case?
 15 MR. BLAKE: No, there is not.
 16 THE COURT: Have you or anyone close to you,
 17 such as a family member or friend ever been the victim of a
 18 crime?
 19 MR. BLAKE: Yes.
 20 THE COURT: Who was that?
 21 MR. BLAKE: It was my son.
 22 THE COURT: And what was he a victim of?
 23 MR. BLAKE: He was a victim of an assault.
 24 THE COURT: Okay. And, again, was that here

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1 in Clark County?

2 MR. BLAKE: Yes, it was.

3 THE COURT: Did the police catch whoever was
4 responsible?

5 MR. BLAKE: No, they did not.

6 THE COURT: Okay. Do you feel the police
7 did what they could to properly investigate that assault?

8 MR. BLAKE: No, they didn't.

9 THE COURT: Again, do you hold any animosity
10 towards the police for their failure to investigate that
11 assault further?

12 MR. BLAKE: No. That was the responsibility
13 of a particular officer involved, who didn't do his job, but
14 that doesn't reflect on any of the rest of them.

15 THE COURT: So if police officers testify in
16 this case, you will consider their testimony fairly and
17 impartially just like you would any other witness?

18 MR. BLAKE: Yes, I would.

19 THE COURT: Okay. Can you base your verdict
20 solely on the evidence brought out at the trial and the law
21 that applies, as stated in my instructions to you, without
22 fear of criticism or popular opinion?

23 MR. BLAKE: Yes, I can.

24 THE COURT: Have you ever served as a juror

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1 your ability to be fair and impartial to both sides in this
2 case?

3 MR. BLAKE: No, there is not.

4 THE COURT: Okay. If you were a party to
5 this case, would you be comfortable with 14 jurors just like
6 yourself?

7 MR. BLAKE: Yes, I would.

8 THE COURT: Thank you.

9 Mr. Coumou.

10 MR. COUMO: Judge, I'll pass for cause.

11 THE COURT: Mr. Santacroce.

12 MR. SANTACROCE: Thank you.

13 Mr. Blake, I'm sorry, I didn't
14 get who was the victim of the assault.

15 MR. BLAKE: My son.

16 MR. SANTACROCE: Your son was?

17 MR. BLAKE: Yes.

18 MR. SANTACROCE: And they never found the
19 person that did that?

20 MR. BLAKE: No, they did not.

21 MR. SANTACROCE: What were the circumstances
22 around that?

23 MR. BLAKE: Um, my son was running with a
24 crowd that he really shouldn't have been running with and in

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1 before?

2 MR. BLAKE: Yes, sir, I have.

3 THE COURT: On how many occasions?

4 MR. BLAKE: About three.

5 THE COURT: Were they civil or criminal
6 cases?

7 MR. BLAKE: Both.

8 THE COURT: Okay. Again, let me ask you, in
9 those three cases, did your juries reach verdicts?

10 MR. BLAKE: On one of the cases, yes.

11 THE COURT: How about the other two?

12 MR. BLAKE: One of them, they settled before
13 the case was over, and I don't remember -- it was a
14 technical thing. On the third one, I don't remember what
15 that was, but we didn't complete the trial.

16 THE COURT: Okay. But the one case, it did
17 go all the way to deliberations, your jury did reach a
18 verdict?

19 MR. BLAKE: Yes.

20 THE COURT: And were you elected the
21 foreperson of that jury?

22 MR. BLAKE: No, I was not.

23 THE COURT: Is there anything about those
24 experiences you had on jury duty which you feel would affect

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1 a neighborhood he shouldn't have been in and got,
2 essentially, mugged; and -- and they -- the police officer
3 involved didn't consider it worth his while because it
4 was -- he was obviously in the wrong place doing the wrong
5 thing.

6 MR. SANTACROCE: Was he seriously injured?

7 MR. BLAKE: No, he was not.

8 MR. SANTACROCE: You are not going to hold
9 that incident against Mr. Nasby, are you?

10 MR. BLAKE: Oh, no, no.

11 MR. SANTACROCE: So you don't think somebody
12 should be punished for what -- what your son went through?

13 MR. BLAKE: Oh, absolutely. The perpetrator
14 should.

15 MR. SANTACROCE: Okay.

16 MR. BLAKE: Absolutely, but nobody else.

17 MR. SANTACROCE: You won't transfer that
18 feeling towards Mr. Nasby?

19 MR. BLAKE: Oh, no. That would not be fair.

20 MR. SANTACROCE: You are a computer
21 technician?

22 MR. BLAKE: Yeah.

23 MR. SANTACROCE: What -- can you explain
24

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1 what your job entails?

2 MR. BLAKE: I do anything that's related to
3 computing in campus housing at UNLV. Whatever it is, if it
4 has a computer patched to it, I can do it.

5 MR. SANTACROCE: So you are employed by
6 UNLV?

7 MR. BLAKE: Yes, I am.

8 MR. SANTACROCE: Are you a sports fan?

9 MR. BLAKE: Not really.

10 MR. SANTACROCE: What kind of things do you
11 enjoy in your spare time?

12 MR. BLAKE: Hiking and outdoor things.

13 MR. SANTACROCE: And you served as a juror
14 on three occasions?

15 MR. BLAKE: Correct.

16 MR. SANTACROCE: And do you have any kind of
17 feeling serving as a juror on those three occasions,
18 anything that would impact your impartiality toward my
19 client, Mr. Nasby?

20 MR. BLAKE: Oh, nothing at all.

21 MR. SANTACROCE: Pass for cause. Thank you.

22 THE COURT: Thank you.

23 Okay. It appearing to the
24 Court that all peremptory challenges have either been

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1 jury selection process and how it worked.

2 (Remaining prospective panel excused.)

3 THE COURT: Okay. Ladies and gentlemen,
4 what we're going to do today here is -- I'll explain a
5 little bit about the schedule today and then tomorrow,
6 Thursday and Friday.

7 What we're going to do today is
8 I'm going to tell you a little bit about the trial and what
9 to expect, which will take us about 10, 15 minutes.

10 I'm going to allow the
11 attorneys to do their openings statements; and then we're
12 going to break for the day because I do have to meet with
13 the attorneys and take care of some matters we worked on
14 this morning, into the lunch hour, by the way, to try to get
15 them done, but we didn't quite finish. But we're going to
16 need to finish them up this afternoon.

17 And then we'll come back and
18 start with witnesses tomorrow morning on that at eleven a.m.
19 So that will be the schedule, roughly, on what we're going
20 to do.

21 On Thursday, we'll get started
22 at 1:30 in the afternoon. Friday, we'll probably start
23 around 10:30. Again, I will give you firm times for sure
24 each day before, but just planning your schedules for work

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1 exercised or waived, the clerk will now administer the oath
2 of service to the jury.

3 Ladies and gentlemen, could you
4 all stand and raise your right hand, please.

5 (Jury panel sworn.)

6 THE CLERK: Thank you. You may seated.

7 THE COURT: Okay. Ladies and gentlemen, as
8 you can see, we never know exactly how many people we need
9 to talk to, to speak to, to select the jury, and we had ten
10 peremptory challenges waived; so, again, I don't know if
11 that's going to happen until we go through the process.

12 But we have selected the jury
13 and I want to thank all of you for being here yesterday and
14 today.

15 What I'm going to ask you to do
16 is go downstairs to the first floor, where you were
17 yesterday and you had the jury orientation, and just let
18 them know you've been excused as prospective jurors in this
19 case and they will go ahead and give you some further
20 instructions.

21 But thank you again for being
22 here yesterday and today. I hope you enjoyed seeing the

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1 and whatever, those are roughly the time frames.

2 Definitely, Thursday, we'll
3 start in the afternoon, so if you have to do something, at
4 least you have the morning to go to work. You go ahead and
5 make plans and go ahead and do that.

6 Okay. Ladies and gentlemen,
7 you are admonished that no juror may declare to a fellow
8 juror any fact relating to this case of his or her own
9 knowledge; and if any juror discovers, during the trial or
10 after the jury has retired, that he, she or any other juror
11 has personal knowledge of any fact in controversy in this
12 case, he or she shall disclose such situation to myself in
13 the absence of the other jurors.

14 This means that if you learn,
15 during the course of this trial, that you were acquainted
16 with the facts of this case or the witnesses, and you have
17 not previously told me of this relationship, you must then
18 declare that fact to me. You communicate to the Court
19 through the bailiff.

20 Now, during the course of the
21 trial, the attorneys for both sides, the parties and the
22 witnesses and court personnel, other than the bailiff, are
23 not permitted to converse with members of the jury. These
24 individuals are not being anti-social. They are bound by

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ethics in the law not to talk to you. To do so might contaminate your verdict.

You are admonished additionally that you are not to visit the scene of any of the acts or occurrences made mention of during this trial unless specifically directed to do so by the Court.

Now, ladies and gentlemen, what I will now say is intended to serve as an introduction to the trial of this case. It is not a substitute for the detailed instructions on the law, which I will give to you at the close of the case and before you retire to consider your verdict.

This is a criminal case presented -- commenced by the State of Nevada, which I may sometimes refer to as the State, against Brendan James Nasby.

The case is based upon an Information. The clerk will now read the Information to the ladies and gentlemen of the jury, and state the plea of the defendant to that Information.

THE CLERK: District Court, Clark County, Nevada; the State of Nevada, Plaintiff, versus Brendan James Nasby, Case Number C154293. Information: Stewart L. Bell, District

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weapon, open murder: Defendants did then and there willfully, feloniously, without authority of law and with premeditation and deliberation, and with malice aforethought, kill Michael Beasley, a human being, by shooting at and into the body of Michael Beasley with a deadly weapon, to wit, a firearm, in the following manner, to wit, by said defendants and an unknown individual acting pursuant to a conspiracy to commit murder, aiding or abetting each other by counsel and encouragement, by entering into a course of conduct whereby defendants and an unknown individual drove said Michael Beasley into the desert, lured said Michael Beasley out of the vehicle, whereby defendant Brendan James Nasby repeatedly shot said Michael Beasley with said firearm while defendants Jeremiah John Deskin, Tommie C. Burnside, Jr., Jotee Burnside and Jeremiah John Deskin acted as lookouts and fled the scene together.

Stewart L. Bell, District Attorney, by Frank Johan Coumou, deputy District Attorney.

To which the defendant has entered pleas of not guilty.

Names of witnesses known to the

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Attorney, within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court that Brendan James Nasby -- excuse me -- the defendant above named, having committed the crimes of conspiracy to commit murder, felony, NRS 199.480, 200.010, 200.030, and murder with use of a deadly weapon, open murder, felony, NRS 200.010, 200.030, 193.165, on or about the 17th day of July, 1998, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada:

Count I, conspiracy to commit murder:

The defendants did then and there meet with each other or unknown individuals and between themselves, and each of them with the other, willfully, unlawfully and feloniously conspire and agree to commit the crime of murder, and in furtherance of said conspiracy, defendants commit the acts as set forth in Count II, said acts being incorporated by this reference as though fully set forth herein.

Count II, murder with use of a deadly

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District Attorney's Office at the time of filing this Information are as follows:

Thomas Thowsen; Allen Cabrales; Kenneth Hefner; Gordon McGhie; Darlene Falvey; James Carroll; James Buczek; David Smith; Daniel Giersdorf; Jessie Sams; Kelly Neil; Sherree Norman; R. McPhail; Torrey Johnson; Jeffrey Crait; Robert Gilmore; Jomeka Beavers; Tanesha Banks; Crystal Bradley; Helen Jones; Velma Beasley; Robert Jordan; Jeremiah Deskin; Sergeant Rod Torres; Damian Von Lewis; Tommie Burnside; Jotee Burnside.

THE COURT: Thank you.

Ladies and gentlemen, the case is based upon an Information, which has been read to you by the clerk. You should distinctly understand that the Information is simply a charge and that it is not, in any sense, evidence of the allegations it contains.

The defendant has pled not guilty to the Information. The State, therefore, has the burden of proving each of the essential elements of the Information beyond a reasonable doubt.

As the defendant sits there now, he is not guilty. The purpose of the trial is to determine whether the State will meet that burden.

It is your primary

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responsibility as jurors to find and determine the facts. Under our system of criminal procedure, you are the sole judge of the facts. You are to determine the facts from the testimony you hear and the other evidence, including exhibits introduced in court.

It is up to you to determine the inferences which you feel may be properly drawn from the evidence.

The parties may sometimes present objections to some of the testimony or other evidence. It is the duty of a lawyer to object to evidence which he or she believes may not properly be offered and you should not be prejudiced in any way against the lawyer who makes objections on behalf of the party he or she represents.

At times, I may sustain objections or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

Remember, statements, arguments

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there are two kinds of evidence: Direct evidence and circumstantial evidence.

Direct evidence is testimony by a witness about what that witness personally saw or heard or did.

Circumstantial evidence is testimony or exhibits which are proof of a particular fact, from which, if proven, you may infer the existence of a second fact.

Now, ladies and gentlemen, what I'm going to do is give you a simple example of direct evidence versus circumstantial evidence.

Now, let's say, before you came down here this afternoon for jury duty, to find out whether or not you would be selected for this jury, you decided that you were going to plan for dinner this evening and you were going to cook your dessert. You were going to cook a cherry pie and have that for dessert.

So you put that in the oven this morning; and you took it out of the oven. Let's say you've got a five year old son at home, and you told your son: Wait until I get home tonight. Don't eat that pie. We're going to have it for dessert after dinner.

So, you come home tonight, you

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and opinions by counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as true. You must not speculate to be true any insinuations suggested by a question asked of the witness. The question is not evidence and may be considered only as it supplies meaning to the answer.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the State or the defendant. Both sides are entitled to the same fair and impartial consideration.

In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the case, if any, the relation of the witness to the defendant or the State, the inclination of the witness to speak truthfully or not, and the probability or improbability of the witness' statements and all of the facts and circumstances in evidence.

Thus you may give the testimony of any witness just such weight and valuation as you believe the testimony of the witness is entitled to receive.

Now, ladies and gentlemen,

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walk in to the kitchen; there you see your son eating the pie. That's what we call direct evidence: You see it for yourself and you can testify to that.

Let's change the facts slightly. We'll say when you come home tonight, you walk into the kitchen; you see the pie on the kitchen table and a quarter of the pie is missing; and you got some suspicions on what happened to it, so you go looking for your son, and when you see him, he's got red berries all over his face.

Now, that's what we call circumstantial evidence: You didn't see him eat the pie, but you can infer from the circumstances -- that a quarter of the pie is missing and he has red berries on his face -- that he was the one who ate the pie.

Now, the law permits you to consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any of the evidence.

Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence.

No statement, ruling, remark or

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comment which I may make during the course of the trial is intended to indicate my opinion as to how you should decide the case or to influence you in any way in your determination of the facts.

At times, I may even ask questions of the witnesses. If I do so, it is for the purpose of bringing out matters which I feel should be brought out and not, in any way, to indicate my opinion about the facts or to indicate the weight I feel you should give the testimony of the witness.

I may also find it necessary to admonish the lawyers, and if I do, you should not show a prejudice against a lawyer or his or her client because I found it necessary to admonish him or her.

Until this case is submitted to you, you must not discuss it with anyone, even with your fellow jurors. After it is submitted to you, you must discuss it only in the jury room with your fellow jurors.

It is important that you keep an open mind and not decide any issue in the case until the entire case has been submitted to you under instructions from myself.

If you cannot hear a witness, please raise your hand as an indication. Also, if you need

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else about it until after you've been discharged as jurors by myself.

Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately by contacting the bailiff.

Do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

Now, ladies and gentlemen, you will be given an opportunity to ask written questions of any of the witnesses called to testify in this case. You are not encouraged to ask large numbers of questions because that is the primary responsibility of counsel.

Questions may be asked only in the following manner:

After both lawyers have finished questioning the witness and only at this time, if there are additional questions you would like to ask the witness, you may then seek permission to ask that witness a written question.

Should you decide to ask a question, write your question down, with your juror number, on a full sheet of clean paper and raise your hand. The

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to use the restroom or if you feel ill, please also raise your hand as an indication.

I may, during the trial, take notes from the witnesses' testimony. You are not to make any inference from that action. I am required to prepare for legal arguments of counsel during this trial, and for that reason, I may take notes.

The jury will not have the transcript to consult at the close of the case. However, the jury will be furnished note pads and pencils and will be allowed to take notes during the course of the trial, if you so desire.

Again, let me remind you that until the case is submitted to you, do not talk to each other about it or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict.

Do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended and you have been discharged as jurors by myself.

Anyone else includes members of your family and your friends. You may tell them that you are a juror in a criminal case, but don't tell them anything

bailiff will pick up your question and give it to myself.

All questions must be directed to the witness and not to the lawyers or to the judge.

After consulting with counsel, I will determine if your question is legally proper. If I determine that your question may properly be asked, I will ask it. No adverse inference should be drawn if the Court does not allow a particular question.

Now, again, let me explain that procedure a little bit further on the questions.

Now, let's say -- now, Miss Peter, I will use you as an example. You are sitting in chair number one. Let's say Miss Peter thinks of a question. There is a witness testifying and she thinks of a question she would like to ask that witness.

Now, you'll be given -- Lisa will give you note pads, and what you do is you just take out a clean sheet of paper -- make sure you don't have any notes on it -- write "Number 1" across the top with a circle around it and just write your question down with a question mark.

Now, perhaps, one of the lawyers will actually ask the question that you have in mind when they're examining that witness.

1 Well, let's say, after the
2 lawyers get done questioning the witness, the question
3 hasn't been asked. What I will do is after every witness
4 gets done testifying, I will ask the ladies and gentlemen of
5 the jury if they have any questions for this particular
6 witness.

7 Then all you have to do is just
8 raise your hand like that and Lisa will come up and pick up
9 that question and then bring it to me. And I'll -- I'll
10 probably either meet with the attorneys right here in front
11 of the bench or we may even step outside so we can talk
12 about the question and then come back in.

13 Now, what I'm going to do at
14 that time then is make a determination if the question
15 qualifies under our rules of evidence.

16 So, in other words, I will
17 analyze the question, just like I would if a lawyer asked
18 it.

19 And as you can see -- behind
20 me, see all these blue books here? Those are all the laws
21 of the state of Nevada. And in one of those books, there's
22 a section on what we call evidence, and that tells me what
23 kind of questions can be asked and can't be asked. And
24 that's part of my job in the case, to make those

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1 (Unreported discussion at the bench.)

2 MR. COUMOU: If I may have the Court's
3 indulgence for just one moment?

4 THE COURT: Yes.

5 MR. SANTACROCE: Excuse me. Does the Court
6 have any objection if we move --

7 THE COURT: No. Please, throughout the
8 course of the trial, if the attorneys wish to walk around to
9 get a better view, feel free to do so.

10 MR. SANTACROCE: Thank you.

11 THE COURT: Okay. If Mr. Nasby wants to,
12 why don't you approach the bench and we'll discuss the
13 protocol on that. Okay?

14 MR. SANTACROCE: Thank you.

15 THE COURT: Thank you.

16 Mr. Coumou, you may proceed.

17 MR. COUMOU: Thank you.

18 If it may please the Court,
19 counsel for the defendant, ladies and gentlemen of the jury:

20 As you by now know, my name is
21 Frank Coumou. I'm a deputy District Attorney here in Clark
22 County and I have been assigned to prosecute this case in
23 which the State of Nevada has charged the defendant with
24

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1 determinations.

2 So, I will make that
3 determination, it's a proper question under our rules of
4 evidence, and if I determine it's proper, then I will go
5 ahead and ask it to the witness on behalf of the juror.

6 After I do so, I give the
7 attorneys a chance to follow up and see if they have any
8 additional questions based upon the juror's question.

9 Now, the question may be a very
10 good question, may be a very logical question, but if it
11 doesn't fall under our rules of evidence, then I won't be
12 permitted to ask it. So, again, I'll be using that
13 evaluation in doing that.

14 Now, at this time, if there is
15 anyone present who expects to be called as a witness, please
16 leave the courtroom; please remain available in the hallway;
17 and do not discuss your testimony or the testimony of any
18 other witness with anyone except the parties of this case
19 and their attorneys.

20 Okay. At this time, the State
21 may present its opening statement.

22 MR. SCISCENTO: Your Honor, may we approach
23 for a moment?

24 THE COURT: Yes.

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1 committing two serious felony crimes here in Clark County.

2 As you heard, they're
3 conspiracy to commit murder, where the defendant, Brendan
4 James Nasby, agreed to, talked about, and decided, along
5 with Jottee Burnside, Tormie Burnside and Jeremiah Deskin,
6 to take Michael Beasley, a human being, a young man of 18
7 years old at the time, to lure him out to the desert, a
8 desert area to the west of our valley here, to take him out
9 to kill him.

10 And Count II is to complete the
11 act that they did on that evening of July 16th, 1998; that's
12 murder with use of a deadly weapon; that they, in fact, did
13 take out the young man, Michael Beasley, and they murdered
14 him, execution style, by shooting him into the back of his
15 head and then -- in the back of his back, and then another
16 bullet that was eventually lodged to the left front side of
17 his face, and the bullet remained lodged in his brain.

18 This particular crime scene,
19 what we'll be talking about, will take us to an area that is
20 past -- a little bit northwest of Lone Mountain. It's that
21 little mountain that sticks out, just to the west of
22 Alexander Road.

23 In fact, the way that you get
24 to that area, is if you keep on driving on Alexander,

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1 eventually, the road stops and then you can start following
2 a power line -- this is Lone Mountain right here. If you
3 look at this diagram right here, you can see the city and
4 Summerlin area in the background on the top part.

5 And as you can see, there is a
6 power line that follows up and there's a gravel road that
7 follows the power line and, eventually, comes to a wash.

8 This area -- this is an
9 overview of the area with the wash towards the bottom end of
10 the photograph. And you can see some of the police cars and
11 technical people that were present on the date when the body
12 was discovered.

13 This particular area is
14 actually frequented highly by people who go out and target
15 practice; a lot of shooting happens up in that area. It's a
16 common place because it's not zoned -- it's okay to go and
17 do some target practicing out there.

18 And you will hear testimony
19 that Jeremiah Deskin, one of the co-defendants in this case,
20 did, in fact, go back over in to that desert a couple of
21 times and discharged his weapon, and so he knew about the
22 weapon and they knew where they were headed to.

23 And this area at night time,
24 it's desolate. There's nobody that lives out there in that

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1 And it had some girls also part
2 of this group -- this gang. And they would sometimes get
3 around and be rappin' in the defendant's garage, making
4 music, and do whatever young teenagers would do.

5 But now the defendant started
6 having a problem with Michael Beasley. Some people say that
7 there is a problem because the defendant believed that
8 Michael Beasley wanted to become the leader or he wanted to
9 become -- just wanted to leave the gang. He just recently
10 had a baby with one of his girlfriends and he thought maybe
11 it was time for him to get out of the gang.

12 But the defendant started
13 having a problem with Michael Beasley, the victim, because
14 he thought that Michael, our victim, wanted to take what is
15 called his stripes away, take his position of leadership
16 away from the gang.

17 And so, apparently, there was
18 just an impromptu meeting, where Michael wasn't present, and
19 the defendant brought up the subject, with the Burnside
20 boys, and Jeremiah Deskin was there.

21 You'll hear of Jeremiah Deskin
22 who goes by the name of Woodpecker; and sometimes you'll
23 hear their nicknames as it's being brought out.

24 You'll find out that the

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1 area. It's a quiet, dark area. And only people that would
2 be out there are people who would be driving out on this
3 gravel road and who know the existence of this gravel road.

4 So what exactly happened on
5 July 16th that brings us all here in court today and that
6 led to the filing of these criminal charges by the State of
7 Nevada?

8 Well, in order to understand
9 what happened on July 16th, the State needs to go back and
10 explain a little bit of background as to the involvement of
11 the victim, Michael Beasley, and the defendant, along with
12 all the co-defendants in this case.

13 There is a group, a gang,
14 whatever you want to call it, a group of young males, and
15 some girls, called L.A. Crazy Riders. It's a gang that the
16 defendant kind of was the leader of.

17 The evidence will show that he
18 was kind of the leader and he kind of played that role and
19 he certainly assumed that role.

20 Michael Beasley, the victim,
21 was part of this group; and so was Jottee Burnside and
22 Tommie Burnside -- and Jeremiah Deskin. Although he claims
23 he's not a member, he was friendly and he was an associate
24 with this group.

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1 defendant's street name was Blue. Michael Beasley's, our
2 victim's, you'll hear his name is Droop. But you will hear
3 these names being thrown out interchangeably.

4 But you will find out that
5 about a month prior to the actual killing, so sometime in
6 June, Nasby brought up the subject that maybe we ought to
7 kill Michael. And none of them said: No, no, we're not
8 going to go along with this. The subject was dropped

9 And there was nothing that was
10 really brought up after that. There was no signs that there
11 was trouble between the defendant and the victim until that
12 evening of July 16, 1999.

13 You'll hear the testimony of
14 Jeremiah Deskin as he explains what process, what steps,
15 were taken on that evening. You'll also find out that
16 Jeremiah Deskin has pled guilty to accessory to commit
17 murder in this case, and that he is awaiting sentencing in
18 this case also.

19 And you can evaluate his
20 testimony, but he'll start telling you he came over to the
21 defendant's house and he was playing a Nintendo game, a
22 video game on TV, and the two Burnside boys were there and
23 so was the defendant.

24 And he was in the garage and,

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1 eventually, Jeremiah gets called to the garage and says --
2 the defendant says: I want you to go and pick up Michael.

3 And the reason he wanted to
4 pick up Michael is because he decided, along with the
5 Burnside boys, that we're gonna go and take him out to the
6 desert and kill him. But we're gonna lure him by making him
7 believe we're going to go out there and smoke or drink and
8 do some target practicing.

9 And so a telephone call was
10 placed. And you will hear Jeremiah Deskin, he agreed; he
11 went along with -- with the leader, Nasby's, wishes.

12 And so he gets in his car --
13 Jeremiah gets in his car, a red Cougar, and he takes both of
14 the Burnside boys -- they're brothers. Jottee is the
15 youngest brother; Tommie is the older brother -- and they
16 drive down a short distance, about a half a mile or a mile,
17 to Michael's house.

18 And when they get there, they
19 left -- they had left Nasby behind because they were going
20 to pick up Michael and they were going to come right back
21 and pick up the defendant then; and then they were going to
22 proceed and do what they had agreed to do.

23 So they go and pick up Michael.
24 And Michael answers the door and he says: Yeah, yeah, let's

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1 Michael, the victim, gets out
2 of the car. He's looking around for things to shoot at. So
3 does Brendan Nasby, who's holding the nine millimeter gun;
4 and the Burnside boys are out, walking around, looking for
5 things to shoot at.

6 And, eventually, Nasby or one
7 of the Burnside boys, somebody asked: Can you reposition
8 your cars so that the headlights are aimed down into the
9 wash area because there was some refrigerators or something
10 that they could shoot at.

11 And Jeremiah Deskin knew that
12 sooner or later, at one of these moments, Michael was going
13 to meet his fate. But, at the same time, he always thought,
14 well, maybe Nasby was just playing mind games and this was
15 not going to happen.

16 And so he repositioned his car,
17 aiming his headlights down into the wash. And as he gets
18 out of the car, he sees Michael taking his last steps of his
19 life. He's walking towards the car slowly, looking down
20 towards the car direction and looking down towards the wash.

21 And he sees the defendant
22 behind him, and he then suddenly walks up and takes a shot
23 into the back of -- Michael's back.

24 And he sees Michael collapses

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1 go, guys, but, first, come in here. I want to show you my
2 baby.

3 And so he takes them inside;
4 they all look at the baby. And Jeremiah Deskin will tell
5 you, he's sitting there looking at the baby, knowing full
6 well that they're taking Michael out to his death place.

7 So, eventually, he gets into
8 the car; they turn around and they go back to Nasby's home;
9 they pick up the defendant, Brendan. And as he walks out,
10 he's showing a nine millimeter gun, a gun that he had just
11 recently purchased, according to Jeremiah, and he was
12 showing it off.

13 It was a nine millimeter gun.
14 That gun will turn out to be a Browning Ingles nine
15 millimeter gun. And he showed it -- and he was showing it
16 even to the victim: Look at this gun; look at this gun.

17 And then they all get in the
18 car and they proceeded down Craig Road, eventually on to
19 Alexander, and they started heading straight up to the west,
20 up to the mountain side, ultimately getting to the area
21 where he died.

22 And they get to the wash area
23 where the road kind of stops, where you can't go any
24 further, and everybody gets out of the car.

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1 down to the ground on his knees, holding his hand on his
2 back. (Indicating) And he hears another shot taken by the
3 defendant, and at this point, everybody runs into the car
4 and starts getting away.

5 Jeremiah says he puts the car
6 in reverse and before he's able to get the car in reverse,
7 he sees the defendant open the door, who is sitting in the
8 right front passenger's side, gets out of the car, walks
9 back up to Michael, who's laying now facing head up, facing
10 the sky, and he just walks up and takes another shot at him,
11 which accounts for, from the testimony that you'll hear by
12 the coroner's office, that there's a bullet wound -- one
13 bullet wound that hit the victim in the back, just below the
14 neck area, that entered the back and just barely exited the
15 front portion of his chest, and that bullet, as you'll hear,
16 was recovered.

17 And you will also hear
18 testimony that there is an entrance wound of a gunshot to
19 the left front temple area by the eye of Michael and that
20 bullet was recovered from Michael's skull.

21 And so they all left the crime
22 scene quietly, and the defendant has to make the statements
23 of: Nobody says anything or you'll die.

24 And they proceed down back

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1 towards the home and they left Michael Beasley laying dead
2 in the desert, as he is found the next morning,
3 (indicating), with everything of his jewelry. You will hear
4 testimony from the coroner's office that there were no cuts,
5 scrapes on his hands, no indications that there was a
6 struggle or a fight. His jewelry was still there, so there
7 was no robbery, all indications of this man -- this young
8 man was lured out there by people who he knew or thought he
9 could trust and he was murdered on that late evening hour.

10 The defendant, the Burnside
11 boys are dropped off back at Nasby's home. Jeremiah leaves
12 and he, ultimately, will testify that he left -- that
13 weekend, he left town. He went to California 'cause he got
14 scared of his involvement.

15 The case starts breaking the
16 very next day when the police are notified, through some
17 individuals who are riding ATVs, those all terrain vehicles,
18 that they found a body in the desert.

19 And so they go and they cordon
20 off the crime scene. And during this time, early in the
21 morning hour, you hear of Tanesha Banks. Now, Tanesha Banks
22 was the ex-girlfriend and mother of Michael's newborn baby
23 boy. And she was talking to Crystal Bradley, who was also
24 very friendly and knew the defendant.

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1 conversation starts: Crystal, there's going to be a
2 funeral. What do you mean? Well, I killed Michael.

3 And he goes on to explain how
4 they went out to the desert because Michael was going to
5 take his stripes away, he couldn't trust him anymore, and so
6 he killed him and shot him that way; and how he lured him
7 out there, along with the two Burnside boys, and Jeremiah
8 Deskin was the driver of the car, and they killed him,
9 shooting him from the back and then, ultimately, one more
10 shot to make sure that he was dead.

11 So Crystal Bradley hears this
12 and she gets off the phone; she turns on the TV and, sure
13 enough, she verifies from the news that there was a body
14 found with some identifying tattoos that Michael had on him.

15 And she calls back Tanesha
16 Banks and explains what the defendant had just stated to
17 her.

18 And at that point, Tanesha
19 Banks was the one who eventually calls the police, and law
20 enforcement starts aiming their suspicions and their case to
21 the one suspect who had the motive, and that is this man,
22 the defendant. (Indicating)

23 Now, the case doesn't stop
24 there. Eventually, on August 4th, there is a search warrant

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1 In fact, you will find out that
2 the defendant actually trusted her very much, Crystal
3 Bradley. And they talked like young teenage girls do,
4 apparently, on a daily basis, on the phone a lot. And they
5 were chitchatting, and they started gossiping a little bit
6 about whether or not Michael, the victim, was in trouble
7 with the gang or if there was some bad blood because they
8 started hearing rumors.

9 So Crystal calls -- using a
10 three way call, calls the defendant and they start talking.
11 And the thing that stood out in Tanesha's mind is when she
12 heard -- when she asked: Is Droop, Michael, is he still
13 part of this gang? You know, is he still part of L.A. Crazy
14 Riders? And the defendant said no.

15 And then she started by making
16 a statement: Well, he had come over just this morning to
17 pick up the baby, but she misspoke. She meant the night
18 before that he came over to pick up the baby, which he did.

19 And the moment she said that,
20 the defendant suddenly said: Well, what are you talking
21 about? What do you mean by "this morning"?

22 And then he tells Crystal to
23 get off the phone with Tanesha, that he needed to talk to
24 her. And then, once the two of them are just talking, the

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1 that is executed. The homicide detectives, armed with the
2 search warrant, go to the defendant's house, and they go and
3 execute the search warrant early in the morning.

4 And the defendant is arrested
5 at that point, and he's read his Miranda rights and he
6 starts talking to the police.

7 Now, the police never mention
8 what type of weapon that they're looking for. They just
9 said: Brendan, defendant, where is the gun?

10 And he says: Well, the gun is
11 not here. The .25 is over at my cousin Tormie's house. And
12 then he says: And the nine is not here either, something to
13 that effect.

14 Well, the police thought that
15 was kind of interesting because they never even mentioned
16 that they were looking for a nine millimeter weapon.

17 And so they started taking him
18 away, driving him towards the police station, at which
19 point, the defendant said: If you turn around, I'll tell
20 you where it's at. He was agitated.

21 But the car turned around and
22 then he led the homicide detectives back to the house.
23 There were other persons executing the search warrant. He
24 led them to his bedroom, and underneath his bed, there was a

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1 nylon bag, a blue nylon bag, with a nine millimeter Browning
2 Ingles, nine millimeter pistol with two clips.

3 And then what's even more
4 interesting, he says he just bought it from a guy named
5 Sugar Bear, after the murder, but he also adds -- eventually
6 adds, in case there are -- well, he says that he did handle
7 the weapon before and he handled the clips and he handled
8 all the bullets beforehand, which the police thought was
9 interesting, those fine comments that he gave.

10 And then he goes on to say how
11 some girl named Tanesha Banks is the one who is pinning this
12 murder on him; and he makes some other comments to that,
13 that you will hear about as these witnesses testify.

14 Now, this weapon gets impounded
15 and, ultimately, it's processed by crime lab people,
16 criminalistics, with the Las Vegas Metropolitan Police
17 Department. One test that they do is they check to see if
18 there are fingerprints.

19 Now, on this weapon and on the
20 clips, there are no fingerprints found, which is common.
21 You will hear testimony that on a weapon, it is so rare that
22 you -- because of the texture and the surface of the weapon,
23 the way that it's made, the -- the metal and so forth, that
24 it's rare that you are going to find any type of

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1 Winchester cartridge cases. And they also impounded a Colt
2 45 cartridge case, which was eliminated as being shot by
3 this weapon.

4 But Torrey Johnson with the
5 crime lab will explain to you that after examining these
6 three expended cartridge cases that were recovered from the
7 crime scene, he'll tell you that they could have been
8 shot -- he can't say for a positive finding -- but that they
9 could have been shot by the Browning nine millimeter.

10 But there were two bullets
11 recovered from the coroner's office, and because of the
12 rifling effect as those bullets shoot through the pistol,
13 they're able to test those and compare those with test fired
14 bullets; and Torrey Johnson will tell you that the defendant
15 had the murder weapon underneath his bed.

16 Now, eventually, some months go
17 by and the defendant comes in contact with a John Holmes.
18 You'll hear about him. And John Holmes knew the defendant
19 from previous -- from prior, when he was still hanging
20 around the gang, and he also knew Michael Beasley, the
21 victim. He was friends with Michael Beasley.

22 And, eventually, the defendant
23 confides in him --

24 MR. SCISCENTO: Your Honor, may I approach?

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1 fingerprints on the gun even if it's handled just moments
2 before it being examined.

3 The gun is then laid to process
4 by a firearms examiner. Now, what the firearms examiner
5 will testify to is that every gun can be examined
6 microscopically and be able to identify it as the murder
7 weapon or not.

8 And the way they do that,
9 you'll hear, is that they look at the casings, where the
10 pistol, as a -- as the cartridge is shot, the -- the
11 cartridge case that the bullet is housed in, with the gun
12 powder and everything, spits out of the gun.

13 And there were some cartridge
14 casings that they located, the police located, at the crime
15 scene.

16 Now, this crime scene is
17 littered with shell casings because it's so heavily used by
18 people who go out to shoot, but they did find -- at the
19 location just near the body, they found a total of four very
20 shiny -- it looked like they were just deposited -- copper,
21 untarnished; hadn't been tarnished by the weather or the sun
22 or the rain if -- if it were to ever rain here -- but it
23 hadn't been to that point where it got tarnished yet.

24 So they impounded three

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1 May we approach a moment on this?

2 THE COURT: Yes.

3 (Unreported discussion at the bench.)

4
5 THE COURT: Okay. Mr. Cournou, you may
6 proceed.

7 MR. COUNOU: Thank you.

8 And so the defendant eventually
9 starts confiding in -- since he knew the victim and the --
10 the talk that was happening between the two of them,
11 eventually says: Do you want to know the truth? I killed
12 him, because he was wanting to take my stripes away.

13 That is the facts of this case;
14 the sad fact that Michael Beasley was shot and murdered on
15 that night.

16 You will also hear testimony
17 of -- of witnesses, that the defendant, after this homicide,
18 even though he has admitted to it to several people, will
19 start spitting out information, bad information, blaming it
20 on other people, not himself. And you'll hear about those
21 versions, several versions, as they come out.

22 In fact, you will even hear
23 about a -- a list -- an actual handwritten note,
24 (indicating), a statement, a letter, three pages --

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MR. SCISCENTO: Your Honor, again, I'm objecting to this. I think there is -- if we can approach again outside --

(Unreported discussion at the bench.)

THE COURT: Okay. The record will reflect a simultaneous objection by the defense as to this issue.

The objection is overruled.

Mr. Courou, you may proceed.

MR. COUMOU: Thank you, Judge.

You will find that the defendant eventually gives a three page, handwritten letter to John Holmes, the guy that he just eventually confesses to, and what it is, it says: A statement to the girl.

And what the defendant wanted John Holmes to do is to go find a girl, some girl out there, who will read this story, that he just wrote three pages of, and to memorize it and come in court and testify in his behalf.

And -- and in that letter, it explains everything as to what -- basically what happened that evening; the exception is he's blaming it on somebody else and not himself. He's nowhere mentioned in this case.

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mistakes. I'm going to say some wrong things. I'm going to talk too fast and I'm going to be redundant, repeating myself. It's because I'm nervous. It's the way I always am.

If what the District Attorney told us in this case is the way it is, this case is easy. There is no reason for us to be here.

But you promised me in the beginning, when we asked you this, that you could keep an open mind and you would listen to both arguments, because some of you now may have closed your minds and may have made a determination that Mr. Nasby is guilty, because you've seen the one side of it.

And you are going to see one side of this throughout most of the trial, because the State has the burden of proof first.

They're going to place their witnesses up there and they're going to show you their side. You have to hold out and watch for the other side.

I'm reminded of a magician, a magician who gets up there and he says, "Look over here," and he waves this right hand and he shows you a bird in this hand, but he doesn't want you to see what's in the left hand, because in the left hand is something else, something

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As I indicated, the sad fact is the defendant murdered Michael Beasley because he thought he was going to take his stripes away, his position of authority, and then, eventually, he has started putting out information, lies, that somebody else may have done it, other people may have done it, but it's not him.

The State will promise you, the facts that are presented to you from this witness stand, that after all the testimony, the State will be asking you to find the defendant guilty of conspiracy to commit murder with use of a deadly -- or conspiracy to commit murder and murder with use of a deadly weapon for the killing of Michael Beasley.

Thank you.

Thank you, Judge.

THE COURT: Okay. The defense may present their opening statement at this time.

MR. SCISCENTO: Yes.

May it please the Court, opposing counsel, ladies and gentlemen of the jury:

I always get nervous before I talk, especially in front of a crowd like this, no matter how many times I do this.

There are times I will make

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he's trying to hide from you, something he doesn't want you to look at or something he doesn't want you to see, because if you look over there, you see the full picture.

That is what a trial is about: Looking at both hands. The prosecution is going to present one side; the defense is going to present another.

That's what you need to do today is look at both hands, because I'm going to try to show you both of them, because when you see both of them, you're going to see that the witnesses that the prosecution talked about, Jottee Burnside, Toimie Burnside, did mention Sugar Bear as the killer.

See, he throws that out there: Sugar Bear was mentioned one time; but there were four statements mentioning Sugar Bear as a killer. There is a mention that Sugar Bear was the one that had the gun.

Jerimiah Deskin, we're going to talk about him. He's going to get up and testify, and he's going to tell you that he drove out there; he was there numerous times before; he had shot there before. He was friends with Sugar Bear.

He, Jerimiah Deskin, will testify as to the reason why he's going to testify for the State now. He's going to tell you he's going to get

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1 probation, because I'm going to make him say that, because
2 it's true.

3 The State will show you a
4 letter saying we've got this witness here; why is the reason
5 he's going to lie? And I'm going to show you why.

6 That's what this trial is
7 about: It's about both hands. You can believe it now or
8 not, but that's what this is about and that's what you need
9 to do.

10 You need to listen to all the
11 evidence that's going on, about Tanesha Banks and her
12 motivation for lying, and whether or not she actually made
13 that phone call or was it somebody else who made that phone
14 call and what she heard was something she heard from
15 somebody else. That's what you are going to hear.

16 And the bullets. The coroner,
17 Dr. Jordan, is going to tell you there were two shots in
18 that body; but yet, miraculously, they find three bullets
19 and they try to compare three bullets.

20 The coroner is going to tell
21 you he only recovered maybe one, one that was split, was
22 shattered, and a comparison couldn't be made. It's
23 impossible. But the prosecution wants you to believe the
24 comparison was given and it was found.

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1 Jeremiah Deskin is going to say everybody was smoking. They
2 grabbed a cigarette. They ran a DNA test. It did not fit
3 Mr. Nasby. There was no DNA there.

4 But you know what they didn't
5 do? -- and the expert witness will tell you about this --
6 they didn't compare the DNA to Sugar Bear.

7 The person that the police --
8 that Jeremiah -- that Jottee Burnside told them about, that
9 Tommie Burnside told them about, that said that this man was
10 a killer, that everybody in the street thought was a killer,
11 they didn't compare the DNA to Sugar Bear. Because they
12 don't have that connection, they've got to go back to him.
13 (Indicating)

14 You see, there is so much out
15 here and there's so much out here. (Indicating) You've got
16 to see both of them.

17 That crime scene will show you
18 a lot of problems. There was -- there was thousands of
19 shells found out there, literally thousands. I'll show you
20 pictures of that because that's where people go shooting.

21 And Mr. Holmes, if he gets up
22 and testifies, you will see the involvement that he has.
23 You will see why he wants to testify on behalf of the State.

24 You promised in the

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1 We'll talk about that gun. The
2 witnesses will tell you what that gun was doing, where it
3 was at.

4 Now, the cartridges that were
5 found there don't match the gun they found at the
6 defendant's house. The expert witness is going to tell you
7 that. This all is going to come out from the expert
8 witness.

9 Please keep your mind open on
10 this, because some of you are going to close them.

11 When he talks about holding
12 somebody's baby, knowing he's going to be killed, it's easy
13 to excite somebody. I can do it at the drop of a hat. I'm
14 a trained professional; so is Mr. Coumou. We're going to
15 try to get to your emotions throughout this trial.

16 Don't let it happen. Logic and
17 facts will show you the truth. Don't let the emotions take
18 over.

19 There was a crime scene
20 analysis done. There were footprints there. They came and
21 they grabbed the footprints of my client; they grabbed
22 his -- his shoes. They didn't match. They didn't match the
23 footprints.

24 There was a cigarette there.

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1 beginning -- and I can't emphasize enough -- I can cry at
2 the drop of a hat because I am trained to do it. Three
3 years of law school teaches you that; years of trial teaches
4 you that --

5 MR. COUMOU: Judge, I'm going to have to
6 start objecting, because, with all due respect -- I hate to
7 interrupt -- but this is starting to sound like closing
8 argument.

9 MR. SCISCENTO: I'll come around, Your
10 Honor.

11 THE COURT: Mr. Sciscento, let's concentrate
12 on what you believe the evidence will show.

13 MR. SCISCENTO: What I'm telling you is:
14 Review the evidence. That's what your job is.

15 After we come together and you
16 see both sides of it, without the emotion, without the
17 crying, but the facts, you are going to see Mr. Nasby is not
18 guilty of this crime because there is going to be too many
19 questions out there and reasonable doubt will not let you
20 find Mr. Nasby guilty.

21 Thank you.

22 THE COURT: Okay. Ladies and gentlemen,
23 we're going to go ahead and take our overnight recess at
24 this time.

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During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial;

Or to read, watch or listen to any report of or commentary on the trial by any person connected with this case or by any medium of information, including, without limitation, to newspaper, television, the Internet or radio.

You are further admonished not to form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

And you are directed to return to meet Lisa right outside the courtroom here tomorrow morning at eleven a.m.

What she will do is she will give you some blue badges to replace those orange ones; and what you do is you will wear the blue badges all day around the courthouse, and including lunch time, but at night when you leave, just put them on your chair.

And she also also give you tablets and pencils as well, which you will have tomorrow to take notes, if you desire to do so.

So thank you again and we'll see you tomorrow morning at eleven a.m. right outside the

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the document, as well as the statements by the State, has contaminated the jury.

We believe a mistrial is warranted already, unfortunately, because even at -- even at the bench before opening statements, the Court instructed the State not to make reference to that, as I recall, and not to refer to the document or to the testimony of John Holmes.

We're asking that the Court, if not declare a mistrial, at least admonish the jury regarding that document until the Court has at least made a ruling on that.

THE COURT: Okay. Mr. COUNOU.

MR. COUNOU: Yes, Judge.

First of all, this is not a Petrocelli hearing that we were going through. It was the State's understanding -- and from the guidance of the defendant's motion -- it is just to substantiate whether or not the intimidation can come into evidence, in light of the Lay case, as set out by our Supreme Court, that we need to substantiate it.

Now, the three page letter that counsel is referring to, and that I felt that I was free and able to discuss about it, it's not part of intimidation by

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courtroom here.

(The following proceedings were had in open court outside the presence of the jury:)

THE COURT: Okay. The record reflect the jury has left the courtroom.

Mr. Santacroce, you wanted to put something on the record regarding the opening statement of the State.

(Whereupon, a sotto voce at this time.)

MR. SANTACROCE: Your Honor, we're going to object to the State's opening argument, specifically with reference to the three page letter that is the subject of the Petrocelli hearing.

The Court has not made a ruling on that document as of yet, and the State showed that document to the jury, as well as making reference to John Holmes and testimony regarding the letter itself.

Now, the defense has filed a motion in limine to preclude that evidence on July 9th, so we filed a timely motion regarding that.

We believe that the showing of

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any means.

That letter -- I'm bringing it out in this hearing just to allow the Court to evaluate it, in light of whether or not there was intimidation written on the -- you know, being subject to the letter or the names of the listing, and if -- if the defendant wrote, in fact, one letter and he gave this letter, then there certainly is that substantiation as to the second letter -- or the listing, the two-page document of listing of names and so forth.

The three page letter is just not part of the intimidation part; and the State certainly felt that we were within the bounds of being able to present that and still feels that that subject was not part of the intimidation motion set out by the defense.

THE COURT: Okay. Thank you.

I would just ask defense counsel: Was there a motion filed to preclude Mr. Holmes' statements based upon the allegation that he was an agent of the police and it violated the Fifth Amendment?

MR. SCISCENTO: No, Your Honor, but that didn't come -- I didn't know that basically until this morning, until I explored that very issue.

THE COURT: Okay.

MR. SCISCENTO: Had I known that, I would

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1 have filed a motion.

2 THE COURT: I thought Mr. Holmes'
3 testimony -- and I believe from last week when we discussed
4 it, it was simply on the intimidation issue and that what's
5 I was prepared to address this morning.

6 I gathered, Mr. Sciscento,
7 that -- from your cross-examination of Mr. Holmes, that's
8 where you were going with it: That he was an agent of the
9 law enforcement; perhaps there is a Fifth Amendment
10 violation. But I didn't know if there was a motion even
11 pending on that issue then.

12 MR. SCISCENTO: Well, I intend to make that
13 motion after the hearing --

14 THE COURT: Okay.

15 MR. SCISCENTO: -- based on what we've
16 discovered this morning.

17 THE COURT: Okay.

18 MR. SCISCENTO: Also, Your Honor, I mean, we
19 had filed a motion in limine to preclude the evidence of
20 intimating a witness.

21 THE COURT: Okay.

22 MR. SCISCENTO: My understanding was there
23 was a motion filed by the State, which tried to put Mr.
24 Nasby in protective custody, based on the fact of

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1 MR. SANTACROCE: But isn't the whole purpose
2 of the hearing that we're having is to determine the
3 evidence and whether or not it's going to be used?

4 THE COURT: Absolutely. We're going to
5 determine that this afternoon -- okay? -- and get that done.
6 But -- and when Mr. Councou showed that letter to the jury,
7 he showed it from a distance. Certainly there was nobody --
8 you need binoculars to read the letter, so it's simply a
9 piece of paper --

10 MR. COUNCOU: Actually, Judge, I showed my
11 trial notes. I didn't even show the letter.

12 THE COURT: Okay. So there was no --
13 nothing read by the jury in that letter. That would
14 certainly not be proper until we have a ruling on the
15 motion. It was more of a prop here more than anything else.

16 And as the defense counsel is
17 aware, if I do exclude that, it's fair game for comment by
18 the defense at closing argument: Where's the letter and
19 all.

20 So, Mr. Councou may be taking a
21 calculated risk that he thinks he can get that into evidence
22 by putting that forth in his opening statement.

23 So -- but we're not going to
24 know until we get a ruling on the motion. So -- but right

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1 intimidation of a witness, using the letter, the three page
2 letter, that he had as part of the evidence.

3 So my motion in limine to
4 exclude the witness intimidation included that three page
5 evidence --

6 THE COURT: But Mr. --

7 MR. SCISCENTO: -- three page letter.

8 THE COURT: But Mr. Councou didn't say
9 anything about intimidation in his opening statement; it's
10 simply that the letter was written, if I understood it
11 correctly.

12 MR. SANTACROCE: May I respond, Your Honor?

13 THE COURT: Yes, please.

14 MR. SANTACROCE: The fact of the matter is
15 that the letter that he showed them may not even be
16 admissible at trial, because we have an issue of whether or
17 not my client was Mirandized before the statement was even
18 procured.

19 THE COURT: But, Mr. Santacroce, right now,
20 there hasn't been a ruling in your favor, and the State and
21 the defense both, in their opening statements, can show
22 what -- it can set forth what they believe the evidence will
23 show. So I don't see where he's done anything wrong in that
24 regard.

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1 now, as far as a motion for mistrial, it's denied.

2 Okay. Do you want to take a
3 break for about ten minutes and then we'll finish up this
4 hearing.

5 MR. COUNCOU: Sure.

6 MR. SCISCENTO: Oh, the hearing, yes.

7 THE COURT: Very good.

8 (Recess in proceedings.)

9
10 THE COURT: Okay. This is the continuation
11 of Case Number C154293, the State of Nevada versus Brendan
12 James Nasby.

13 Let the record reflect the
14 presence of the defendant, together with his attorneys
15 Joseph Sciscento, Frederick Santacroce; the State of Nevada
16 represented by Frank Councou, deputy District Attorney.

17 The jury is not present.

18 Okay. This is the continuation
19 of the hearing which we commenced this morning about 11:15
20 a.m. So the State had presented three witnesses so far
21 regarding the intimidation issue.

22 Mr. Councou, you may call your
23 next witness.
24

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MR. COUMOU: Thank you, Judge.

The State calls Tanesha Banks.

THE COURT: Okay. Miss Banks, if you could just step around to your -- just come on up here; just come forward and step around to your right, please.

Okay. If you could face me and raise your right hand, please.

Whereupon,

TANESHA BANKS

having been called as a witness by the Plaintiff and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Thank you. You may be seated.

THE COURT: Go ahead and have a seat and make yourself comfortable.

Okay. Miss Banks, could you spell your first and last name for the court reporter, please.

THE WITNESS: Tanesha, T-a-n-e-s-h-a; Banks, B-a-n-k-s.

THE COURT: Okay. Mr. Coumou, you may proceed.

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THE COURT: Sustained.

Why don't you lay some foundation, Mr. Coumou.

MR. COUMOU: Okay.

THE COURT: The Court will strike the previous answer.

MR. SANTACROCE: Your Honor, could we ask the Court to have the witness speak up a little bit?

THE COURT: Yeah. Miss Banks, would you mind, could you speak maybe towards counsel, Mr. Sciscento and Mr. Santacroce, so they can hear what you have to say.

THE WITNESS: Okay.

THE COURT: Go ahead, Mr. Coumou.

BY MR. COUMOU:

Q So you say you got beat up by -- or you got beat by Brittney Adams?

A Yes.

Q How -- how do you know that the defendant, Brendan Nasby, was behind this?

A Because Brittney told me.

Q When did she tell you that?

A Before she hit me.

MR. SCISCENTO: I'm sorry.

Was it -- was it Brittney told

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MR. COUMOU: Thank you.

DIRECT EXAMINATION

BY MR. COUMOU:

Q Miss Banks, this is a limited hearing, so I'm just going to focus to the areas that -- that we are interested about hearing.

First of all, for some background, were you involved with Michael Beasley?

A Yes, I was.

Q And isn't it true that you have a child in common with him?

A Yes, I do.

Q Now, since the death of your baby's father, did something occur to you personally that happened around August 1st, 1998?

A I was attacked.

Q Okay. Attacked by who?

A Brittney Adams.

Q Do you know why?

A Because Blue wanted me killed and he wanted me attacked because I knew too much.

MR. SCISCENTO: Your Honor, I am going to object. This is speculation.

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you?

THE COURT: The testimony was Brittney told Tanesha Banks, before Brittney hit her, that some -- I haven't heard what the statement was; it was just a general -- a generalization.

MR. SCISCENTO: Again, then, I would make an objection as to hearsay as to what Brittney says.

THE COURT: Is Brittney available, Mr. Coumou?

MR. COUMOU: Oh, she's the last witness.

THE COURT: Okay. Because I think it might be -- I'm trying to think if it would be a declaration against interest -- what would the exception to the hearsay rule be?

MR. COUMOU: Well, I'm going to say the general exception right now, because you are going to hear from Brittney Adams here very shortly.

THE COURT: Okay. What I will do, I will overrule it pursuant to NRS 51.075, with the understanding that Brittney Adams will testify and can be cross-examined.

Now, the defense can renew a motion to strike after we hear the testimony of Brittney Adams then.

Go ahead. Okay. Mr. Coumou, next question.

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MR. COUMOU: Thank you.

BY MR. COUMOU:

Q Miss Banks, where did this take place?

A In -- at my house, in front of my house.

Q In front of your house?

A Uh-huh.

THE REPORTER: Speak up a little.

BY MR. COUMOU:

Q You are going to have to speak up a little louder. Okay?

A In front of my house.

Q And was it just the two of you before she started hitting you?

A It was her cousin she said; supposed named Keshia, was her cousin, was out there with her too.

Q Okay.

A She didn't come to the door, but she was outside when I walked outside with them.

Q Okay. And that -- that occurred about August 1st, you think?

A I am sure August 1st, because my parents' anniversary is August 2nd. So --

Q Okay. Now, in about September, did you get a call from somebody you see here in court?

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THE WITNESS: Just Brittney; just Brittney.

THE COURT: So you mean her, singular?

THE WITNESS: Yeah; her, yeah.

THE COURT: Okay. Mr. Coumou.

MR. COUMOU: Thank you.

BY MR. COUMOU:

Q Now, drawing your attention then to this September 23rd date, you said you received a call from Blue?

A Uh-huh.

Q Do you see him here in court today?

A Yes, I do.

Q Will you please point to him and tell me what he is wearing.

A He's wearing a blue suit and glasses.

(Indicating)

Q Could you be a little more specific?

There is --

THE COURT: Is he the middle gentleman?

THE WITNESS: He's the middle gentleman.

THE COURT: Okay. Let the record reflect the witness has identified the defendant.

MR. COUMOU: Thank you.

BY MR. COUMOU:

Q What did he tell you on the telephone?

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A Yep.

Q Who -- who was that call from?

A Blue.

MR. COUMOU: Okay.

THE COURT: Blue is Brendan Nasby?

THE WITNESS: Yes.

THE COURT: And that's his street name?

THE WITNESS: Yes.

THE COURT: Before we go into that, what did Brittney tell you exactly about what -- the reason she was hitting you or -- can you give me her quote?

THE WITNESS: Because -- well, they said because they had -- they -- that Blue had told her that I was saying that he killed Michael.

MR. SCISCENTO: Your Honor, again, I'm going to object to that. Now this is double hearsay.

THE COURT: Well, I'm going to let it in under 51.075, subject to a motion to strike, Mr. Sciscento. I'm not going to accept it for the truth of the matter. I just want to get the context of how this all came about.

So -- you said "they."

Now, is that Brittney and somebody else or just Brittney?

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A That, um, he could have me touched if -- if I didn't testify -- if I did -- I didn't need to testify.

THE COURT: Well, what does "touched" mean, ma'am?

THE WITNESS: Touched means hurt, killed; hurt, any kind of way. It's a street slang word.

BY MR. COUMOU:

Q And that's how you --

A Yes.

Q -- meant it when he told you he could have you touched?

A Yes.

Q And do you have a caller box or anything like that?

A I have a -- I have caller I.D.

Q And after this call, what did you do?

A Um, I called my mom at work to see what she -- she thinks I should do and she told me to call the detectives on the case.

Q Okay.

A And I called them and talked --

Q Did the detectives come?

A Yes, they did.

Q Do you remember that number, by any chance?

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1 A Um, it was a 315 number.
 2 Q Okay. A 315 number?
 3 A Yeah.
 4 Q And if I showed you a statement, would that
 5 help refresh your memory?
 6 A Yes.
 7 MR. COUMOU: Court's indulgence, Judge.
 8 BY MR. COUMOU:
 9 Q Now, did you give a taped statement to the
 10 police on that -- on that date?
 11 A Yes.
 12 Q And if I show you a copy of that taped
 13 statement, would that help refresh your memory as to what
 14 that caller I.D. number showed?
 15 A Yes.
 16 MR. COUMOU: Counsel, page four on the
 17 September 23rd statement.
 18 If I may approach?
 19 THE COURT: Yes, you may.
 20 BY MR. COUMOU:
 21 Q I just want to let you look at the -- read
 22 to yourself the top portion and see if that -- if that helps
 23 refresh your memory.
 24 A (Complies.) Yeah.

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1 still have that caller I.D. box?
 2 A Yes.
 3 Q And what number was that that showed?
 4 A It was also a 315 number.
 5 Q Okay. Did you write it down, by any chance?
 6 A Yes, I did.
 7 Q And did you bring that piece of paper with
 8 you?
 9 A Yes, it's in my purse.
 10 Q It's inside your purse?
 11 A Uh-huh.
 12 MR. COUMOU: Judge, can I maybe ask her to
 13 look at it?
 14 THE COURT: Yes.
 15 MR. COUMOU: If I may approach with the
 16 purse?
 17 THE COURT: Yes.
 18 BY MR. COUMOU:
 19 Q You said that phone call came this morning
 20 or when?
 21 A This morning, at 8:57.
 22 Q In the morning?
 23 A Uh-huh; yes.
 24 Q And what was the number that was recorded?

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1 Q Yes?
 2 Have -- having looked at that,
 3 has that helped refresh your memory?
 4 A Uh-huh.
 5 Q And what was that number that --
 6 THE COURT: Okay. Ma'am, did you say yes to
 7 the last question?
 8 THE WITNESS: Yes.
 9 THE COURT: Would you answer yes or no,
 10 please.
 11 THE WITNESS: Yes; yes.
 12 THE COURT: Thank you.
 13 Next question.
 14 THE WITNESS: 315-4415.
 15 BY MR. COUMOU:
 16 Q Okay. And that's the number that you showed
 17 to the police, that has the time and everything as they came
 18 to you --
 19 A Yes.
 20 Q -- when you spoke to the defendant?
 21 A Yes, sir.
 22 Q Did -- did you receive another call today?
 23 A This morning, yes, I did.
 24 Q And what number was that, if you -- do you

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1 A 315-4422.
 2 Q 4422.
 3 And that's the same prefix at
 4 the original number when he told you he could have you
 5 touched?
 6 A Yes, sir.
 7 Q Did you talk to anybody when that call came
 8 in this morning?
 9 A No, I didn't. I hung up.
 10 MR. COUMOU: I think that should conclude
 11 for this --
 12 THE COURT: Cross-examination.
 13
 14 CROSS-EXAMINATION
 15 BY MR. SCISCENTO:
 16 Q Miss Banks, this first phone call, when did
 17 that happen? You say in September?
 18 A September, the end of September.
 19 Q '98 or '99?
 20 A '98.
 21 Q '98. Okay. September of 1998, did you know
 22 of anybody else who was in the Clark County Detention
 23 Center?
 24 A Um, yes, I did.

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1 Q And your boyfriend was in?
 2 A No, he wasn't my boyfriend. It was an
 3 acquaintance of mine. It was my --
 4 Q Who was it?
 5 A It was my friend's boyfriend.
 6 Q Okay. What was his name?
 7 A His name was Danny Coboix.
 8 THE COURT: How does he spell his last name,
 9 do you know?
 10 THE WITNESS: I have no idea.
 11 THE COURT: Okay.
 12 BY MR. SCISCENTO:
 13 Q Has Danny ever called you from the jail?
 14 A Yes.
 15 Q Numerous occasions, he's called you?
 16 A No.
 17 Q Okay --
 18 A Just once -- once -- once in a while.
 19 Q Okay. How many times is once in a while?
 20 A About five times.
 21 Q Is Danny still in custody right now?
 22 A Yes, he is.
 23 Q He's still in the Clark County Detention
 24 Center?

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1 A I don't know.
 2 Q What does Blue Loc mean?
 3 A It's a gang name, is what he went by.
 4 Q Well, Brendan Nasby goes by Blue?
 5 A Yes, Blue Loc.
 6 Q But --
 7 A That's his whole --
 8 Q This is the first time I've ever heard him
 9 called Blue Loc.
 10 Do you know of anybody else who
 11 calls him Blue Loc?
 12 A Everybody.
 13 Q You just know him as Blue though?
 14 A I know him as -- yes.
 15 Q Okay. Did he ever identify himself to you
 16 before as Blue Loc?
 17 A No. He never identified himself to me. I
 18 was introduced to him.
 19 Q Okay. Now, the -- this morning, you said,
 20 at 8:57, you received a phone call.
 21 A Yes.
 22 Q And did the person identify himself?
 23 A No. It's a recording. You have to -- you
 24 have to press a two or a nine to accept the phone -- either

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1 A No, he's not.
 2 Q Where is he at now?
 3 A I'm not sure, but I know he's not there.
 4 Q But in September, he was?
 5 How many times previous to
 6 September have you talked to -- talked to Brendan on the
 7 phone?
 8 A Not at all.
 9 Q Not at all?
 10 A Except -- except for the day that I found
 11 out Michael was killed.
 12 Q Did you talk to him on the phone or did
 13 Crystal tell you she talked to him on the phone?
 14 A No. He was on the phone with me and
 15 Crystal, three way.
 16 Q And that was back in July of '98?
 17 A Uh-huh.
 18 Q And since then, to September, you've never
 19 had a phone call from Brendan Nasby?
 20 A No.
 21 Q And he -- the person who called in September
 22 identified himself as Blue Loc?
 23 A Yes.
 24 Q Blue Loc, L-o-c?

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1 accept it for a two, or nine to not accept it, or just hang
 2 up.
 3 Q And did you accept the phone call?
 4 A No, I didn't. I hung up.
 5 Q Do you know who was on the other end?
 6 A No.
 7 MR. SCISCENTO: Okay. I have no further
 8 questions.
 9 THE COURT: Mr. Coumou.
 10 MR. COUMO: Just real briefly.
 11
 12 REDIRECT EXAMINATION
 13 BY MR. COUMO:
 14 Q You said on that 23rd of September, it was
 15 when he called and said: I can have you touched. Correct?
 16 A Yes.
 17 Q Miss Banks, you indicated you spoke to him
 18 before on the telephone.
 19 You knew -- how was it that you
 20 knew that it was the defendant calling you on that 23rd date
 21 of 1998?
 22 A Because he said he was Blue.
 23 Q Okay. And did the voice sound the same as
 24 the voice --

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1 * A *After a while it did, because, at first, he
2 was being low, trying to disguise his voice at first.

3 MR. SCISCENTO: I object to that,
4 speculation, Your Honor.

5 THE COURT: Overruled. I'll allow that
6 under 50.265.

7 MR. COUMOU: Nothing further.

8 THE COURT: Mr. Sciscento?

9 MR. SCISCENTO: Nothing, Your Honor.

10 THE COURT: Okay. Miss Banks, thank you
11 very much for coming. You can be in touch with Mr. Coumou
12 when you will testify again on the case.

13 THE WITNESS: Okay.

14 THE COURT: Okay. The State may call their
15 next witness.

16 MR. COUMOU: The State calls Brittney Adams.

17 THE COURT: Okay. Miss Adams, if you would
18 come on up here, please; and just step around to your right,
19 just right around the corner here.

20 And you can go ahead and put
21 your purse down, if you want, on top of this bench.

22 If you would face me and raise
23 your right hand, please.
24

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1 aware that I am doing this and I have his okay to be here.

2 THE COURT: Okay. Thank you very much.

3 Okay. Could you state your
4 name and spell your first and last name for the court
5 reporter, please.

6 THE WITNESS: Brittney Adams;
7 B-r-i-t-t-n-e-y; last name A-d-a-m-s.
8
9

DIRECT EXAMINATION

10 BY MR. COUMOU:

11 Q Miss Adams, do you know -- did you know
12 Michael Beasley?

13 A Yes, I did.

14 Q And how did you know him?

15 A We went to school together.

16 Q Okay. Did you also know an individual who
17 goes by the nickname Blue?

18 A Yes.

19 Q Do you see him here in court today?

20 A Yes.

21 Q Can you please point to him and tell me what
22 he is wearing today in court.

23 A He's wearing a Navy blue suit, with a tie,
24 with glasses, and his hair shaved low, sitting in between

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1 Whereupon,

BRITTNEY ADAMS

2 having been called as a witness by the Plaintiff and
3 having been first duly sworn to tell the truth, the
4 whole truth and nothing but the truth, was examined
5 and testified as follows:
6

7 THE CLERK: Thank you. Please be seated.

8 MR. SCISCENTO: Your Honor, before we
9 proceed, I would make a motion as to Miss Adams.

10 Miss Adams is being represented
11 by a William B. Terry. I tried to speak with her earlier.
12 She informed me that in order to speak to her, I should
13 speak to Mr. Terry, which I did send a letter to him.

14 I think if she's going to
15 testify today, I think that she needs to have her
16 representation here or she needs to waive her right to her
17 attorney.
18

19 THE COURT: Well, it's her call, Mr.
20 Sciscento.

21 I mean, Miss Adams, are you
22 willing to testify here in response to questions from Mr.
23 Coumou and Mr. Sciscento without Mr. Terry being here?

24 THE WITNESS: Yes, sir. Mr. Terry is very

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1 two attorneys.

2 MR. COUMOU: Judge, if the record could
3 reflect the witness has identified the defendant?

4 THE COURT: The record will so reflect.

5 BY MR. COUMOU:

6 Q How did you know the defendant?

7 A Michael introduced us.

8 Q Were you good friends with Michael?

9 A Very.

10 Q Now, are you a member of or were you
11 familiar with this L.A. Crazy Riders?

12 A Yes, I was familiar with it.

13 Q Could you explain that?

14 A Well, it was supposed to just be a clique
15 of -- a bunch of people hanging out together, but a certain
16 individual tried to turn it into a gang.

17 Q Okay. Who is that?

18 A Blue.

19 Q Okay. Now, this is a limited hearing, so
20 I'm going to focus your attention to certain parts.

21 On or about August 1st of 1998,
22 did you find out something had happened to -- to Michael
23 Beasley?

24 A Yes, I did.

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1 Q How -- what did you find out?
 2 A I found out that he had been killed and his
 3 body was found in the desert.
 4 Q How did you find that out?
 5 A From Blue.
 6 Q Did you call him or how -- how did you learn
 7 this information?
 8 A I went by his house that night and that's
 9 when he gave me the obituary and he began telling me about
 10 what happened.
 11 Q What did he say?
 12 A He told me that Sugar Bear had done it; and
 13 that Tanesha, Crystal and Sugar Bear had called him on the
 14 night it happened and told him how Crystal had the gun in
 15 the back and was loading it, handed it to Charles, and they
 16 made him get out the car in the desert and they shot him.
 17 Q Okay. You say Charles is -- is --
 18 A Is Sugar Bear.
 19 Q -- Sugar Bear?
 20 What else -- did he say
 21 anything else about Tanesha?
 22 A He said she was telling people on the street
 23 that he did it, that he killed Mike; and he said that people
 24 were supposed to be coming after him because of what Tanesha

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1 and she corroborated Blue's story, that Tanesha was saying
 2 this. I mean, everything that Blue had told me, Marla told
 3 me the exact same thing.
 4 Then that's when I went to
 5 Tanesha's house to get her side of the story.
 6 Q Okay. Did anybody -- did you go by
 7 yourself?
 8 A No.
 9 Q Who went with you?
 10 A Blue was with me and my younger cousin,
 11 Porsche Nichols, was with me.
 12 Q Did the defendant give you anything or tell
 13 you to do anything with Tanesha?
 14 A Yes. He wanted me to kill her.
 15 Q Why?
 16 A He said she was running her mouth; she
 17 needed to be shut up. He wanted me to kill her.
 18 And I didn't know he brought a
 19 hammer in the car, but when we got to her house, before I
 20 got out the car, he said: Here's a hammer. Why don't you
 21 just hit her between the eyes and kill her?
 22 And I said: No, I'm not going
 23 to do that. I want to find out what happened to Mike.
 24 Q So you didn't take the -- you didn't take

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1 was saying.
 2 Q How was he acting like? I mean, what was
 3 his mannerisms at the time?
 4 A He tried to show remorse, but it wasn't
 5 genuine. It -- it wasn't right. You know, I mean, in his
 6 garage --
 7 MR. SCISCENTO: I object as speculation.
 8 THE COURT: Overruled under 50.265.
 9 Next question.
 10 BY MR. COUNTOU:
 11 Q After having heard this then -- did you know
 12 Tanesha Banks?
 13 A Yes.
 14 Q What was your relationship to Tanesha at the
 15 time?
 16 A I knew of Tanesha from Mike. I know that
 17 that was his girlfriend at one time. She got a baby by him.
 18 Q Okay.
 19 A I didn't -- we weren't very good friends,
 20 but I knew her through Mike. That's how I knew her.
 21 Q And what -- what did you do next?
 22 A Well, um, Blue indicated to call Mike's
 23 other -- supposed other baby's mother, Marla.
 24 And I called her on the phone

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1 the hammer?
 2 A No.
 3 Q Did you contact Tanesha that night?
 4 A Yes, I did.
 5 Q And where was the defendant during this time
 6 when you contacted her?
 7 A Sitting in my car, watching everything.
 8 Q Okay. Where did you talk to Tanesha?
 9 A Outside, right next to my car, across the
 10 street from her house.
 11 Q Now, did you -- did you then get -- well,
 12 let's just cut to the chase: Did you end up fighting or
 13 hitting Tanesha?
 14 A Yes, I did.
 15 Q And what exactly did you do to her?
 16 A I began hitting her in the head and kicking
 17 her, because I got angry because she wouldn't tell me
 18 anything about what happened to Mike.
 19 MR. COUNTOU: Okay.
 20 THE COURT: Did you hit her with your fist?
 21 THE WITNESS: My fist, my balled up fist,
 22 and my feet.
 23 THE COURT: Okay.
 24

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1 BY MR. COUMOU: *

2 Q And where was the defendant during this
3 time?

4 A Sitting in the car watching.

5 Q Did you leave?

6 A Yes.

7 Q Why?

8 A Because her parents came out; her dad did;
9 and my cousin grabbed me, pulled me in the car, and we left.

10 And as we were leaving, her dad
11 did jump on the car and was hanging on the car for a little
12 bit, about halfway down the street. Then he fell off and we
13 left.

14 Q Okay. When you were driving, where did you
15 go after that?

16 A Went back to Blue's house, to take him back
17 home, so my cousin and I could get back home before the 12
18 o'clock curfew for them.

19 Q And did he say anything about the fight?
20 What was -- what was he telling you on the way home?

21 A His exact words: Oh, 'Cuz, you should have
22 killed her.

23 That's the only thing. He kept
24 repeating himself until I told him to shut up and I wasn't

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1 So his way of telling me to
2 tell the police what he told me was saying: Go tell my girl
3 what happened.

4 MR. SCISCENTO: Your Honor, I object to this
5 as speculation now as to what Brendan intended her to do by
6 going to talk to her parents. I think that calls for
7 speculation.

8 THE COURT: Mr. Coumou?

9 MR. COUMOU: Judge, it's not really
10 speculation because it's really showing what -- what she did
11 then next.

12 THE COURT: Okay. I'm going to overrule it,
13 but it's subject to cross-examination. So -- okay.

14 BY MR. COUMOU:

15 Q So what happened next?

16 A Then I -- my cousin Porsche and I, we went
17 down to the detective bureau, and I filled out a voluntary
18 statement saying everything that Brendan had told me, but I
19 put it in first person to try to help him out, to get him
20 out of trouble. I was trying to be a friend.

21 Q And, at the time, you didn't know who to
22 believe, right?

23 A No. I believed -- I believed Brendan
24 because I had no reason not to. He hadn't done anything to

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1 going to kill anybody. Then he just left it alone.

2 Q Okay. Now, Miss Adams, did you receive a
3 call from -- from the defendant sometime after August 4th,
4 1998?

5 A Yes. He tried -- I believe he tried calling
6 after the 4th, after I had gotten out of jail on charges for
7 fighting Tanesha.

8 Q Oh. Did you get arrested for that?

9 A Yes, I did. I got arrested on August 4th,
10 after receiving a call from him.

11 Q Okay. Tell me about that call.

12 A It was about 4:30, five o'clock in the
13 evening and when he called, it was a free call. It was a
14 free call at the time.

15 He told me he had been
16 arrested; that Tanesha had went down and told the police.
17 She wasn't just talking on the street anymore. She went and
18 told the police about what he did, about what she says he
19 did.

20 And I said: Well, what do you
21 want me to do?

22 And I know he lives with his
23 mother and his baby's mother-girlfriend. So I know when he
24 got arrested, they knew what was going on.

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1 me in the past for me not to.

2 I had doubts, but my doubts
3 weren't over -- they weren't stronger than me believing him.

4 So me being a friend, when I'm
5 a friend, I'm a loyal friend, and I was trying to be a
6 friend and he knew that.

7 Q And so what happened when you gave the
8 statement to the police?

9 A They began --

10 Q The version that he told you.

11 A Oh, Detective Buczek questioned me over and
12 over again, and I just kept intend- -- getting myself caught
13 up in more lies and more lies, because I didn't know the
14 truth. I was just telling him what I was told.

15 And after that, they then gave
16 me the Rights of a Person Arrested card for me to read. I
17 read that; signed it.

18 And he began to question me
19 about the incident at Tanesha's house. And, at first, I
20 denied it until he told me what Blue had said.

21 And then my cousin was -- they
22 had her in another room and she told him that, yes, we did
23 fight. So then, after I confessed to everything about
24 fighting Tanesha, then that's when they arrested me and took

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me down to Clark County Detention Center.

Q Now, so you were arrested, right?

A Yes.

Q And from -- for the beating of Tanesha?

A Yes.

Q Do you remember what you were charged with?

A I was charged with first degree kidnapping, intimidating a witness and battery with intent to commit a crime.

Q Now, are you still ongoing -- is that case still pending against you?

A It's still pending. It should be resolved this Thursday.

Q Did you plead guilty to something?

A I will be on Thursday.

Q Okay. To what, do you know?

A Battery, a misdemeanor battery.

Q Did -- you said you will on this Thursday.

What -- what does that have to do with the timing? Why Thursday? Is that a negotiation that your lawyer struck up?

A Yes. My lawyer negotiated with a D.A. on my case for me to assist in any way I possibly can in this case, in reference to they will drop two of the felony

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earlier in September; is that correct?

A Yes, Labor Day to be exact.

Q Okay. And I inquired about whether I could speak to you on this case?

A Uh-huh.

Q And you told me -- that was a yes, right?

A Yes, you did.

Q And you told me that you were represented by Mr. Terry?

A Yes.

Q Did Mr. Terry tell you he received a letter from me dated September 6th requesting to speak to you?

A No, he did not.

Q He never told you at all?

A No.

Q Did he ever tell you that I contacted him to speak to you?

A No.

Q He never told you that I was interested interest in talking to you at all?

A No. You made that clear when you called me on Labor Day.

Q But I'm saying Mr. Terry, subsequent to that telephone call on Labor Day, he never contacted you and told

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charges and change the felony battery to commit with -- with intent to commit a crime to a misdemeanor battery.

Q You didn't negotiate that with me, correct?

A No. I never met you until recently.

Q Are you doing this -- are you wanting to do this or are you doing this because you want to motivate yourself in order to get a lesser charge?

A I have to do this.

Q Why?

A Because Mike was my friend and with me knowing what happened and me knowing what I can help to do to put his murderer behind bars, if I didn't come here and say anything, I would be less than a woman, and my mom didn't raise less than a woman.

MR. COUNOU: Thank you.

Nothing further, Judge.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. SCISCENTO:

Q Miss Adams, you are being represented by Mr. William Terry?

A Yes, that's correct.

Q And you received a phone call from me

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you?

A After that call on Labor Day, after I spoke with him, he told me I am not to talk to you.

Q Did he say the reason why?

A No.

MR. SCISCENTO: Your Honor, I'll strike that as --

THE COURT: Yeah. I can't let you -- that's kind of privileged --

BY MR. SCISCENTO:

Q You gave a statement to the police on July 17th, '98 -- I'm sorry. I think it's August 4th, '98; is that correct?

A Yes.

Q And in that, you said that Charles Von Lewis told you that Charles Von Lewis killed Michael.

A Yes.

Q And Charles Von Lewis is known as Sugar Bear?

A Yes.

Q But now you were subsequently charged with three felonies, battery, intimidating a witness and attempted kidnapping?

A Uh-huh; yes.

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1 Q And now they have told you they will dismiss
2 those cases and give you a misdemeanor if you testify in
3 this case?

4 A Yes.

5 Q You think you are being intimidated by the
6 prosecution to give testimony here?

7 A No.

8 Q So their promise of you getting a lenient
9 sentence of a misdemeanor is not prompting you to give this
10 story today?

11 A No.

12 Q And the story you gave on August 4th is a
13 lie?

14 A Yes, it is.

15 MR. SCISCENTO: I have no further
16 questions -- Your Honor, Court's indulgence one moment.

17 (Whereupon, a sotto voce at this time.)

18 BY MR. SCISCENTO:

19 Q Did you discuss your testimony with Tanesha
20 Banks?

21 A No.

22 Q Have you seen Tanesha Banks other than

23 ACCUSCRIPTS (702) 391-0379

1 (Whereupon, a sotto voce at this time.)

2 MR. SCISCENTO: I'm sorry. Could I have the
3 Court's indulgence?

4 (Whereupon, a sotto voce at this time.)

5 RE-CROSS-EXAMINATION

6 BY MR. SCISCENTO:

7 Q Miss Adams, I want to make sure I understand
8 this: You are not allowed to talk to Tanesha Banks pursuant
9 to some agreement you have with the court?

10 THE COURT: She said it was a restraining
11 order.

12 THE WITNESS: It's a restraining order.

13 BY MR. SCISCENTO:

14 Q Oh, a restraining order.

15 So, therefore, you have not
16 contacted her; she has not contacted you?

17 A No.

18 Q But has anybody, a third party, contacted
19 you on behalf of Tanesha Banks or have you contacted anybody
20 on -- had a third person contact Tanesha Banks?

21 A No.

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1 today? I assume you saw her today?

2 A No, I haven't, except for today.

3 Q So prior to today, you haven't seen Tanesha
4 Banks?

5 A No, except for when we had the fight. That
6 was the last time I spoke to her or saw her.

7 Q Did you call her at all?

8 A No.

9 MR. SCISCENTO: I have no further questions.

10 THE COURT: Mr. Coumou.

11 REDIRECT EXAMINATION

12 BY MR. COUMOU:

13 Q You are not even allowed to call her, see
14 her or talk to her, correct?

15 A Until my case is over, I have a restraining
16 order against me for talking to her.

17 Q And you are honoring that, correct?

18 A Yes, I am.

19 MR. COUMOU: Nothing further.

20 THE COURT: Mr. Sciscento?

21 MR. SCISCENTO: Nothing.

22 THE COURT: Thank you very much.

23 MR. SCISCENTO: Your Honor, I'm sorry --

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1 Q Nobody has called you to say that Tanesha
2 told me to tell you this?

3 A No.

4 Q Has anybody from the jail contacted you?

5 A No.

6 Q Nobody has called you from the jail --

7 A I had --

8 Q -- Clark County Detention Center?

9 A I got a couple of calls, collect calls, from
10 the Detention Center, but I don't accept them.

11 Q In September of '98, did you ever get a
12 phone call from a person named Danny?

13 A From who?

14 Q Danny, from the Clark County Detention
15 Center.

16 A No. I received a call from someone named RJ
17 that had just gotten out of the Detention Center.

18 MR. SCISCENTO: Okay. I have no further
19 questions, Your Honor.

20 THE COURT: Okay. Thank you very much, Miss
21 Adams.

22 You are excused now, but you
23 will be in touch with Mr. Coumou about him needing to call
24 you back for the trial.

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1 THE WITNESS: Okay.

2 THE COURT: Okay. Does the State have any
3 other witnesses?

4 MR. COUMOU: No.

5 THE COURT: Does the defense have any
6 witnesses?

7 MR. SCISCENTO: No, Your Honor, we don't.

8 THE COURT: Okay. I guess we'll go ahead
9 and proceed with argument then.

10 MR. COUMOU: Yes, Judge.

11 I'll let counsel make this
12 argument, since it's his motion.

13 THE COURT: Very well.

14 (Whereupon, a sotto voce at this time.)

15 MR. SCISCENTO: Your Honor, I think we're
16 going to do the argument in two-fold: One, I'm going to
17 argue as to the testimony of Mr. Holmes; and also, I guess,
18 the writings that Mr. Holmes recovered.

19 THE COURT: Well, I guess -- Mr. Holmes,
20 now, is there a motion -- it's not a written motion to
21 exclude Mr. Holmes' testimony under the Fifth Amendment, is
22 there?
23
24

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1 Holmes received is not received until after November 4th. I
2 took great pains to determine that that was done.

3 Mr. Holmes specifically said he
4 received it after November 4th.

5 On November 4th, Mr. Holmes was
6 an agent of the State; he said he went there; he asked Mr.
7 Nasby to give him that letter. He did it without a
8 subpoena; he did it without my client being given Miranda
9 rights.

10 And I move to exclude it as a
11 violation of my client's Fifth Amendment rights.

12 THE COURT: Okay. Now, let me -- there was
13 some other statements, if I understand what Mr. Holmes said,
14 that were allegedly made by Mr. Nasby to Mr. Holmes before
15 this November 4th incident here.

16 So there is no argument there
17 that he was acting as an agent of the State.

18 MR. SCISCENTO: Not at that point, I guess,
19 I cannot make that argument.

20 THE COURT: So any statements Mr. Nasby
21 allegedly made to Mr. Holmes would be admissible
22 pre-November 4th even under your motion then.

23 MR. SCISCENTO: Yes.

24 THE COURT: Okay. Why don't we deal with

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1 MR. SCISCENTO: This time, I'm going to ask
2 for -- I'm going to make a motion to exclude under the Fifth
3 Amendment, basically on the fact -- and I think this Court
4 knows where I'm going and coming from -- is that Mr. Holmes
5 specifically said:

6 On November the 4th, he
7 approached an officer; told him that he has in --
8 information regarding Brendan Nasby regarding the murder;
9 and the officer -- Mr. Holmes said this -- then told him:
10 Well, can you get more information? Go out and get more
11 information.

12 Further, Mr. Holmes said, at
13 times, he prompted some conversation regarding this; he
14 asked him questions; he prompted Mr. Nasby to answer
15 questions; he kept asking questions regarding this case.

16 Now, at that point, on November
17 4th, Mr. Holmes is becoming an agent of Metro, or the
18 investigator or somebody to that effect, but he's working on
19 behalf of the State.

20 And by prompting the questions
21 to Mr. Nasby, he is, in fact, violating his Miranda right;
22 that is, the right to remain silent. He's acting as an --
23 Mr. Holmes is acting as an arm of the government.

24 Further, the letter that Mr.

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1 this issue and then we'll go to the other issue.

2 Mr. Coumou.

3 MR. COUMOU: Okay.

4 THE COURT: Let's deal with this Fifth
5 Amendment issue.

6 MR. COUMOU: Yes, Judge.

7 I -- I don't know where this
8 Fifth Amendment issue -- obviously, it's an impromptu motion
9 that suddenly has been brought up, but there is far from
10 evidence that Mr. Holmes was an agent of the State, acting
11 on behalf of the police department.

12 THE COURT: Didn't he say that? I mean,
13 that was his testimony on the stand, that he -- he contacted
14 the officials in the jail and he was told to go get more
15 information. He was the State's witness.

16 MR. COUMOU: I -- I think that's -- the
17 unfortunate part of -- the testimony didn't come out very
18 clear. That was -- in -- and just as a proffer of proof,
19 that was a discussion he had with the homicide detectives.

20 Now, let me just put it into
21 context, the timing of everything:

22 He, meaning Holmes, receives
23 this confession on the 4th of November, somewhere around
24 that time, while they were playing chess.

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1 THE COURT: Okay.
 2 MR. COUNOU: And then he eventually gets
 3 these -- this letter, this three page letter and -- and
 4 listing, the -- the two-page document with the witnesses
 5 that need to be intimidated. That's subject to the second
 6 part of the motion -- or the actual motion.
 7 THE COURT: Well, wasn't that after he
 8 talked to law enforcement and they told him to go get more
 9 information?
 10 MR. COUNOU: That was not my understanding,
 11 Judge, because I have a statement right here that when he
 12 did speak to the homicide detectives, it's -- it's dated
 13 December the 17th.
 14 And the Court can take judicial
 15 notice that that's what it says; that at 1335 hours, that's
 16 when he talked.
 17 So we're talking about two plus
 18 weeks since the time that he actually got the --
 19 THE COURT: Well --
 20 MR. COUNOU: Actually more. I don't know
 21 what I'm talking about, two plus weeks --
 22 THE COURT: All I can say is that might be
 23 very important, you know, what the timing is here, so I want
 24 to make sure I have it right.

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1 MR. COUNOU: Right.
 2 THE COURT: And I didn't realize this
 3 morning, Mr. Sciscento was going to -- cross-examination as
 4 to the dates would be so critical.
 5 MR. COUNOU: And I will be honest with you,
 6 Judge, I didn't push it. And I was not foreseeing this, and
 7 that's why I didn't push it and that's why I think it is --
 8 it's unfair for the defense to suddenly bring this up and to
 9 now try to argue something where we're not even prepared for
 10 it, because it's not the subject of the motion.
 11 THE COURT: Is there a time limit under the
 12 N.R.S. to bring this type of motion --
 13 MR. COUNOU: Judge --
 14 THE COURT: -- before trial?
 15 MR. COUNOU: I would say it is a motion in
 16 limine that should have been brought up -- you know, at
 17 least filed within ten days of the calendar call, so we
 18 would have a chance to respond and be heard at the time of
 19 the calendar call.
 20 We're going in to trial now;
 21 we've got the jury impaneled. And, quite frankly, had
 22 counsel wanted to argue this point, it should have been done
 23 in good faith at the time and made it part of the motion of
 24 intimidation --

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1 THE COURT: Okay.
 2 MR. COUNOU: -- that was filed.
 3 So I -- I didn't pursue it then
 4 because I didn't think it was my -- my job to foresee every
 5 impromptu motion that counsel wants to make.
 6 But I can only tell you, by
 7 looking at the copy, when he finally makes a statement to
 8 the homicide detectives -- I mean, they just -- they made --
 9 they took a recorded statement, dated December the 17th, so
 10 there is some substantial time had gone by.
 11 THE COURT: Mr. Sciscento, what -- I'm
 12 sorry.
 13 Mr. COUNOU, are you finished?
 14 This is just one issue here.
 15 MR. COUNOU: And I just want to point out
 16 that the basic law of, you know, whether or not he's acting
 17 as an agent of the State, as the Court knows, he goes under
 18 the agency law.
 19 The police didn't direct him
 20 how to do it, what to do or anything like that. I mean,
 21 they just said: Hey, if you got any more information, you
 22 know, let us know.
 23 THE COURT: But isn't there a different
 24 standard once you are under arrest, as opposed to being in

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1 an investigatory stage where the State is gathering
 2 information?
 3 MR. SCISCENTO: There is, but in this case,
 4 Mr. Nasby is under arrest.
 5 THE COURT: Well, I understand that.
 6 I mean, that's my question to
 7 Mr. COUNOU --
 8 MR. SCISCENTO: Yeah.
 9 THE COURT: -- isn't it a more stricter
 10 standard once somebody is under arrest, to deal with these
 11 third parties without soliciting information from them?
 12 MR. COUNOU: I would agree with that, Judge,
 13 but under the circumstances, you know, we -- we have a guy
 14 who -- who is upset. He's playing along with the defendant.
 15 He's saying: Yeah, yeah, yeah. I understand why you killed
 16 him. But inside, he's really upset because he killed one of
 17 his best friends.
 18 THE COURT: Okay.
 19 MR. COUNOU: And -- and all I can go by
 20 right now, because it is unfair to the State to now suddenly
 21 spring this motion on it -- and the Court, quite honestly,
 22 in the State's opinion, does not have facts enough to make a
 23 determination --
 24 THE COURT: Well, I'm going to wait and get

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1 more facts, Mr. Courou, because, again, I didn't -- I have
2 to admit -- and the court reporter has been ordered to
3 prepare daily transcripts, and I'm going to look at this on
4 these dates, and I'm certainly going to deal with that issue
5 because I think timing is very critical on these points.

6 But, Mr. -- Mr. Sciscento, what
7 about Mr. Courou's argument that this should have been filed
8 ten days before trial and heard?

9 MR. SCISCENTO: Well, my understanding is I
10 did file the motion in limine to exclude witnesses of
11 intimidation.

12 THE COURT: Yeah, but not this -- it wasn't
13 a Fifth Amendment issue.

14 MR. SCISCENTO: No. And the reason is, Your
15 Honor, that did not become apparent until I had him on the
16 stand.

17 I've been trying to gather up
18 information and witnesses on this. I requested a
19 continuance, not based on this, but as this Court will note,
20 Miss Adams says: I contacted her; she refused to talk to
21 me. Mr. Terry refused to have her talk to me. We've been
22 trying to contact people, witnesses. This is the first time
23 I knew.

24 Now, the statute says it may be

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1 I want to know that, because I
2 think, Mr. Sciscento, that goes exactly to your argument
3 there, under the -- whether or not that should be suppressed
4 as violating the Fifth Amendment.

5 MR. CORMOU: And plus, these officers that
6 made the photocopy, I don't think they were aware as to what
7 was going on.

8 THE COURT: Well, we need to hear from him.

9 So what I suggest we do then is
10 get him on the stand -- we can do this in front of the
11 jury -- and lay out these facts. Then we'll -- then we'll
12 take a break, you know, like that; and then I'll take
13 argument on that issue from each counsel.

14 And then I'll rule on it in
15 that regard before those letters are admitted, and we can --
16 we can -- both sides can address that.

17 But I want to make sure we got
18 all the facts so we have a clear record here on this point.

19 MR. SCISCENTO: Can we move to the second
20 issue?

21 THE COURT: Yeah. So what I'm going to do
22 on the Fifth Amendment issue, on whether or not Mr. Holmes
23 was acting as an agent of the police, certainly any
24 statements allegedly made by Mr. Nasby to Mr. Holmes, before

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1 ten days prior, or if the Court feels injustice, can allow
2 me to make that motion.

3 I don't have the burden of
4 proof; the State has the burden of proof. And at that
5 point, when I realized what was happening, the dates and the
6 times and how it was happening, that's the first I became
7 aware of it.

8 THE COURT: Okay. Well, why don't we do
9 this: The court reporter has been instructed I want a daily
10 prepared on this testimony of Mr. Holmes and all, everything
11 else. I really want to look at that tomorrow morning here
12 before we start this session.

13 What I think we should do
14 would be this: Is I will look at that. I know the State is
15 going to call Mr. Holmes. Perhaps, if it's unclear --
16 because, Mr. Courou, again, I agree, maybe didn't anticipate
17 this argument --

18 MR. CORMOU: I didn't anticipate it, no.

19 THE COURT: Here's how we can handle it:
20 We'll get Mr. Holmes back on the stand. Mr. Courou can go
21 through it step-by-step.

22 I want to get to the date when
23 these letters were delivered to him in relationship to when
24 he talked to these officers.

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1 the initial meeting with law enforcement, where he started
2 to act with them in some capacity, are admissible. There is
3 no question about that.

4 Then we'll just talk about the
5 subsequent conversations and documentation that may have
6 been produced after this relationship with the law
7 enforcement commenced.

8 And I wouldn't rule on that
9 until we get further testimony on that point.

10 Okay. Let's go to issue two.

11 Mr. Santacrose.

12 MR. SANTACROCE: Thank you.

13 Your Honor, we would also move
14 at this time to exclude, strike the testimony and the
15 conclusions and opinions of Jan Seaman-Kelly, the document
16 examiner, and we make that motion based on Daubert.

17 We believe that there was
18 incorrect and erroneous methodology for her to reach her
19 conclusions. What she testified to was that she received
20 nine kites, purportedly from -- purportedly from -- Mr.
21 Nasby, and she compared, I think, eight, she said -- eight
22 of those with the purported letter that the State now wants
23 to admit into evidence.

24 As the Court is probably aware,

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1 in Daubert, Daubert, the court shifted the focus from the
2 old Frey standards to now --

3 THE COURT: Let me stop you, Mr.
4 Santacroce. I'm well aware of it, because it's civil law.
5 And let me just tell you what I think the standard is.

6 The Supreme Court of Nevada
7 specifically rejected applying Daubert in a case of Dow
8 Chemical versus Mahlum, a civil case involving breast
9 implant litigation, and said that the court can do its own
10 analysis under N.R.S. 50.275, as to weighing the various
11 factors in qualifying somebody as an expert.

12 So I don't think Daubert
13 applies, unless you want to argue specific -- the overall
14 picture.

15 MR. SANTACROCE: I want to argue the
16 methodology which leads to an erroneous conclusion.

17 THE COURT: Fine. Well, you can do that
18 under 50.275, so go ahead.

19 MR. SANTACROCE: As I stated, her comparison
20 was flawed because we didn't have an exemplar sample from
21 Mr. -- from Mr. Nasby.

22 We had nothing that actually --
23 anyone witnessed that he had actually signed or written.

24 And, generally, in a situation

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1 I'm not going to say I'm going
2 to grant it, but I will let Mr. Coughou argue that point
3 because I don't know what the timing is; and when Miss Kelly
4 was first designated as an expert witness for the State, if
5 that -- was she -- I don't know if she was on the
6 Information or not.

7 MR. COUMOU: Oh, she was -- well, not the
8 original.

9 MR. SCISCENTO: Not the original.

10 MR. COUMOU: But the --

11 THE COURT: When? It's been a while since
12 she's been designated?

13 MR. COUMOU: Quite some time.

14 THE COURT: Okay. Well, again, I'm not
15 going to rule on that. I will allow her testimony, Mr.
16 Santacroce, but, again, I will leave open the issue, if you
17 want to call an expert here on that to rebut what she said.

18 MR. SANTACROCE: Thank you.

19 THE COURT: Okay. What else do we have?

20 (Whereupon, a sotto voce at this time.)

21 MR. SCISCENTO: Nothing, I don't think.

22 THE COURT: Okay. Does the State have
23
24

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1 of document examining, they take an exemplar from the person
2 that they want to examine and they have that person write a
3 certain phrase over and over again several times. They
4 compare that.

5 In this case, we have nothing,
6 nothing whatsoever, to authenticate the writings in the kite
7 or any other writings that she compared.

8 And on that basis, we believe
9 that any opinion she gave, that this was Mr. Nasby's
10 writing, is erroneous and must be excluded.

11 THE COURT: Okay. That motion is denied.

12 The Court finds that under
13 N.R.S. 50.275, that the sufficient foundation has been laid
14 to present that testimony of the handwriting expert.

15 However, that is subject to
16 cross-examination by the defense, and it is also -- I will
17 consider -- I'm not saying I will grant it, but I know we
18 had an issue that Mr. Sciscento raised before regarding
19 handwriting.

20 I don't know if you've
21 contacted an expert or not, on behalf of the defense, and I
22 realize we have some time problems here, now that the trial
23 has started, but I'll consider that issue, if you wish to
24 designate an expert.

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1 anything else or are we done for the day?

2 MR. COUMOU: No. I -- I guess -- I just
3 know -- I just wanted to know where we stand, because my
4 burden -- and that's what I thought we were only here for --
5 is on the intimidation, to show that I can't -- in order for
6 me to be able to present evidence of intimidation in my case
7 in chief --

8 THE COURT: Okay. I'll rule on that: The
9 motion that the State is permitted to -- to present evidence
10 of intimidation, the Court finds that that information is
11 more probative than prejudicial.

12 However, that is subject to --
13 if I agree with the defense on the Fifth Amendment issue,
14 the Constitution supercedes the N.R.S. on that point, so
15 I -- I'm not going to let that testimony go before the jury
16 until we deal with the constitutional issue.

17 MR. SCISCENTO: Can I get that blown up,
18 please, the Constitution exceeds N.R.S.?

19 THE COURT: Okay.

20 MR. COUMOU: Just so I'm clear, Judge: The
21 only subject of intimidation reference is what John Holmes
22 said as to that document on page two, but you are allowing
23 intimidation that was done on Tanesha Banks by the defendant
24 and what happened between Brittney Adams and --

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1 *THE COURT: Absolutely. That's admissible.
2 So -- okay. That was what the
3 original motion was. I guess we got off on tangents here,
4 but that's why we're here.

5 MR. COUNOU: Yeah.

6 THE COURT: So the State will be permitted
7 to offer that evidence.

8 MR. COUNOU: Okay. Thank you, Judge.

9 THE COURT: Okay.

10 (Pceedings recessed until Wednesday,,
11 October 13, 1999, at eleven a.m.)

12 *****

13 ATTEST: Full, true and accurate transcript of proceedings.

14 RENEE SILVAGGIO, C.C.R. NO. 122
15 OFFICIAL COURT REPORTER

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1 A Um, it was a 315 number.
 2 Q Okay. A 315 number?
 3 A Yeah.
 4 Q And if I showed you a statement, would that
 5 help refresh your memory?
 6 A Yes.
 7 MR. COUMOU: Court's indulgence, Judge.
 8 BY MR. COUMOU:
 9 Q Now, did you give a taped statement to the
 10 police on that -- on that date?
 11 A Yes.
 12 Q And if I show you a copy of that taped
 13 statement, would that help refresh your memory as to what
 14 that caller I.D. number showed?
 15 A Yes.
 16 MR. COUMOU: Counsel, page four on the
 17 September 23rd statement.
 18 If I may approach?
 19 THE COURT: Yes, you may.
 20 BY MR. COUMOU:
 21 Q I just want to let you look at the -- read
 22 to yourself the top portion and see if that -- if that helps
 23 refresh your memory.
 24 A (Complies.) Yeah.

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1 still have that caller I.D. box?
 2 A Yes.
 3 Q And what number was that that showed?
 4 A It was also a 315 number.
 5 Q Okay. Did you write it down, by any chance?
 6 A Yes, I did.
 7 Q And did you bring that piece of paper with
 8 you?
 9 A Yes, it's in my purse.
 10 Q It's inside your purse?
 11 A Uh-huh.
 12 MR. COUMOU: Judge, can I maybe ask her to
 13 look at it?
 14 THE COURT: Yes.
 15 MR. COUMOU: If I may approach with the
 16 purse?
 17 THE COURT: Yes.
 18 BY MR. COUMOU:
 19 Q You said that phone call came this morning
 20 or when?
 21 A This morning, at 8:57.
 22 Q In the morning?
 23 A Uh-huh; yes.
 24 Q And what was the number that was recorded?

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1 Q Yes?
 2 Have -- having looked at that,
 3 has that helped refresh your memory?
 4 A Uh-huh.
 5 Q And what was that number that --
 6 THE COURT: Okay. Ma'am, did you say yes to
 7 the last question?
 8 THE WITNESS: Yes.
 9 THE COURT: Would you answer yes or no,
 10 please.
 11 THE WITNESS: Yes; yes.
 12 THE COURT: Thank you.
 13 Next question.
 14 THE WITNESS: 315-4415.
 15 BY MR. COUMOU:
 16 Q Okay. And that's the number that you showed
 17 to the police, that has the time and everything as they came
 18 to you --
 19 A Yes.
 20 Q -- when you spoke to the defendant?
 21 A Yes, sir.
 22 Q Did -- did you receive another call today?
 23 A This morning, yes, I did.
 24 Q And what number was that, if you -- do you

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1 A 315-4422.
 2 Q 4422.
 3 And that's the same prefix at
 4 the original number when he told you he could have you
 5 touched?
 6 A Yes, sir.
 7 Q Did you talk to anybody when that call came
 8 in this morning?
 9 A No, I didn't. I hung up.
 10 MR. COUMOU: I think that should conclude
 11 for this --
 12 THE COURT: Cross-examination.
 13
 14 CROSS-EXAMINATION
 15 BY MR. SCISCENTO:
 16 Q Miss Banks, this first phone call, when did
 17 that happen? You say in September?
 18 A September, the end of September.
 19 Q '98 or '99?
 20 A '98.
 21 Q '98. Okay. September of 1998, did you know
 22 of anybody else who was in the Clark County Detention
 23 Center?
 24 A Um, yes, I did.

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1 Q And your boyfriend was in?
 2 A No, he wasn't my boyfriend. It was an
 3 acquaintance of mine. It was my --
 4 Q Who was it?
 5 A It was my friend's boyfriend.
 6 Q Okay. What was his name?
 7 A His name was Danny Coboix.
 8 THE COURT: How does he spell his last name,
 9 do you know?
 10 THE WITNESS: I have no idea.
 11 THE COURT: Okay.
 12 BY MR. SCISCENTO:
 13 Q Has Danny ever called you from the jail?
 14 A Yes.
 15 Q Numerous occasions, he's called you?
 16 A No.
 17 Q Okay --
 18 A Just once -- once -- once in a while.
 19 Q Okay. How many times is once in a while?
 20 A About five times.
 21 Q Is Danny still in custody right now?
 22 A Yes, he is.
 23 Q He's still in the Clark County Detention
 24 Center?

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1 A I don't know.
 2 Q What does Blue Loc mean?
 3 A It's a gang name, is what he went by.
 4 Q Well, Brendan Nasby goes by Blue?
 5 A Yes, Blue Loc.
 6 Q But --
 7 A That's his whole --
 8 Q This is the first time I've ever heard him
 9 called Blue Loc.
 10 Do you know of anybody else who
 11 calls him Blue Loc?
 12 A Everybody.
 13 Q You just know him as Blue though?
 14 A I know him as -- yes.
 15 Q Okay. Did he ever identify himself to you
 16 before as Blue Loc?
 17 A No. He never identified himself to me. I
 18 was introduced to him.
 19 Q Okay. Now, the -- this morning, you said,
 20 at 8:57, you received a phone call.
 21 A Yes.
 22 Q And did the person identify himself?
 23 A No. It's a recording. You have to -- you
 24 have to press a two or a nine to accept the phone -- either

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1 A No, he's not.
 2 Q Where is he at now?
 3 A I'm not sure, but I know he's not there.
 4 Q But in September, he was?
 5 How many times previous to
 6 September have you talked to -- talked to Brendan on the
 7 phone?
 8 A Not at all.
 9 Q Not at all?
 10 A Except -- except for the day that I found
 11 out Michael was killed.
 12 Q Did you talk to him on the phone or did
 13 Crystal tell you she talked to him on the phone?
 14 A No. He was on the phone with me and
 15 Crystal, three way.
 16 Q And that was back in July of '98?
 17 A Uh-huh.
 18 Q And since then, to September, you've never
 19 had a phone call from Brendan Nasby?
 20 A No.
 21 Q And he -- the person who called in September
 22 identified himself as Blue Loc?
 23 A Yes.
 24 Q Blue Loc, L-o-c?

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1 accept it for a two, or nine to not accept it, or just hang
 2 up.
 3 Q And did you accept the phone call?
 4 A No, I didn't. I hung up.
 5 Q Do you know who was on the other end?
 6 A No.
 7 MR. SCISCENTO: Okay. I have no further
 8 questions.
 9 THE COURT: Mr. COUNOU.
 10 MR. COUNOU: Just real briefly.
 11
 12 REDIRECT EXAMINATION
 13 BY MR. COUNOU:
 14 Q You said on that 23rd of September, it was
 15 when he called and said: I can have you touched. Correct?
 16 A Yes.
 17 Q Miss Banks, you indicated you spoke to him
 18 before on the telephone.
 19 You knew -- how was it that you
 20 knew that it was the defendant calling you on that 23rd date
 21 of 1998?
 22 A Because he said he was Blue.
 23 Q Okay. And did the voice sound the same as
 24 the voice --

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1 THE WITNESS: Okay.
 2 THE COURT: Okay. Does the State have any
 3 other witnesses?
 4 MR. COUNOU: No.
 5 THE COURT: Does the defense have any
 6 witnesses?
 7 MR. SCISCENTO: No, Your Honor, we don't.
 8 THE COURT: Okay. I guess we'll go ahead
 9 and proceed with argument then.
 10 MR. COUNOU: Yes, Judge.
 11 I'll let counsel make this
 12 argument, since it's his motion.
 13 THE COURT: Very well.
 14
 15 (Whereupon, a sotto voce at this time.)
 16
 17 MR. SCISCENTO: Your Honor, I think we're
 18 going to do the argument in two-fold: One, I'm going to
 19 argue as to the testimony of Mr. Holmes; and also, I guess,
 20 the writings that Mr. Holmes recovered.
 21 THE COURT: Well, I guess -- Mr. Holmes,
 22 now, is there a motion -- it's not a written motion to
 23 exclude Mr. Holmes' testimony under the Fifth Amendment, is
 24 there?

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1 Holmes received is not received until after November 4th. I
 2 took great pains to determine that that was done.
 3 Mr. Holmes specifically said he
 4 received it after November 4th.
 5 On November 4th, Mr. Holmes was
 6 an agent of the State; he said he went there; he asked Mr.
 7 Nasby to give him that letter. He did it without a
 8 subpoena; he did it without my client being given Miranda
 9 rights.
 10 And I move to exclude it as a
 11 violation of my client's Fifth Amendment rights.
 12 THE COURT: Okay. Now, let me -- there was
 13 some other statements, if I understand what Mr. Holmes said,
 14 that were allegedly made by Mr. Nasby to Mr. Holmes before
 15 this November 4th incident here.
 16 So there is no argument there
 17 that he was acting as an agent of the State.
 18 MR. SCISCENTO: Not at that point, I guess,
 19 I cannot make that argument.
 20 THE COURT: So any statements Mr. Nasby
 21 allegedly made to Mr. Holmes would be admissible
 22 pre-November 4th even under your motion then.
 23 MR. SCISCENTO: Yes.
 24 THE COURT: Okay. Why don't we deal with

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1 MR. SCISCENTO: This time, I'm going to ask
 2 for -- I'm going to make a motion to exclude under the Fifth
 3 Amendment, basically on the fact -- and I think this Court
 4 knows where I'm going and coming from -- is that Mr. Holmes
 5 specifically said:
 6 On November the 4th, he
 7 approached an officer; told him that he has in --
 8 information regarding Brendan Nasby regarding the murder;
 9 and the officer -- Mr. Holmes said this -- then told him:
 10 Well, can you get more information? Go out and get more
 11 information.
 12 Further, Mr. Holmes said, at
 13 times, he prompted some conversation regarding this; he
 14 asked him questions; he prompted Mr. Nasby to answer
 15 questions; he kept asking questions regarding this case.
 16 Now, at that point, on November
 17 4th, Mr. Holmes is becoming an agent of Metro, or the
 18 investigator or somebody to that effect, but he's working on
 19 behalf of the State.
 20 And by prompting the questions
 21 to Mr. Nasby, he is, in fact, violating his Miranda right;
 22 that is, the right to remain silent. He's acting as an --
 23 Mr. Holmes is acting as an arm of the government.
 24 Further, the letter that Mr.

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1 this issue and then we'll go to the other issue.
 2 Mr. Counou.
 3 MR. COUNOU: Okay.
 4 THE COURT: Let's deal with this Fifth
 5 Amendment issue.
 6 MR. COUNOU: Yes, Judge.
 7 I -- I don't know where this
 8 Fifth Amendment issue -- obviously, it's an impromptu motion
 9 that suddenly has been brought up, but there is far from
 10 evidence that Mr. Holmes was an agent of the State, acting
 11 on behalf of the police department.
 12 THE COURT: Didn't he say that? I mean,
 13 that was his testimony on the stand, that he -- he contacted
 14 the officials in the jail and he was told to go get more
 15 information. He was the State's witness.
 16 MR. COUNOU: I -- I think that's -- the
 17 unfortunate part of -- the testimony didn't come out very
 18 clear. That was -- in -- and just as a proffer of proof,
 19 that was a discussion he had with the homicide detectives.
 20 Now, let me just put it into
 21 context, the timing of everything:
 22 He, meaning Holmes, receives
 23 this confession on the 4th of November, somewhere around
 24 that time, while they were playing chess.

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1 THE COURT: Okay.
 2 MR. COUNOU: And then he eventually gets
 3 these -- this letter, this three page letter and -- and
 4 listing, the -- the two-page document with the witnesses
 5 that need to be intimidated. That's subject to the second
 6 part of the motion -- or the actual motion.
 7 THE COURT: Well, wasn't that after he
 8 talked to law enforcement and they told him to go get more
 9 information?
 10 MR. COUNOU: That was not my understanding,
 11 Judge, because I have a statement right here that when he
 12 did speak to the homicide detectives, it's -- it's dated
 13 December the 17th.
 14 And the Court can take judicial
 15 notice that that's what it says; that at 1335 hours, that's
 16 when he talked.
 17 So we're talking about two plus
 18 weeks since the time that he actually got the --
 19 THE COURT: Well --
 20 MR. COUNOU: Actually more. I don't know
 21 what I'm talking about, two plus weeks --
 22 THE COURT: All I can say is that might be
 23 very important, you know, what the timing is here, so I want
 24 to make sure I have it right.

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1 THE COURT: Okay.
 2 MR. COUNOU: -- that was filed.
 3 So I -- I didn't pursue it then
 4 because I didn't think it was my -- my job to foresee every
 5 impromptu motion that counsel wants to make.
 6 But I can only tell you, by
 7 looking at the copy, when he finally makes a statement to
 8 the homicide detectives -- I mean, they just -- they made --
 9 they took a recorded statement, dated December the 17th, so
 10 there is some substantial time had gone by.
 11 THE COURT: Mr. Sciscento, what -- I'm
 12 sorry.
 13 Mr. COUNOU, are you finished?
 14 This is just one issue here.
 15 MR. COUNOU: And I just want to point out
 16 that the basic law of, you know, whether or not he's acting
 17 as an agent of the State, as the Court knows, he goes under
 18 the agency law.
 19 The police didn't direct him
 20 how to do it, what to do or anything like that. I mean,
 21 they just said: Hey, if you got any more information, you
 22 know, let us know.
 23 THE COURT: But isn't there a different
 24 standard once you are under arrest, as opposed to being in

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1 MR. COUNOU: Right.
 2 THE COURT: And I didn't realize this
 3 morning, Mr. Sciscento was going to -- cross-examination as
 4 to the dates would be so critical.
 5 MR. COUNOU: And I will be honest with you,
 6 Judge, I didn't push it. And I was not foreseeing this, and
 7 that's why I didn't push it and that's why I think it is --
 8 it's unfair for the defense to suddenly bring this up and to
 9 now try to argue something where we're not even prepared for
 10 it, because it's not the subject of the motion.
 11 THE COURT: Is there a time limit under the
 12 N.R.S. to bring this type of motion --
 13 MR. COUNOU: Judge --
 14 THE COURT: -- before trial?
 15 MR. COUNOU: I would say it is a motion in
 16 limine that should have been brought up -- you know, at
 17 least filed within ten days of the calendar call, so we
 18 would have a chance to respond and be heard at the time of
 19 the calendar call.
 20 We're going in to trial now;
 21 we've got the jury impaneled. And, quite frankly, had
 22 counsel wanted to argue this point, it should have been done
 23 in good faith at the time and made it part of the motion of
 24 intimidation --

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1 an investigatory stage where the State is gathering
 2 information?
 3 MR. SCISCENTO: There is, but in this case,
 4 Mr. Nasby is under arrest.
 5 THE COURT: Well, I understand that.
 6 I mean, that's my question to
 7 Mr. COUNOU --
 8 MR. SCISCENTO: Yeah.
 9 THE COURT: -- isn't it a more stricter
 10 standard once somebody is under arrest, to deal with these
 11 third parties without soliciting information from them?
 12 MR. COUNOU: I would agree with that, Judge,
 13 but under the circumstances, you know, we -- we have a guy
 14 who -- who is upset. He's playing along with the defendant.
 15 He's saying: Yeah, yeah, yeah. I understand why you killed
 16 him. But inside, he's really upset because he killed one of
 17 his best friends.
 18 THE COURT: Okay.
 19 MR. COUNOU: And -- and all I can go by
 20 right now, because it is unfair to the State to now suddenly
 21 spring this motion on it -- and the Court, quite honestly,
 22 in the State's opinion, does not have facts enough to make a
 23 determination --
 24 THE COURT: Well, I'm going to wait and get

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1 more facts, Mr. Coumou, because, again, I didn't -- I have
2 to admit -- and the court reporter has been ordered to
3 prepare daily transcripts, and I'm going to look at this on
4 these dates, and I'm certainly going to deal with that issue
5 because I think timing is very critical on these points.

6 But, Mr. -- Mr. Sciscento, what
7 about Mr. Coumou's argument that this should have been filed
8 ten days before trial and heard?

9 MR. SCISCENTO: Well, my understanding is I
10 did file the motion in limine to exclude witnesses of
11 intimidation.

12 THE COURT: Yeah, but not this -- it wasn't
13 a Fifth Amendment issue.

14 MR. SCISCENTO: No. And the reason is, Your
15 Honor, that did not become apparent until I had him on the
16 stand.

17 I've been trying to gather up
18 information and witnesses on this. I requested a
19 continuance, not based on this, but as this Court will note,
20 Miss Adams says: I contacted her; she refused to talk to
21 me. Mr. Terry refused to have her talk to me. We've been
22 trying to contact people, witnesses. This is the first time
23 I knew.

24 Now, the statute says it may be

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1 I want to know that, because I
2 think, Mr. Sciscento, that goes exactly to your argument
3 there, under the -- whether or not that should be suppressed
4 as violating the Fifth Amendment.

5 MR. COUMOU: And plus, these officers that
6 made the photocopy, I don't think they were aware as to what
7 was going on.

8 THE COURT: Well, we need to hear from him.

9 So what I suggest we do then is
10 get him on the stand -- we can do this in front of the
11 jury -- and lay out these facts. Then we'll -- then we'll
12 take a break, you know, like that; and then I'll take
13 argument on that issue from each counsel.

14 And then I'll rule on it in
15 that regard before those letters are admitted, and we can --
16 we can -- both sides can address that.

17 But I want to make sure we got
18 all the facts so we have a clear record here on this point.

19 MR. SCISCENTO: Can we move to the second
20 issue?

21 THE COURT: Yeah. So what I'm going to do
22 on the Fifth Amendment issue, on whether or not Mr. Holmes
23 was acting as an agent of the police, certainly any
24 statements allegedly made by Mr. Nasby to Mr. Holmes, before

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1 ten days prior, or if the Court feels injustice, can allow
2 me to make that motion.

3 I don't have the burden of
4 proof; the State has the burden of proof. And at that
5 point, when I realized what was happening, the dates and the
6 times and how it was happening, that's the first I became
7 aware of it.

8 THE COURT: Okay. Well, why don't we do
9 this: The court reporter has been instructed I want a daily
10 prepared on this testimony of Mr. Holmes and all, everything
11 else. I really want to look at that tomorrow morning here
12 before we start this session.

13 What I think we should do
14 would be this: Is I will look at that. I know the State is
15 going to call Mr. Holmes. Perhaps, if it's unclear --
16 because, Mr. Coumou, again, I agree, maybe didn't anticipate
17 this argument --

18 MR. COUMOU: I didn't anticipate it, no.

19 THE COURT: Here's how we can handle it:
20 We'll get Mr. Holmes back on the stand. Mr. Coumou can go
21 through it step-by-step.

22 I want to get to the date when
23 these letters were delivered to him in relationship to when
24 he talked to these officers.

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1 the initial meeting with law enforcement, where he started
2 to act with them in some capacity, are admissible. There is
3 no question about that.

4 Then we'll just talk about the
5 subsequent conversations and documentation that may have
6 been produced after this relationship with the law
7 enforcement commenced.

8 And I wouldn't rule on that
9 until we get further testimony on that point.

10 Okay. Let's go to issue two.

11 Mr. Santacroce.

12 MR. SANTACROCE: Thank you.

13 Your Honor, we would also move
14 at this time to exclude, strike the testimony and the
15 conclusions and opinions of Jan Seaman-Kelly, the document
16 examiner, and we make that motion based on Daubert.

17 We believe that there was
18 incorrect and erroneous methodology for her to reach her
19 conclusions. What she testified to was that she received
20 nine kites, purportedly from -- purportedly from -- Mr.
21 Nasby, and she compared, I think, eight, she said -- eight
22 of those with the purported letter that the State now wants
23 to admit into evidence.

24 As the Court is probably aware,

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1 in Daubert, Daubert, the court shifted the focus from the
2 old Frey standards to now --

3 THE COURT: Let me stop you, Mr.
4 Santacroce. I'm well aware of it, because it's civil law.
5 And let me just tell you what I think the standard is.

6 The Supreme Court of Nevada
7 specifically rejected applying Daubert in a case of Dow
8 Chemical versus Mahlum, a civil case involving breast
9 implant litigation, and said that the court can do its own
10 analysis under N.R.S. 50.275, as to weighing the various
11 factors in qualifying somebody as an expert.

12 So I don't think Daubert
13 applies, unless you want to argue specific -- the overall
14 picture.

15 MR. SANTACROCE: I want to argue the
16 methodology which leads to an erroneous conclusion.

17 THE COURT: Fine. Well, you can do that
18 under 50.275, so go ahead.

19 MR. SANTACROCE: As I stated, her comparison
20 was flawed because we didn't have an exemplar sample from
21 Mr. -- from Mr. Nasby.

22 We had nothing that actually --
23 anyone witnessed that he had actually signed or written.
24 And, generally, in a situation

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1 I'm not going to say I'm going
2 to grant it, but I will let Mr. COUNOU argue that point
3 because I don't know what the timing is; and when Miss Kelly
4 was first designated as an expert witness for the State, if
5 that -- was she -- I don't know if she was on the
6 information or not.

7 MR. COUNOU: Oh, she was -- well, not the
8 original.

9 MR. SCISCENTO: Not the original.

10 MR. COUNOU: But the --

11 THE COURT: When? It's been a while since
12 she's been designated?

13 MR. COUNOU: Quite some time.

14 THE COURT: Okay. Well, again, I'm not
15 going to rule on that. I will allow her testimony, Mr.
16 Santacroce, but, again, I will leave open the issue, if you
17 want to call an expert here on that to rebut what she said.

18 MR. SANTACROCE: Thank you.

19 THE COURT: Okay. What else do we have?

20 (Whereupon, a sotto voce at this time.)

21 MR. SCISCENTO: Nothing, I don't think.

22 THE COURT: Okay. Does the State have
23
24

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1 of document examining, they take an exemplar from the person
2 that they want to examine and they have that person write a
3 certain phrase over and over again several times. They
4 compare that.

5 In this case, we have nothing,
6 nothing whatsoever, to authenticate the writings in the kite
7 or any other writings that she compared.

8 And on that basis, we believe
9 that any opinion she gave, that this was Mr. Nasby's
10 writing, is erroneous and must be excluded.

11 THE COURT: Okay. That motion is denied.

12 The Court finds that under
13 N.R.S. 50.275, that the sufficient foundation has been laid
14 to present that testimony of the handwriting expert.

15 However, that is subject to
16 cross-examination by the defense, and it is also -- I will
17 consider -- I'm not saying I will grant it, but I know we
18 had an issue that Mr. Sciscento raised before regarding
19 handwriting.

20 I don't know if you've
21 contacted an expert or not, on behalf of the defense, and I
22 realize we have some time problems here, now that the trial
23 has started, but I'll consider that issue, if you wish to
24 designate an expert.

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1 anything else or are we done for the day?

2 MR. COUNOU: No. I -- I guess -- I just
3 know -- I just wanted to know where we stand, because my
4 burden -- and that's what I thought we were only here for --
5 is on the intimidation, to show that I can't -- in order for
6 me to be able to present evidence of intimidation in my case
7 in chief --

8 THE COURT: Okay. I'll rule on that: The
9 motion that the State is permitted to -- to present evidence
10 of intimidation, the Court finds that that information is
11 more probative than prejudicial.

12 However, that is subject to --
13 If I agree with the defense on the Fifth Amendment issue,
14 the Constitution supercedes the N.R.S. on that point, so
15 I -- I'm not going to let that testimony go before the jury
16 until we deal with the constitutional issue.

17 MR. SCISCENTO: Can I get that blown up,
18 please, the Constitution exceeds N.R.S.?

19 THE COURT: Okay.

20 MR. COUNOU: Just so I'm clear, Judge: The
21 only subject of intimidation reference is what John Holmes
22 said as to that document on page two, but you are allowing
23 intimidation that was done on Tanesha Banks by the defendant
24 and what happened between Brittney Adams and --

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1 THE COURT: Absolutely. That's admissible.
2 So -- okay. That was what the
3 original motion was. I guess we got off on tangents here,
4 but that's why we're here.

5 MR. COUMOU: Yeah.

6 THE COURT: So the State will be permitted
7 to offer that evidence.

8 MR. COUMOU: Okay. Thank you, Judge.

9 THE COURT: Okay.

10 (Proceedings recessed until Wednesday,
11 October 13, 1999, at eleven a.m.)

12 * * * * *

13 ATTEST: Full, true and accurate transcript of proceedings.

14 *Renee Silvaggio*
15 RENEE SILVAGGIO, C.C.R. NO. 122
16 OFFICIAL COURT REPORTER
17
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BY

JOSEPHINE BOHN DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

BRENDAN JAMES NASBY,)

Defendant.)

Case No. C154293

Dept. No. VII

Docket No. P

VOLUME III

Before the Honorable Mark Gibbons

Wednesday, October 13, 1999, 11:25 a.m.

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1 Las Vegas, Nevada, Wednesday, October 13, 1999, 11:25 a.m.

2
3 * * * * *

4
5 (The following proceedings were had in open
6 court in the presence of the jury:)

7 THE COURT: Okay. Good morning, ladies and
8 gentlemen.

9 This is the continuation of
10 Case Number C154293, the State of Nevada versus Brendan J.
11 Nasby.

12 Let the record reflect the
13 presence of Mr. Nasby, together with his attorney Joe
14 Sciscento; the State of Nevada represented by Frank Coumou,
15 deputy District Attorney.

16 Mr. Coumou, will you stipulate
17 to the presence of the jury?

18 MR. COUMOU: The State does.

19 THE COURT: Mr. Sciscento?

20 MR. SCISCENTO: Yes, Your Honor.

21 THE COURT: Okay. The State may call its
22 first witness.

23 MR. COUMOU: Thank you, Your Honor.

24 The State calls Sergeant James

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1 sustain an objection, the witness cannot answer and the
2 attorney will have to rephrase the question then.

3 Okay. Sergeant, could you
4 state your name and spell it for the court reporter, please.

5 THE WITNESS: James Carroll; C-a-r-r-o-l-l.

6 THE COURT: Thank you.

7 Mr. Coumou, you may proceed.

8
9 DIRECT EXAMINATION

10 BY MR. COUMOU:

11 Q Sergeant Carroll, could you please explain
12 to the jury what line of work are you in.

13 A I'm a sergeant for the Las Vegas
14 Metropolitan Police Department.

15 Q Could you explain the duties that you have
16 as a police sergeant.

17 A I manage a squad of eight to ten people.

18 Q And as part of your squad, what are their
19 duties, generally speaking?

20 A They are a patrol squad and, generally, they
21 respond to crimes in progress that have been called in or
22 they do stops on persons of suspicion.

23 Q I'm going to direct your attention now to
24 July 17th, 1998.

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1 Carroll.

2 THE COURT: Okay. Sergeant, if you would
3 come on up, please; and just step around to your right here.

4 Okay. If you could face me and
5 raise your right hand, please.

6
7 Whereupon,

8 JAMES CARROLL

9 having been called as a witness by the State and
10 having been first duly sworn to tell the truth, the
11 whole truth and nothing but the truth, was examined
12 and testified as follows:

13
14 THE CLERK: Thank you. Please be seated.

15 THE COURT: Sergeant, the attorneys are
16 going to ask you some questions here this morning. Please
17 answer them the best you can without arguing with any of the
18 attorneys.

19 Also, if there is an objection
20 to any question asked to you, please don't answer it unless
21 I tell you it's permissible to do so.

22 And just for your edification,
23 and as you probably know, but for the jury, if I overrule an
24 objection, then the witness can go ahead and answer. If I

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1 Were you working during the
2 morning hours, sir?

3 A Yes, I was.

4 Q And did there come a time that you were
5 requested to proceed to an area of a crime scene, a crime
6 area?

7 A That is correct.

8 Q Could you explain how you got that
9 information?

10 A We were dispatched in reference to a person
11 down, unknown injuries at the time; and we responded to the
12 location that was given to us via the radio and also by
13 computer.

14 Q Okay. This area, could you explain as to
15 where this area was?

16 A It's somewhat of an isolated area that many
17 target shooters and motorcycle riders use; and it's more or
18 less to the northwest area of Ann and the Lone Mountain
19 area, a very large desert area.

20 Q Now, you said there is a lot of target
21 shooters there.

22 From your experience, is it an
23 area where there aren't any residential houses?

24 A There are some, but they're quite a distance

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1 away.

2 Q And the immediate area where you were
3 responding to, is this an area where you've responded to or
4 patrolled before because of crime -- crimes that have been
5 committed in that area?

6 A That is correct. During the past -- during
7 that particular summer, I handled four homicides. There
8 have been suicides in the midnight hours. We've had several
9 stolen cars that were abandoned in that area; common dumping
10 ground.

11 Q Would it be fair to say that it's actually a
12 heavily traveled area?

13 A Actually, it is.

14 Q Now, describe the scene when you -- when you
15 got there -- and how did you get there?

16 A Um, got there by patrol vehicle; and once we
17 located the area, it was obvious that there had been a crime
18 scene.

19 So what I primarily do is I
20 make sure that the area is clear of any pedestrians, which,
21 at the time, there was any -- wasn't any; and we sealed the
22 area off and called for general assignment detectives.

23 Q Why do you do that, seal the area?

24 A Well, what we do is we seal the area so that

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1 MR. COUNTOU: Okay. Judge, I move to admit
2 State's Proposed Exhibit 1.

3 MR. SCISCENTO: No objection, Your Honor.

4 THE COURT: Proposed 1 is received.

5 MR. COUNTOU: Thank you.

6 (State's Exhibit 1
7 admitted into evidence.)

8 MR. COUNTOU: And I'll pass the witness,
9 Judge.

10 THE COURT: Mr. Sciscento.

11 MR. SCISCENTO: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SCISCENTO:

14 Q Is it Sergeant Carroll?

15 A Yes, sir.

16 Q Sergeant Carroll, is this area, depicted in
17 State's Exhibit 1 -- Your Honor, if I may walk around --

18 THE COURT: No. Go right ahead.

19 BY MR. SCISCENTO:

20 Q -- is that your general area of -- where you
21 patrol?

22 A I am responsible for that area, yes, sir.

23 Q Okay. And this is really an unincorp- -- or

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1 none of the contents of the crime scene could be
2 contaminated whatsoever.

3 Q And when you got to the crime scene, what
4 exactly did you observe that caused you to call general
5 assignment detectives?

6 A Well, we had a person who was down. It's a
7 general disarray of the area. The person wasn't moving.
8 Obviously, he was -- had expired.

9 And we immediately back out.
10 We don't search for evidence at that time, only victims and
11 anybody that might be down.

12 Q I'm going to draw your attention to State's
13 proposed Exhibit 1.

14 I ask you if you recognize
15 what's depicted here, sir?

16 A Yes, that's the power line road that runs
17 over -- beyond what we consider -- it's now Lone Mountain --

18 Q Okay.

19 A -- but it has no designated road name.

20 Q Does it accurately and fairly depict the
21 crime scene as you spotted when you arrived at the scene?

22 A Yes, it was. Part of it that -- I don't
23 recognize, because it's cut off, but it's generally the same
24 area, yes.

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1 undeveloped area in Clark County, Nevada?

2 A That is correct.

3 Q Okay. How many years prior to July 17th,
4 1998, or how many months prior, had you been patrolling that
5 specific area?

6 A Approximately seven to eight months.

7 Q Seven to eight months prior to July 1998?

8 A Yes, sir.

9 Q And you'd mentioned earlier that you
10 handled -- or you had responded to four homicides?

11 A In that general vicinity for that summer,
12 yes.

13 Q When you say the general -- the general
14 area, are you talking about this general area (indicating)
15 or --

16 A It would constitute the general area of the
17 power line road.

18 Q Okay. And this is power line road?
19 (Indicating)

20 If you --

21 A I can't tell from that. You can see the
22 power pole, but from the one on the right, the power line
23 road would be the one that intersects through the power
24 lines.

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1 Q This one? (Indicating)
 2 A Yes, sir.
 3 Q So this is the power line road?
 4 A Correct.
 5 Q So, prior to July -- so you were there seven
 6 months patrolling this area, this vicinity. Prior to July
 7 17th, 1998, you had four homicides.
 8 In what period of time were
 9 those four homicides?
 10 A We had a double homicide about a month
 11 within the span of this one here; and we had another one
 12 that fell somewhat in the fall season.
 13 Q In the fall season?
 14 A Yeah. Well, about September --
 15 Q The one --
 16 A -- August, September.
 17 Q The one -- the double homicide, was that the
 18 skinhead kids?
 19 A Yes.
 20 Q And that's where two bodies were discovered
 21 out there?
 22 A That is correct.
 23 Q Now, you drove out there on July 17th, 1998.
 24 How many ways can you get to

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1 A No. There is only one road for a patrol
 2 vehicle.
 3 Q Why is there only one road for a patrol
 4 vehicle?
 5 A It's the only one that we can drive through
 6 that we don't bottom out and get stuck in.
 7 Q So if you are going only on that one way --
 8 if you go the other ways, you probably can't get there in a
 9 regular vehicle?
 10 A Yes.
 11 Q A four by four, you probably could?
 12 A Oh, easy.
 13 Q So you only have one way to get there.
 14 Now, is this an area that is
 15 easy to get to if you don't know where it's at night?
 16 A I would say no, it's not easy to get there.
 17 Q So if somebody's never been there before,
 18 they probably wouldn't know how to get there and especially
 19 at night; do you agree with that?
 20 MR. COUNTOU: Objection; speculation.
 21 THE COURT: Overruled. Sergeant, if you
 22 know.
 23 THE WITNESS: I wouldn't know. I've only
 24 been there in the daytime.

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1 this from the highway?
 2 A There was only one in which we could take a
 3 patrol car. The rest was too rugged.
 4 Q It's too rugged?
 5 A Yes.
 6 Q Which way did you have to come to get there?
 7 A Through the power line road --
 8 Q Okay.
 9 A -- off of where Ann Road kind of curves.
 10 MR. SCISCENTO: If I may, Your Honor --
 11 THE WITNESS: It's very difficult to
 12 explain.
 13 BY MR. SCISCENTO:
 14 Q Is it an area which is lit -- lit up by
 15 street lights or anything like that?
 16 A No, sir. There is no lighting.
 17 Q There is no lighting whatsoever out here?
 18 A No.
 19 Q Other than maybe the moon?
 20 A If that.
 21 Q So at night, it will be almost pitch black?
 22 A Possibly.
 23 Q Okay. And you said there is only two
 24 roads -- ways to get out here; one is off of Ann Road?

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1 BY MR. SCISCENTO:
 2 Q Can you see the road? It's not illuminated
 3 at night?
 4 A It's not illuminated.
 5 Q How far from where the body was found to the
 6 nearest pavement is it, in your estimation, unless you know
 7 exactly?
 8 A Roughly a mile and a half, two miles.
 9 Q And it's all on dirt road?
 10 A Yes.
 11 Q It's all unlit?
 12 A Uh-huh; correct.
 13 Q So, again, somebody would have to know about
 14 this area in order to drive out there?
 15 A I don't know if they would have to know that
 16 or not.
 17 Q Okay. You don't think somebody could just
 18 stumble across it?
 19 MR. SCISCENTO: Withdraw that question, Your
 20 Honor.
 21 BY MR. SCISCENTO:
 22 Q When you arrived at the scene, did you
 23 notice any shells, that being gun shells, shotgun shells,
 24 any kind of shells on the ground?

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1 A There were hundreds throughout the area.
 2 Q Hundreds throughout that area?
 3 A Oh, yes.
 4 MR. SCISCENTO: If I may have the Court's
 5 indulgence for just one moment.

7 (Whereupon, a sotto voce at this time.)

9 BY MR. SCISCENTO:

10 Q So when you examined the area, you saw
 11 literally hundreds of shells?

12 A Yes, sir.

13 Q There were some new shells there?

14 A There were some new, some old.

15 Q Some old?

16 A Yes.

17 Q Dating from probably very recently to very
 18 old; would you agree with that?

19 A Yes. It's a common shooting area.

20 MR. SCISCENTO: Okay. No further questions,
 21 Your Honor.

22 THE COURT: Mr. Coumou.

23 MR. COUMO: Nothing further by the State.

24 THE COURT: Okay. Do any of the ladies and

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1 Whereupon,

2 KELLY NEIL

3 having been called as a witness by the State and
 4 having been first duly sworn to tell the truth, the
 5 whole truth and nothing but the truth, was examined
 6 and testified as follows:

8 THE CLERK: Thank you. Please be seated.

9 THE COURT: Sir, the attorneys are going to
 10 ask you some questions here this morning. Please answer
 11 them the best you can without arguing with any of the
 12 attorneys.

13 Also if there is an objection
 14 to any question asked to you, please don't answer it unless
 15 I tell you it's permissible to do so.

16 And could you state your name
 17 and spell your first and last name for the court reporter,
 18 please.

19 THE WITNESS: Kelly Neil; N-e-i-l.

20 THE COURT: Thank you very much.

21 Okay. Mr. Coumou.

22 MR. COUMO: Thank you, Judge.

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1 gentlemen of the jury have any questions for Sergeant
 2 Carroll?

3 (Negative response.)

5 THE COURT: Okay. Sergeant, thank you very
 6 much for coming to court and testifying this morning.

8 (Witness excused.)

10 THE COURT: Okay. The State may call its
 11 next witness.

12 MR. COUMO: Thank you, Judge.

13 The State calls Kelly Neil.

14 THE COURT: Okay. Mr. Neil, come on up here
 15 and step around to your right, please. Just go right and
 16 here, then like that.

17 THE WITNESS: Okay.

18 THE COURT: Okay. And if you could face me
 19 and raise your right hand, please.

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1 DIRECT EXAMINATION

2 BY MR. COUMO:

3 Q Mr. Neil, could you please explain to the
 4 jury what line of work are you in.

5 A I'm a crime scene analyst for the Las Vegas
 6 Metropolitan Police Department.

7 Q Can you explain exactly the duties that you
 8 have as a crime scene analyst?

9 A As a crime scene analyst, I respond to crime
 10 scenes to locate, recover and preserve items of physical
 11 evidence that would tend to prove or disprove that a crime
 12 has been committed and to document that crime scene with the
 13 use of photography, diagrams and notes.

14 Q Do you have to have any special type of
 15 training in order to qualify yourself for this type of work?

16 A I have a Bachelor's of Science degree in
 17 biology from Missouri Southern State College; two years of
 18 graduate study in molecular biology from Pittsburgh State
 19 University.

20 I have attended the Las Vegas
 21 Metropolitan Police Department Crime Scene Analyst Academy
 22 and field training program. I completed the Institute for
 23 Applied Science, Forensic Science program.

24 I have attended numerous crime

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1 scene and homicide investigation classes and responded to
2 approximately 1,400 crime scenes in the approximately three
3 years that I have worked for Metro.

4 Q And isn't it true you are required to take a
5 proficiency test every year for this type of work?

6 A Um, approximately every year, yes, that's
7 right.

8 Q Mr. Neil, were you working on June -- excuse
9 me -- July 17th, 1998 in the morning hours?

10 A Yes, I was.

11 Q And did there come a point during your shift
12 that you were requested to respond to a desert area, that is
13 to the west of Ann Road, Lone Mountain, Alexander Road?

14 A That is correct.

15 Q Could you explain the reasons why you got
16 called out there?

17 A I responded to that location reference a
18 dead body that had been located in that open desert open.

19 Q When you first got to the scene, describe
20 what you saw.

21 A The scene consisted primarily of an open
22 desert area with a road that ran -- a crudely constructed
23 road -- that ran to the north and south. There was a
24 circular area in the middle.

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1 there very long.

2 Q Could you -- could you compare the
3 difference why -- you said that there were shiny, compared
4 with all the other cartridge cases that were laying around.

5 A The others that were lying around were
6 corroded; they had obviously been rained on and there was
7 dust, dirt, that type of thing on -- on them; and the four
8 that I mentioned were clean, in a clean condition. They did
9 not have the dirt over the top of them, the corrosion. So
10 they -- they stood out from the rest in that regard.

11 Additionally, there were three
12 Winston cigarette butts that were laying in close proximity
13 to the victim, which also appeared, because of their clean
14 condition, that they had not been there for a great deal of
15 time.

16 Q But you have no idea how long they had
17 actually been there, correct?

18 A No. I would not have any way to know that.
19 But they just stuck out because it is an open desert area,
20 it is dirty out there, and they appeared to be clean.

21 Q Now, the cartridge cases that you found that
22 stuck out in your mind, were they of all the same caliber
23 size?

24 MR. SCISCENTO: Your Honor, I think I'm

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1 When I arrived, Metro uniformed
2 patrol officers had already secured the scene. Myself,
3 crime scene analyst Jessie Sams and crime scene analyst
4 supervisor Al Cabrales met with the homicide detectives at
5 an area just north of the scene.

6 Surveying the scene from a
7 distance, it was apparent there was a black male adult lying
8 on the ground in the circular turn-around area that I
9 mentioned. There was a pile of trash, lumber, two by four
10 type boards, lying off to the east of the victim.

11 Walking towards the scene
12 closer, it was apparent that there were numerous expended
13 cartridge cases lying all over the ground, literally
14 hundreds, apparently from people in that area target
15 shooting.

16 Walking further into the scene,
17 it was apparent that there was blood in the area of the head
18 and the upper torso of the victim. He was lying on his
19 back, his head to the north, his feet to the south.

20 Standing out from the numerous
21 cartridge cases that were littering the desert were four, in
22 particular, that were -- that appeared not to have been
23 there nearly as long as the rest. They were shiny cartridge
24 cases, in a condition that appeared that they had not been

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1 going to object at this point. I don't know if he said he
2 found them or if another officer found them and directed him
3 to them. I think we need to have to lay a little foundation
4 regarding that matter.

5 MR. COUNOU: I thought he said that he found
6 them.

7 THE COURT: I thought so too, but, again --

8 MR. SCISCENTO: If he, in fact, found them
9 then I withdraw the objection.

10 THE COURT: On that, Mr. Neil, did you find
11 the cartridge cases yourself?

12 THE WITNESS: As far as who initially saw
13 them first, I mean, there was a group of us that approached
14 the scene. I don't specifically recall who saw which one
15 first.

16 It was my duty to document
17 where they all were, photograph them and collect them.

18 THE COURT: Okay.

19 MR. SCISCENTO: Your Honor, if I may have a
20 quick voir dire.

21 THE COURT: Well, there is no -- there is no
22 exhibit present that's being offered, is there? So we can't
23 do voir dire.

24 But let's do this, Mr.

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1 Sciscento: If you want to object, go ahead and object. I'm
2 going to overrule it now, but go ahead. We'll listen.
3 If you don't feel there is a
4 proper foundation, go ahead and object, and we'll deal with
5 it.

6 Okay, Mr. Coumou, you may
7 proceed.

8 MR. COUMOU: Thank you.

9 BY MR. COUMOU:

10 Q You talked about these cartridge cases, and
11 I believe the last question was: If -- if four expended
12 cartridge cases that you found, could you explain as to the
13 location, approximate location, where they were and if they
14 were of the same caliber size.

15 A One of the cartridge cases was south of the
16 victim, towards the victim's feet. It was a .45 caliber
17 cartridge case.

18 Three of the cartridge cases
19 were in close proximity to the victim's head and were all
20 nine millimeter cartridge cases.

21 Q Now, what about the -- the cigarette butts
22 that you talked about; approximately where were they located
23 and what brand were they?

24 A They were Winston cigarette butts and they

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1 that you felt were recent ones, not the old ones laying
2 around, did you also -- you and your partners focus on any
3 other piece of evidence that was near the body?

4 A There were some -- there was an area near
5 the victim's head, and somewhat to the east, where there was
6 some overlapping partial footprints in the dirt which were
7 photographed.

8 Q In your opinion, were they of good quality?

9 A No, they were not, in my opinion.

10 Like I say, they were
11 overlapping and did not bear very much detail at all.

12 Q Mr. Neil, is it common -- well, let me ask
13 you this: Pursuant to your subpoena, did you bring anything
14 to court today?

15 A Yes, I did.

16 MR. COUMOU: If I may approach, Judge?

17 THE COURT: Yes, you may.

18 MR. COUMOU: Judge, if I can have these
19 items marked as 4 and 5.

20 THE COURT: This will be the envelopes
21 themselves?

22 MR. COUMOU: Yes. And I will have him
23 identify them in a second.

24 THE COURT: Okay.

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1 were all in close proximity to the victim, within a few feet
2 of the victim.

3 Q Now, did you ever look for a weapon in this
4 particular case?

5 A Yes, I did.

6 After the initial search of the
7 area where the victim was, myself and the others that I
8 mentioned, that were at the scene, did essentially a spiral
9 search, starting at the location where the victim was and
10 getting in larger circles out to locate any other evidence,
11 including a firearm, if it was apparent that he had likely
12 been shot.

13 Q And nothing was found?

14 A No, nothing was found.

15 Q Okay. Did you -- did you explain -- the
16 location, was there a wash close by to where the victim was?

17 A Yes, there was. Just to the west of the
18 victim, there is a pretty steep drop off; and after the
19 initial search of the plateau and the road area where the
20 victim was located, I did go down the embankment and
21 searched the surrounding area for where someone might have
22 thrown a weapon or any other potential evidence.

23 Q Now, Mr. Neil, after the location of the
24 cigarettes -- the cigarette butts and the cartridge cases,

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(Whereupon, State's Exhibits
4 and 5 marked for
identification.)

3 BY MR. COUMOU:

4 Q Mr. Neil, what did you do with the expended
5 cartridge cases that you did locate?

6 A I photographed them in place before --
7 before they were moved; placed numbers beside them to
8 identify them as to which casings they were; and then I
9 placed them in to a vial and secured them to take back to
10 the lab for fingerprint processing.

11 After that, they were placed in
12 this evidence bag that I have here, (indicating), which I
13 sealed and put my Metro identification number and the date
14 that I sealed these.

15 Q Explain to the jury exactly the process of
16 impounding something into evidence.

17 A After this package is sealed, it is
18 identified with writing on the outside of the envelope as to
19 what the contents are.

20 It is then placed in our
21 secured evidence vault, Metro's evidence vault, until such
22 time as it needs to be examined by firearms examiners or
23 reexamined or brought to court, as I did today.

24 Q Now, look at -- is that the same process

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1 that you did with the cigarette butts, that you just
2 explained?

3 A With the exception that I did not process
4 the cigarette butts for fingerprints, yes, it is. They
5 are -- it was sealed up and placed in the evidence vault.

6 Q Explain the processing of looking for
7 fingerprints on the cartridge cases.

8 How is that done?

9 A Um, first, I submit the cartridge cases to,
10 essentially, super glue fumes in a humid environment. This
11 allows whatever fingerprints might actually be there to be
12 affixed, so that when the processing is done it will not
13 wipe the fingerprints off.

14 Then a black fingerprint powder
15 is applied, hopefully, to adhere to whatever fingerprints
16 would be there.

17 In this case, there were none,
18 which is not that uncommon due to the fact that the surface
19 area on a cartridge case is very small; it doesn't leave a
20 whole lot of room for a fingerprint to be placed; and,
21 additionally, the high temperature that a cartridge case is
22 subjected to when the firearm is fired would tend to
23 evaporate the liquids, the moisture, that the fingerprint
24 would be placed with.

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1 and P number placed on the package.

2 Q And is that item still in the same or
3 substantially the same condition since you sealed it?

4 A This package, yes, it is.

5 MR. COUNTOU: Judge, I'll submit or move to
6 admit now State's Proposed Exhibit 4 into evidence.

7 THE COURT: Any objection?

8 MR. SCISCENTO: No objection.

9 THE COURT: Proposed 4 is received then.

10 (State's Exhibit 4
11 admitted into evidence.)

12 MR. COUNTOU: And the State will not ask to
13 open this.

14 THE COURT: Okay.

15 BY MR. COUNTOU:

16 Q Now, Mr. Neil, look now at State's Proposed
17 Exhibit 5; and ask if you recognize that?

18 A Yes, I do. This is a package containing the
19 Colt .45 cartridge case and the three nine millimeter Ruger
20 cartridge cases that I spoke of previously, which I sealed
21 and put my initials and P number and the date and placed it
22 into evidence.

23 Q And is that evidence envelope still in the
24 same condition as it was when you sealed it?

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1 Q In the time that you've spent -- you said
2 about three and a half years with the Las Vegas Metro --

3 A Approximately three years.

4 Q Three years?

5 -- have you ever recovered
6 fingerprint, latent fingerprints, from an expended cartridge
7 case -- a cartridge case that has been fired?

8 A No, I haven't, and I've processed a lot of
9 them.

10 Q And in this particular case, your results
11 were negative?

12 A That is correct. I did not get any
13 fingerprints from the cartridge cases.

14 Q Look at State's Proposed Exhibit 4.

15 Do you recognize that?

16 A Yes, I do. This is a package containing the
17 three Winston cigarette butts that I talked about earlier,
18 which I sealed.

19 Q Okay. Is it still in the same sealed
20 condition as it was when you sealed it, sir?

21 A Yes, it is.

22 Q Has it been opened since you sealed it?

23 A With the exception that it had been opened
24 by the forensic section and then resealed with their name

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1 A With the exception that it has been examined
2 by the forensic section of the Metropolitan Police
3 Department, yes, it is.

4 Q Okay. Do you know who that person is who
5 examined it?

6 A One name I recognize as Torrey Johnson. The
7 other one, I believe to be Robert Rees, but I can't quite
8 make out the last name very well.

9 Q With a pair of scissors, can you --

10 THE COURT: We have them.

11 MR. COUNTOU: Oh, you already have them.

12 BY MR. COUNTOU:

13 Q Could you please open that evidence envelope
14 and do so without disturbing any of the current seals on
15 there.

16 And as you remove the items,
17 please explain what you have in your hand, sir.

18 A Is it all right if I line them up out here
19 and then explain what they are?

20 Q Yes.

21 A This item is the .45 caliber cartridge case
22 that I mentioned that was recovered. (Indicating)

23 These three items are the nine
24 millimeter cartridge casings that I recovered. (Indicating)

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1 Q Now, have you listed these by numbers so
2 that when you refer to -- you mentioned that they were first
3 photographed.

4 A Yes.

5 Q -- that you can actually detail where each
6 and every one of those --

7 A Yes.

8 Q -- expended casings was located?

9 A There are markings on the outside indicating
10 this is item two, three, five, and that this is item six.
11 (Indicating)

12 MR. COUNOU: Judge, if I could maybe have
13 that and ask the clerk to mark them correspondingly as 5-A,
14 -B, -C and -D.

15 THE COURT: Okay. Mr. Sciscento, is there
16 going to be an objection to admitting these?

17 MR. SCISCENTO: No, Your Honor.

18 THE COURT: Okay. Those will be marked and
19 received.

20 MR. COUNOU: Thank you.
21 (State's Exhibits 5-A through
22 5-D admitted into evidence.)

23 BY MR. COUNOU:

24 Q Isn't it true, sir, that the .45 colt

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1 BY MR. COUNOU:

2 Q Mr. Neil, these have been premarked as
3 State's Proposed Exhibits 6 through 20.

4 I ask if you could look at them
5 collectively, on your own; and ask if you recognize what's
6 depicted?

7 A I recognize each of these as enlargements of
8 photographs that I took on the date and time that we were
9 speaking of, depicting the crime scene and items of evidence
10 within the crime scene.

11 Q Do all those photographs fairly and
12 accurately depict the crime scene as you saw it on July
13 17th, 1998?

14 A Yes, they do.

15 MR. COUNOU: Judge, I move to admit now
16 State's Proposed Exhibit Numbers 6 through 20.

17 MR. SCISCENTO: No objection.

18 THE COURT: Proposed 6 through 20 are
19 received.

20 (State's Exhibits 6 through
21 20 admitted into evidence.)

22 BY MR. COUNOU:

23 Q Did you also prepare a crime scene diagram
24

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1 cartridge case is of a different -- substantially different
2 size than the nine millimeter, correct?

3 A Yes. It's quite a bit larger.

4 Q Did you happen to look at the name brand
5 of -- what type of brand those expended cartridge cases
6 were?

7 A The .45 caliber bore the head stamp "Colt
8 .45." The three nine millimeter cartridges bore the head
9 stamp "WIN", which indicated a Winchester nine millimeter
10 Ruger.

11 Q And all three nine millimeter expended
12 cartridge cases were of the same brand?

13 A Yes, they were; they were of the same stamp.

14 Q You also mentioned that there were
15 photographs taken, correct?

16 A That's correct.

17 MR. COUNOU: Judge, if I could have the
18 clerks render us State's Proposed Exhibits 6 through 20.

19 MR. COUNOU: May the record reflect I'm
20 showing the defense counsel State's Proposed Exhibits 6
21 through 20.

22 THE COURT: The record will so reflect.

23 MR. COUNOU: May I approach, Judge?

24 THE COURT: Yes, you may.

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1 in this particular case, sir?

2 A Yes, I did.

3 MR. COUNOU: Okay. Court's indulgence.

4 If the record could reflect I'm
5 showing defense counsel State's Proposed Exhibit Number 2.
6 BY MR. COUNOU:

7 Q Mr. Neil, showing you State's Proposed
8 Exhibit 2, do you recognize what's depicted here?

9 A Yes, I do. This is an enlargement of the
10 crime scene diagram that I constructed depicting the crime
11 scene and the items of evidence therein.

12 Q Would this item -- this diagram help in your
13 testimony as to the location and the impounding of certain
14 key pieces of evidence that you impounded?

15 A Yes, it does. It indicates the pertinent
16 items of evidence.

17 MR. COUNOU: Judge, I move to admit State's
18 Proposed Exhibit Number 2.

19 MR. SCISCENTO: No objection.

20 THE COURT: Proposed 2 is received.

21 (State's Exhibit 2
22 admitted into evidence.)

23 MR. COUNOU: Okay.

24 Mr. Neil, I'm going to ask you

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1 if you could maybe get down from your seat.

2 THE COURT: Okay. And, Mr. Neil, maybe you
3 could stand in front of the court reporter here and --

4 THE WITNESS: Okay.

5 THE COURT: -- so the jury -- I just want to
6 make sure everybody can see.

7 MR. COUMOU: Maybe you could stand over here
8 and use the pole. Just don't hit the court reporter.

9 THE WITNESS: Okay. Would this work for you
10 or maybe --

11 MR. COUMOU: Maybe if you stand over there,
12 it would be easier.

13 THE WITNESS: Okay.

14 BY MR. COUMOU:

15 Q Now, describe to the jury what exactly is
16 depicted here.

17 A Okay. This is an open area of rough desert,
18 the entire surrounding area. This is the north-south road
19 that I indicated earlier. (Indicating) There were a
20 circular turn-around area right here. (Indicating)

21 This is the pile of trash that
22 I spoke of, which contained the two by four lumber pieces --
23 can you see?

24 (Affirmative response.)

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1 the east of the victim.

2 Q Now, I draw your attention to State's
3 Exhibit 16 -- and go ahead and hold it up for the jury.

4 Describe what's there.

5 A Okay. The photograph indicates items two,
6 three and five, which are -- two, three and five -- the
7 Winchester nine millimeter cartridge cases.

8 The footwear evidence, number A
9 and B, which is right here. (Indicating)

10 Items number one, four and --
11 let's see, which is the other one -- seven, which is a
12 little bit difficult to see from this angle, but one, four
13 and seven, the Winston cigarette butts. (Indicating)

14 Q Now, I'm going to show you State's Exhibit
15 13, 18 and 19. And if you could maybe hold -- I'll take
16 that one from you --

17 A Okay.

18 Q -- hold that up for the jury and explain
19 what those are close ups of.

20 A Okay. The exhibit labeled two in the
21 photograph here is the nine millimeter cartridge casing,
22 which was from this location. (Indicating)

23 THE COURT: Mr. Neil, could you kind of
24 maybe give the jury a panorama -- I mean, the jurors so they

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1
2 THE WITNESS: This is the victim, lying on
3 his back with his head to the north, (indicating), the area
4 of blood around the head and upper torso.

5 Items two, three and five are
6 the nine millimeter Ruger cartridge cases that we're
7 referring to.

8 Item number six, down here
9 below, is the Winchester cartridge.

10 Items one, four and seven are
11 the Winston cigarette butts that we were speaking of.

12 And this item A and B was the
13 partial footwear prints that we were speaking of.

14 BY MR. COUMOU:

15 Q Now, is this exactly to scale or is it just
16 in order to represent the findings of some of the pertinent
17 pieces of evidence?

18 A It is not to scale; and it is, as you said,
19 just to illustrate the relationship between the items of
20 evidence.

21 Q Now, you said there were partial footprints
22 and they were located as they are marked or is that
23 exactly --

24 A Approximately in this area, (indicating), to

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1 can all see.

2 THE WITNESS: Okay.

3 THE COURT: Ladies and gentlemen, by the
4 way, the items that have been admitted into evidence, once I
5 say they're received in evidence, you will have a chance to
6 review them further at the appropriate time as well.

7 THE WITNESS: The photograph identified by
8 the number three is an additional Winchester nine millimeter
9 cartridge case, which would be depicted by this number
10 three. (Indicating)

11 And item number five, likewise,
12 is a Winchester nine millimeter cartridge case lying on the
13 ground, which would be indicated by this number five.
14 (Indicating)

15 BY MR. COUMOU:

16 Q Since those are close ups, does it also
17 represent what you were dealing with, as you explained
18 earlier, that there is a lot of expended cartridge cases
19 around that?

20 A Absolutely.

21 Q And does that depict the different stage of
22 corrosion of expended casings that have been weathered or
23 have not been weathered in that area?

24 A Yes, it does.

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Q So when you look at this photograph, is that the reason why you picked, in this particular case, the area of number two, three and five, as being possibly of value in this particular case?

A Yes, it was.

Q And explain again that reason why those -- those three nine millimeter expended cartridge cases stood out when looking at the surrounding area?

A Well, because -- I don't know if you can see in the photograph here, but there are littered around the area numerous cartridge cases which are brown in color, corroded. These quite readily stand out as being shiny, clean, newer, more recently placed cartridges.

Q Now, you said that you have responded to thousands -- well, a lot of crime scenes by now?

A Approximately 1400.

Q Is it common that you impound, such as in this case, cigarette butts that may turn out not to be part of this crime scene.

A Yes. In an effort not to leave anything behind that might actually be potential evidence, and due to the fact that they did appear to be relatively fresh, that is why I would collect something like that.

Q Okay. And in this particular case, to your

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any report of or commentary on the trial or any person connected with this trial, by any medium of information, including, but not limited to, newspapers, television, the Internet or radio;

Or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

What I would ask you to do is meet Lisa at 1:30 right outside the door here and we'll get started promptly at 1:30 this afternoon.

MR. SCISCENTO: Your Honor, if you will excuse me, if we could approach for a moment?

THE COURT: Yes.

(Unreported discussion at the bench.)

THE COURT: Okay. Ladies and gentlemen, as I mentioned to you yesterday when we did the opening charge to the jury, right after the jury was sworn in, that if you do see the attorneys or whatever out in the hallway and all, they won't be able to talk to you.

So they're, again, not being impolite and all like that. They're just not permitted to talk to you.

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knowledge, you didn't know whether or not they were part of this crime scene or not, correct?

A No, I --

Q Okay.

A -- I had no way of knowing that.

Q Was it a judgment call on your part and the detectives at the scene?

A Yes, it was.

MR. COUMOU: Go ahead and have a seat, sir. Court's indulgence. Judge, I believe I'll pass the witness.

THE COURT: Okay. I think, Mr. Sciscento, we better take our noon break here now. I'm sure you will have some cross-examination.

Mr. Neil, can you come back at 1:30? Is that okay?

THE WITNESS: Okay.

THE COURT: Okay. Ladies and gentlemen, we're going to go ahead and take our lunch recess.

During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with the trial;

Or to read, watch or listen to

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So you can't ask them anything or they can't acknowledge you in any way during the course of this trial. And that applies to witnesses as well in this particular case.

Okay. So we'll see you back here at 1:30 this afternoon.

(The following proceedings were had in open court outside the presence of the jury.)

THE COURT: Okay. Let the record reflect the jury has left the courtroom.

Is there any matters to put on the record before we take our noon recess?

MR. COUMOU: Nothing by the State, Judge.

THE COURT: Mr. Sciscento, anything?

MR. SCISCENTO: No, nothing, Your Honor.

THE COURT: Okay. We will be in recess until 1:30.

(Recess in proceedings.)

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1 Las Vegas, Nevada, Wednesday, October 13, 1999, 1:30 p.m.

2
3 * * * * *

4
5 (The following proceedings were had in open
6 court in the presence of the jury:)

7 THE COURT: Okay. This is the continuation
8 of Case Number C154293, State of Nevada versus Brendan J.
9 Nasby.

10 Let the record reflect the
11 presence of Mr. Nasby, together with his attorneys Joe
12 Sciscento and Frederick Santacroce; and the State of Nevada
13 represented by Frank Coumou, deputy District Attorney.

14 Mr. Coumou, will you stipulate
15 to the presence of the jury?

16 MR. COUMOU: We do, Judge.

17 THE COURT: Mr. Sciscento?

18 MR. SCISCENTO: Yes, we do.

19 THE COURT: Okay. When we finished up this
20 morning, we finished Mr. Neil's direct examination; so, we
21 can go ahead -- and, Mr. Sciscento, you can continue your
22 cross-examination.

23 Mr. Neil, you are still under
24 oath from your testimony earlier this morning.

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1 A Approximately 2.1 miles.

2 Q Okay. Approximately 2.1 miles.

3 And is this illuminated out
4 here anywhere? Is there any lights out there?

5 A Not that I recall, no.

6 Q So at nighttime, it would probably be dark
7 and hard to see?

8 A Apparently so, yes.

9 Q Because there was no apparent street lights
10 at all?

11 A None that I noticed, no.

12 Q Okay. And how many roads -- how many access
13 roads do you have to get to the point where you found the
14 body?

15 A Just one road actually.

16 Q Okay. And somebody who hadn't been there
17 before, would you agree, might have trouble finding that
18 place at night?

19 MR. COUMOU: Objection; speculation.

20 THE COURT: Sustained.

21 BY MR. SCISCENTO:

22 Q The road that you traveled to get out there,
23 is it a lit road? Is it lit, illuminated?

24 A No, it is not.

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1 MR. SCISCENTO: Thank you, Your Honor.

2
3 CROSS-EXAMINATION

4 BY MR. SCISCENTO:

5 Q Is it officer or Mr. Neil?

6 A Mr. Neil.

7 Q Mr. Neil.

8 Let me show you -- I think it's
9 State's Exhibit 1.

10 Do you recognize this?

11 A Yes, I do.

12 Q Okay. Is this a blown up picture of a
13 photograph that you took?

14 A Of two separate photographs, yes.

15 Q Did you take this photograph or --

16 A Yes, I did.

17 Q This is from the air?

18 A Right.

19 Q And you did that?

20 A Yes, I did.

21 Q Okay. And do you remember how far the
22 nearest road is to where this body was found?

23 A The nearest paved road?

24 Q Paved road.

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1 Q Is it paved?

2 A The last segment --

3 Q From the 2.1 miles?

4 A No, it is not.

5 Q Are there a lot of ruts in there?

6 A Yes, there were.

7 Q A lot of undulations?

8 A By which you mean waves?

9 Q Waves.

10 A Yes, it's --

11 Q It's a narrow -- it's a narrow road --

12 A Yes, it is.

13 Q -- would you agree with that? Okay.

14 And this canyon right here,
15 (indicating), is probably about what -- how many feet?

16 A My recollection is it would be -- the
17 initial drop off would have been about 10 to 15 feet and it
18 sloped down in to a gully.

19 Q And that could be a hazard if you didn't see
20 it and you drove over it; would you agree with that?

21 A I would agree with that, yes.

22 Q Now, the photographs that you took of the
23 area, do you acknowledge that there were numerous shells
24 there?

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1 A Cartridge cases, yes.
 2 Q Okay. How many do you think were there?
 3 How many do you think?
 4 A I'm just guessing there were several
 5 hundred.
 6 Q You acknowledged earlier that Exhibits 16
 7 through 20 are the photographs that you took --
 8 A Yes.
 9 Q -- correct?
 10 Let me ask you: These little
 11 orange cones that we find on the photographs, what do those
 12 depict?
 13 A Orange cones?
 14 Q Let me see if I can get -- on number five.
 15 That's State's Exhibit 13.
 16 A Initially, on the walk through of the scene,
 17 whenever an item of potential evidence would be located, an
 18 orange cone would be placed by it so that, subsequently, we
 19 might not miss it.
 20 Q And who put those cones there?
 21 A Um, it would have been one of the three
 22 of -- of the crime -- of the three that are at the crime
 23 scene, but, ultimately, the responsibility of picking up the
 24 evidence would be my responsibility.

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1 would --
 2 A Well, the officer wouldn't. I would. Or
 3 the other crime scene analyst that was there would.
 4 Q Okay. And that markings of the cones,
 5 number one through five, or A or B, whichever ones you have
 6 there, indicate potential -- potentially where the evidence
 7 was located?
 8 A That's correct.
 9 Q That being the shells or the cigarettes?
 10 A Or the footwear.
 11 Q Or the footwear. Okay.
 12 On State's Exhibit 14, do you
 13 recognize this?
 14 A Yes.
 15 Q What's depicted in that?
 16 A Multiple expended cartridge cases.
 17 Q Okay. And in the middle, is there a shiny
 18 shell there.
 19 A Yes, there is.
 20 Q Which shell is that, do you know?
 21 A Um, from this photograph, it appears to be a
 22 nine millimeter cartridge case.
 23 Q Which number is it, one through five?
 24 A Um, these are not numbered. Um, it would be

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1 Q So the ultimate responsibility of picking up
 2 the evidence would be yours?
 3 A Yes.
 4 Q Again, who placed these cones there? Did
 5 you place these cones there, these numbered one through
 6 five, which are depicted in State's Exhibit 16? Did you
 7 place those cones there?
 8 A Yes. Differentiating between the orange
 9 cones and the numbers, I did place each of the numbers there
 10 myself.
 11 Q But not the cones?
 12 A Not necessarily all the cones, no.
 13 Q Okay. The cones depict different cartridges
 14 you may have found?
 15 A Or the cigarette butts.
 16 Q Or the cigarette butts
 17 You mentioned earlier that
 18 there were numerous, maybe hundreds of shells, correct?
 19 A Uh-huh.
 20 Q And you or some officer focused on specific
 21 shells that looked new; is that correct?
 22 A That is correct.
 23 Q Okay. And you said that the officers then
 24 would gather the -- put a cone or marker near them or you

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1 one of the -- I would have to look at the numbered
 2 photograph to tell you specifically which one it was.
 3 We like to photograph the
 4 evidence without any other encumbrance, as well as
 5 photograph it with a numeral placed.
 6 May I see that one as well?
 7 Okay. This one was number
 8 five. (indicating)
 9 Q What makes you think it's number five?
 10 A Okay. Do you see this cartridge case right
 11 here? (indicating)
 12 Q Yes.
 13 A It's this one, this one right here.
 14 THE REPORTER: Speak up a little.
 15 THE WITNESS: I'm sorry. I'm just comparing
 16 the cartridge cases; this one being this cartridge case;
 17 (indicating); this cartridge case being this one, the
 18 central one, which we're referring to as number five being
 19 right here.
 20 There is some pieces of rock;
 21 you can see the same pieces of rock and how these little
 22 rocks match up. (indicating)
 23 BY MR. SCISCENTO:
 24 Q And where was number five located?

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1 A Number five is located up in here to the
2 victim's right or to the west of the victim. (Indicating)

3 Q Okay. So I believe your -- you have a
4 report that you wrote on this, right; is that correct?

5 A No, I did not write the report.

6 Q Did you write an evidence impound report?

7 A That's correct.

8 Q You did?

9 A Yes.

10 Q Okay. And that's your name and, I'm
11 assuming, signature there; is that correct? (Indicating)

12 A Yes, it is.

13 Q Okay. And on there, item number five is
14 located, if you can refer -- if you don't remember, if you
15 can refer to your notes.

16 Can you tell the jury where
17 item number five is located?

18 A Item number five, the cartridge case stamped
19 Winchester nine millimeter Ruger, four feet west of the
20 victim.

21 Q And items -- I think it's --

22 A Two and three.

23 Q -- two and three, which also are the
24 Winchester nine millimeter Rugers, where are they located in

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1 Q Were any of those shells ever disturbed
2 while you were there?

3 A Not to my knowledge, no.

4 Q Did anybody ever pick them up and move them?

5 A No, that would not have been done.

6 Q How long have you been in crime scene
7 analysis?

8 A Approximately three years.

9 Q And I don't recall. What kind of schooling
10 did you have to -- specifically on fingerprint analysis?

11 A Okay. The Las Vegas Metropolitan Police
12 Department crime scene analyst academy, we go over
13 essentially all available methods of fingerprint processing.

14 In the field training portion
15 of that, we employ that in real life situations when we are
16 on crime scenes doing that, but under direct supervision.

17 Q Okay.

18 A I've attended the Federal Bureau of
19 Investigation's latent fingerprint identification school and
20 numerous other crime scene investigation classes that
21 included a fingerprint processing component to them.

22 Q Now, in those trainings, did they ever tell
23 you could recover fingerprints from a shell?

24 A Absolutely.

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1 relationship -- go ahead and keep that.

2 A Okay.

3 Q -- to the body?

4 A With respect to the body, item number
5 three -- or item number two, which is one of the other
6 Winchester cartridge cases is in this location. Item number
7 three is in this location. (Indicating)

8 Q Okay. According to the report that you
9 wrote, exactly where?

10 A Okay. Two would be seven feet seven inches
11 north of the victim's head, which is this one by number two.
12 (Indicating)

13 Three would be in the dirt five
14 feet two inches north of the victim's head, which is this
15 one. (Indicating)

16 Q And number five?

17 A And number five, we already mentioned, from
18 the dirt, four feet west of the victim --

19 Q Okay.

20 A -- right here. (Indicating)

21 Q So you have two cartridges that are found
22 north of the victim and one cartridge which is found west of
23 the victim?

24 A That's correct.

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1 Q They said you could?

2 A Yes.

3 Q But in your year and a half or three years
4 experience, you said you've never recovered -- first, is it
5 three years or one and a half years?

6 A It's three years at this point, and it had
7 been approximately two years at the point of the crime.

8 Q Two years at that point --

9 A Right.

10 Q -- that being July 1998 --

11 A Uh-huh.

12 Q -- you had never recovered fingerprints from
13 a shell?

14 A Not in a real life situation. We had done
15 it in experiments to use different types, but not -- no, I
16 have not.

17 Q And so why did you attempt to recover the
18 fingerprints from these shells if you knew you couldn't do
19 them?

20 A Well, I didn't know I couldn't. I know that
21 the likelihood is not that great, but, obviously, you can't
22 just not do it because it's not a good likelihood. There is
23 a chance that a fingerprint might possibly be there.

24 Q There was none located on this one?

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1 A No.
 2 Q The cigarette butts that you had --
 3 A Yes.
 4 Q This is in the middle of July, right?
 5 A Yes.
 6 Q And so, in Las Vegas, it's fairly hot out,
 7 especially in July.
 8 And the sun tends to bake
 9 things; would you agree with that?
 10 A I would agree.
 11 Q Okay. And it would -- paper would probably
 12 start browning or deteriorating rather quickly; would you
 13 agree with that?
 14 A I suppose it's possible, yes.
 15 Q Okay. And so you identified these Winston
 16 butts as something that you had thought were fresh?
 17 A That's correct.
 18 Q Okay. And you took those out; you secured
 19 those --
 20 A Right.
 21 Q -- and you ran them for fingerprints?
 22 A No, I did not.
 23 Q Okay. Did you do anything else with them
 24 other than recover them?

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1 Q So that what was an attempt to gather
 2 evidence?
 3 A That's correct.
 4 Q So it was more than just yourself doing
 5 that?
 6 A Attempting to locate evidence?
 7 Q Yeah.
 8 A That's correct.
 9 Q So there was more than one person attempting
 10 to locate evidence?
 11 A That is correct.
 12 Q Okay. How many people were attempting to
 13 locate evidence then on that date?
 14 A Myself, two other crime scene analysts and
 15 two homicides detectives.
 16 Q Would you agree that a bullet, not the
 17 cartridge itself, but a bullet is a valuable piece of
 18 evidence?
 19 A Yes.
 20 Q Did you locate or recover any of the
 21 bullets?
 22 A Did not recover -- did not locate, but did
 23 recover a bullet.
 24 Q You located it?

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1 A No. I recovered them and impounded them and
 2 sealed them, as I earlier stated.
 3 Q Specifically at this crime scene, whose job
 4 was it to gather the evidence?
 5 A It was my job.
 6 Q And what -- who determines what is valuable
 7 evidence and invaluable evidence?
 8 A Well, that would be a group effort between
 9 myself, the crime scene analyst that was working with me,
 10 the crime scene analyst supervisor and the homicide
 11 detectives at the case.
 12 Q So it's a group thing?
 13 A Yes.
 14 Q How many people were there gathering
 15 evidence on that date that you found?
 16 A Actually gathering evidence, I was the only
 17 one doing that.
 18 Q There wasn't anybody else there helping you?
 19 A Helping me gather it? No.
 20 Q What about that spiral that you guys did
 21 with the officers?
 22 A Yes, that -- several of us were included in
 23 that spiral, but that's at the point that I told you which
 24 we would put cones down if we see something.

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1 A Yes.
 2 Q You personally located it?
 3 A I don't specifically know who saw it first.
 4 When we were examining the body with the coroner
 5 investigator is when the bullet was noticed. I -- I don't
 6 know specifically who saw it first, if that's what you mean.
 7
 8 (Whereupon, a sotto voce at this time.)
 9
 10 BY MR. SCISCENTO:
 11 Q While you were at this crime scene, did you
 12 closely examine the body?
 13 A I did not closely examine the body. I did
 14 examine the body while the coroner investigator was
 15 examining the body.
 16 Q The coroner was out there at that time?
 17 A The coroner investigator, yes.
 18 Q Did the coroner, in your view, ever move the
 19 body at all?
 20 A Prior -- well, I know he moved it to get it
 21 out of the area.
 22 Q Right. But during the investigation, did he
 23 ever move the body around at all?
 24 A Yes.

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1 Q Okay. What did the coroner do, can you
2 please describe to the jury?
3 A I don't know everything that the coroner did
4 in terms of examining the body.

5 A lot of what he would do would
6 be visual, but we did -- the coroner's investigator did roll
7 the body over so that we could view the back of the victim
8 and take a photograph of the back of the victim.

9 Q And did you take a photograph of that
10 victim?

11 A Yes, I did.

12 Q And you, in fact, did take a picture of the
13 back of the body; am I correct?

14 A Yes, I did.

15 Q And on the back of the body were numerous
16 shells; is that correct? Do you recall?

17 A I -- I believe that there were several that
18 were stuck to the body, when he rolled the body over.

19 Q I'm sorry. That's a yes?

20 A Several pieces of debris anyway. I don't
21 recall specifically if they were cartridge cases or not.

22 (Whereupon, a sotto voce at this time.)
23
24

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1 A Somewhat.

2 Q Down below the cone, I think there is two
3 other shells there.

4 A Uh-huh.

5 Q Would you consider those shells shiny?

6 A Somewhat shiny. I mean, there are several
7 stages of corrosion on the different ones.

8 Q Do they look somewhat new?

9 A Newer than others, but --

10 Q Okay. But you didn't photo- -- you didn't
11 identify those as possible evidence, did you?

12 A We didn't feel that they were related to the
13 case, no.

14 Q When you examined this body out there at the
15 crime scene, did you note where the bullets holes were?

16 A I did not make note. Jessie Sams, the other
17 crime scene analyst, did that.

18 Q Okay. And so when the coroner was
19 investigating the body out there, you didn't make note of
20 where the bullet holes were?

21 A No.

22 MR. SCISCENTO: Okay.
23
24

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1 BY MR. SCISCENTO:

2 Q Investigating this crime scene, did you
3 personally touch the body or remove anything from the body?

4 A I did not remove anything from the body.

5 I don't recall -- I'd also
6 taken photographs, so it would be unlikely that I would
7 touch the body. I don't specifically recall whether I
8 touched the body or not.

9 Q How long did you investigate the site?

10 A Without my notes, I'm not sure. We arrived
11 at approximately 9:30 in the morning.

12 Q Okay.

13 A And I would say a couple hours we were
14 actually at the scene.

15 Q Let me show you State's Exhibit 18.

16 That's -- do you recognize that
17 photograph?

18 A Yes.

19 Q In that photograph, you have a shell.

20 A Uh-huh.

21 Q Next to it, there is a complete bullet; is
22 that correct?

23 A That's correct.

24 Q Does that look shiny?

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1 BY MR. SCISCENTO:

2 Q Let's focus also on the other thing: You
3 said that you recovered the shells and you recovered the
4 cigarettes and you also noticed some footprints.

5 A Yes.

6 Q Okay. Now, in your experience and training,
7 what do footprints tell you?

8 A Um, reasonably, that someone had been
9 standing at that location.

10 Q Okay. This is out in the middle of the
11 desert --

12 A Yes.

13 Q -- am I correct?

14 There is not a lot of trees
15 around there, is there?

16 A There are none that I can recall.

17 Q This is open to weather, correct?

18 A That's correct.

19 Q And you found what you considered fresh
20 footprints?

21 A I would say so, yes.

22 Q How fresh would you guess? Could you know
23 how fresh you think those footprints were?

24 A I couldn't say.

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1 Q Okay. But it was fresh enough for you to
2 determine that they may be evidence?

3 A That's correct.

4 Q And you took the photographs of that?

5 A I took overall color photographs of it.
6 Jessie Sams and the crime scene analyst supervisor took
7 black and white close up photographs.

8 Q And what was the purpose of you taking the
9 pictures of the photographs of the footprints?

10 A Um, it would be somewhat analogous to a
11 fingerprint, in that if we recovered footwear from a suspect
12 later on, we could possibly match the pattern from the
13 bottom of the shoe back to the -- the footprint left at the
14 scene.

15 Q Is it your job to compare footprints?

16 A No, it is not.

17 Q Have you ever done footprint comparisons?

18 A Other than in class, no.

19 MR. SCISCENTO: No.

20 Okay. I have no further
21 questions, Your Honor.

22 THE COURT: Redirect, Mr. Coumou?

23 MR. COUMOU: Nothing, Judge.

24 THE COURT: Do any of the ladies and

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1 Whereupon,

2 JERIMIAH DESKIN

3 having been called as a witness by the State and
4 having been first duly sworn to tell the truth, the
5 whole truth and nothing but the truth, was examined
6 and testified as follows:

7 THE CLERK: Thank you. You may be seated.

8 THE COURT: Sir, just have a seat.

9 The attorneys are going to ask
10 you some questions here this afternoon. Please answer them
11 the best you can without arguing with any of the attorneys.

12 Also, if there is an objection
13 to any question asked to you, please don't answer it unless
14 I tell you it's permissible to do so.

15 And could you state your name
16 and spell your first and last name for our court reporter,
17 please.

18 THE WITNESS: Jeremiah Deskin;

19 J-e-r-i-m-i-a-h, D-e-s-k-i-n.

20 THE COURT: Okay. Mr. Coumou, you may
21 proceed.

22 MR. COUMOU: Thank you, Judge.

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1 gentlemen of the jury have any questions for Mr. Neil?

2 (Negative response.)

3 THE COURT: Okay. Mr. Neil, thank you very
4 much for coming to court and testifying this morning and
5 this afternoon. You are excused.

6 (Witness excused.)

7 THE COURT: Okay. The State may call its
8 next witness.

9 MR. COUMOU: Thank you, Judge.

10 The State calls Jeremiah

11 Deskin.

12 THE COURT: Okay. Mr. Deskin, just step
13 around to your right, please, here; and if you could face me
14 and raise your right hand.

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1 DIRECT EXAMINATION

2 BY MR. COUMOU:

3 Q Mr. Deskin, are you familiar with a group
4 called the L.A. Crazy Riders?

5 A Yes.

6 MR. SCISCENTO: Your Honor, I don't know if
7 I'm putting this right --

8 May we approach for a moment?

9 THE COURT: Yes.

10 (Unreported discussion at the bench.)

11 THE COURT: Okay. Mr. Coumou, you may
12 proceed.

13 MR. COUMOU: Thank you.

14 BY MR. COUMOU:

15 Q Are you familiar with a group called the
16 L.A. Crazy Riders?

17 A Yes.

18 Q Tell the jury what this group is all about.

19 A It is a gang.

20 Q Among with who? Were you a member of this
21 gang?

22 A No, sir.

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1 Q Okay. What -- what kind of relationship did
2 you have with this gang?
3 A Kind of like an acquaintance -- as friends
4 maybe.
5 THE COURT: Sir, speak up if you could,
6 please; and you can address your comments towards the jury
7 as well.
8 THE WITNESS: Okay.
9 BY MR. COUNOU:
10 Q So you were kind of like friends with them?
11 A Yes.
12 Q Members of this gang, did they trust you?
13 A Um, yes.
14 Q Now, do you see anybody here in court today
15 that was the leader or the -- the head honcho of this gang?
16 MR. SCISCENTO: I'm going to object to that
17 as leading, Your Honor.
18 THE COURT: Sustained. Rephrase.
19 MR. COUNOU: Sure.
20 BY MR. COUNOU:
21 Q Do you see anybody that was a member of this
22 gang here in court today?
23 A Yes.
24 Q Can you please point to him or her, who this

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1 A Um, a lot of -- a lot of the other people --
2 MR. SCISCENTO: Your Honor, I'm going to
3 object to this as speculation and hearsay.
4 MR. COUNOU: Well, Judge, I don't think--
5 THE COURT: I haven't heard the answer yet,
6 Mr. Sciscento. I mean, right now --
7 MR. SCISCENTO: I believe he started off
8 with "a lot of people" --
9 THE COURT: Well, if he's -- if he's going
10 to start quoting people, then I'll hear your objection, then
11 like that, but, right now, I didn't hear any hearsay.
12 Okay, sir. Why do you believe
13 Mr. Nasby was the leader of this group then?
14 THE WITNESS: Um, other -- other members of
15 this gang, um, sort of, ah, used him has a senior.
16 BY MR. COUNOU:
17 Q And how long were you associated with this
18 gang?
19 A Probably around a year.
20 Q How -- how did you get involved with this
21 group?
22 A Um, through music; started off -- we used to
23 play music together.
24 Q Is that something that they commonly did,

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1 person is, and tell me what that person is wearing today.
2 A He's wearing a suit, a blue suit.
3 Q All three of these guys are gang --
4 A No, sir. The one in the middle.
5 MR. COUNOU: Okay. Judge, if the record
6 could reflect he said the man in the suit in the middle.
7 THE COURT: The record will so reflect.
8 BY MR. COUNOU:
9 Q Do you know what his name is?
10 A Yes.
11 Q What is it?
12 A Brendan Nasby.
13 Q Is that his name that he went by or did he
14 have a nickname?
15 A He had a nickname.
16 Q What is that.
17 A It was Blue.
18 Q What -- what was the defendant -- I'll refer
19 to him as the defendant -- what was his role in this gang?
20 A Sort of the leader.
21 Q Could you explain that?
22 A Um, I don't -- I don't understand how.
23 Q Could you explain why you say he was sort of
24 the leader?

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1 this group?
2 A Yes.
3 Q Where would this music be held at?
4 A A friend of mine's house and some -- once in
5 a while, my house.
6 Q Was that ever done at the -- at the
7 defendant's house?
8 A Um, no, not really.
9 Q Were there times that you would go over to
10 the defendant's house?
11 A Yes.
12 Q And did you have a nickname that they gave
13 you or that they used to call you?
14 A Yes.
15 Q What is that?
16 A Woodpecker.
17 Q Okay. How did you get that name?
18 A Um, I got it, ah, years prior, um, through
19 some other friends of mine, not associated.
20 Q So drawing your attention to July 17th,
21 1998, were you still friendly with this gang?
22 A Um --
23 Q Were you associated or -- or friends with
24 them?

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1 A No, I wouldn't say so. Well, no -- I
2 mean -- I don't understand friend.
3 Q Okay. Well, let me ask you this question
4 then: On July 16th, 1998, did you go over to the
5 defendant's house?
6 A Yes.
7 Q Okay. And approximately where does he live?
8 A Off of, um, Clayton or -- off Switchback.
9 Q Okay. What's the main crossroads?
10 A It's near Clayton and Craig.
11 Q Did you go there by yourself?
12 A Yes.
13 Q How did you get there?
14 A I drove my car.
15 Q What kind of car is that?
16 A A '91 Cougar.
17 Q What color is your '91 Cougar?
18 A It's burgundy.
19 Q Now, when you got to the house -- why -- why
20 did you go over to the defendant's house?
21 A Just to visit.
22 Q Was there anybody else -- else at home?
23 A Yes.
24 Q Who -- who was that?

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1 A Yes.
2 Q And was the defendant at home?
3 A Yes.
4 Q Now, you -- you'd been with this group now
5 for a while then, correct?
6 A Yes.
7 Q And prior to this day, was there any time
8 that you would hang around these guys?
9 A Yes.
10 Q About a month before this July 16th date,
11 when you went over to visit the defendant, were you among
12 some of the gang members?
13 A Yes.
14 Q And who were they?
15 A Um, it was Brendan and Tormie, Jottee,
16 another boy Mac, and -- I don't recall the other name.
17 Q And where -- where was this -- where was
18 this get together at?
19 A It was in the front of Mac's house.
20 Q Why does that -- that meeting or this --
21 this time that you got together with him stand out in your
22 mind?
23 A Um, it was like a meeting.
24 Q Who -- who called the meeting?

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1 A Um, his mother and his girlfriend, a few of
2 his cousins --
3 Q Okay.
4 A -- younger cousins.
5 Q Younger cousins?
6 A Yes.
7 Q When you say younger, what age are we
8 talking about?
9 A Oh, around ten and --
10 Q Was that the only ones who were over at the
11 house?
12 A No. Two of his older cousins, too.
13 Q What are their names?
14 A Tormie and Jottee.
15 Q Do you know their last names?
16 A Burnside.
17 Q Did you know them, the Burnside boys?
18 A Yes.
19 Q How -- how long have you known them?
20 A Um, roughly -- roughly around the same time;
21 maybe a little later than a year.
22 Q So about a year and a half?
23 A No, no. I mean less than a year.
24 Q Less than a year?

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1 A I don't believe it was -- I don't know if --
2 about the calling of the meeting.
3 Q Okay. Was anything said at this meeting?
4 A Yes.
5 Q What was said?
6 A Um, Brendan had asked a few of the -- of the
7 or members if they believed Michael should be killed.
8 Q Who is Michael?
9 A He goes by Droop.
10 Q Droop?
11 A Yes.
12 Q Michael, do you know his last name?
13 A Beasley.
14 Q Show -- so the defendant was inquiring, on
15 this meeting sometime in June, if they thought that Michael
16 should be killed?
17 A Yes.
18 Q Why? Did he say?
19 A Um, it was over -- over gang reasons and --
20 Q Do you remember what those reasons were --
21 A Um --
22 Q -- that -- that the defendant said?
23 A Yes.
24 Q What are they?

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1 A He felt that Michael was -- how do you
2 say? -- trying to get him removed from head status or from
3 the gang itself.
4 Q That Michael was trying to remove the
5 defendant --
6 A Yes.
7 Q -- as the head leader or the head status; is
8 that what you said?
9 A Or --
10 MR. SCISCENTO: Objection, Your Honor. I
11 think it's leading.
12 THE COURT: Sustained, Rephrase it.
13 MR. COUMOU: Okay.
14 BY MR. COUMOU:
15 Q So -- explain again what -- what was the
16 reason that the defendant was saying why he -- he wondered
17 or asked if Michael should be killed?
18 A Um, because Michael was saying to other
19 people that he felt that Brendan should be removed from the
20 gang.
21 Q What -- did the defendant say anything else
22 in this June meeting about -- about Michael?
23 A Um, I don't -- I don't recall; just -- just
24 that do you think he should be --

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1 Q Are you talking about the ten year old --
2 A Yeah.
3 Q -- kids?
4 A Yes, it was the ten year old kids.
5 Q And where was the defendant?
6 A He had stepped out into the garage.
7 Q And what about the two Burnside brothers?
8 A Jottee was inside the house with me and
9 Tormie was out in the garage working with -- with Brendan.
10 Q Did you remain at the playing of Nintendo
11 games?
12 A No.
13 Q What happened? What got you away from the
14 game?
15 A They had asked me to come inside the garage.
16 Q Who is they?
17 A Brendan and Tormie?
18 Q And did you comply?
19 A Yes.
20 Q Did you go to the garage?
21 A Yes.
22 Q And what happened in the garage?
23 A They had asked me if I would go pick up
24 Michael.

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1 Q With -- without saying what -- what the
2 other members of the gang felt about this, what was the
3 general answer to -- to the defendant's question, if Michael
4 should be killed?
5 A Um, pretty much, you know, felt, no, that he
6 should not be.
7 Q Did you have a say in this matter?
8 A No.
9 Q Why not?
10 A I was -- I was never asked. I -- I --
11 Q Now, focus again now on the date when you
12 went over to the defendant's house on -- it was a Thursday
13 evening, on July 16th, you said you went and visited the
14 defendant?
15 A Yes.
16 Q What were you doing at the -- when you got
17 there?
18 A I -- we were playing Nintendo.
19 Q Who is we?
20 A I -- I believe I was and his younger cousin.
21 Q What -- do you remember his name?
22 A The younger cousin's?
23 Q Yeah.
24 A No, I don't.

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1 Q Did they say why?
2 A Yeah, to shoot him.
3 Q Who said that?
4 A Brendan.
5 Q Did he give you a reason why he wanted to
6 shoot Michael?
7 A Um, not -- I -- I don't remember at that
8 time, in the garage.
9 Q What time was this?
10 A Um, roughly around probably nine; nine,
11 maybe later; maybe a little sooner.
12 Q It was at nighttime?
13 A Yes.
14 Q Did you ask Brendan why he wanted to kill
15 Michael at that point?
16 A No.
17 Q Why not?
18 A Um, I don't --
19 Q Now, who called the shots this evening when
20 you got called -- who -- who was giving the orders?
21 A Um, it was Brendan pretty much.
22 Q And that was normal for him, correct?
23 A Yeah.
24 Q Did you want to go pick up Michael?

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1 A Not at first, no.
 2 Q Why did you or did you?
 3 A Yes, I did.
 4 Q And why -- why did you eventually go pick
 5 him up?
 6 A Um, I had -- I had owed him -- Brendan, some
 7 money at the time and he said that I wouldn't owe him if I
 8 did.
 9 Q That you what?
 10 A I would not owe him the money that I owed
 11 him if I went and picked up Michael.
 12 Q The defendant said that?
 13 A Yes.
 14 Q How much money did you owe him?
 15 A Roughly around a hundred dollars.
 16 Q Where was Tommie and Jottee when -- when the
 17 defendant was saying that he wanted you to go pick Michael
 18 up to kill him?
 19 A Tommie was out in the garage and Jottee was
 20 inside, I believe, still.
 21 Q Did you talk about how you were going to go
 22 pick up and how -- how this was going to be done?
 23 A Um, yes. I -- I don't remember who, but it
 24 was said that we were going to go out to the desert and

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1 shoot him out there.
 2 Q Did anybody else have a car besides you that
 3 night?
 4 A Yes.
 5 Q Who was that?
 6 A Tommie did.
 7 Q Tommie did?
 8 A Yes.
 9 Q Did you have the bigger car?
 10 A Yes.
 11 Q Did Michael know that he was going to go out
 12 with you guys that night?
 13 A Um, yes. He was informed.
 14 Q How -- how was he informed?
 15 A Over the telephone.
 16 Q Who called him?
 17 A Um, I don't -- I don't remember who. It was
 18 either Tommie or Jottee.
 19 Q Do you know what was said to Tommie or --
 20 excuse me -- to Michael over the phone?
 21 MR. SCISCENTO: I'm going to object to that
 22 as speculation, Your Honor.
 23 THE COURT: Well, I think he can only -- he
 24 could hear the one side of the conversation; probably

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1 couldn't hear the other side.
 2 So, sir, I just want you to
 3 tell us what you heard yourself, not what -- whoever is on
 4 the other end of the phone line said. Okay?
 5 THE WITNESS: Yes.
 6 BY MR. COUNTOU:
 7 Q Do you know what was said to Michael?
 8 A I was told that they were going to say to go
 9 pick him up to smoke some weed and fire off his -- his
 10 firearm, Michael's.
 11 Q Michael's firearm?
 12 THE COURT: Who -- who said that, sir? Who
 13 said they were going to pick him up to smoke weed and fire
 14 the firearm?
 15 THE WITNESS: I don't remember.
 16 THE COURT: Did Brendan Nasby say that?
 17 THE WITNESS: I don't know.
 18 THE COURT: Mr. Countou.
 19 BY MR. COUNTOU:
 20 Q Okay. And go fire whose firearm?
 21 A Michael's.
 22 Q Michael's firearm?
 23 A Yes.
 24 Q Did -- did the victim Droop have a firearm?

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1 A On him -- could you restate, please?
 2 Q Yeah. Were you going to go pick up Michael
 3 so he could fire his firearm?
 4 A Yes.
 5 Q Did Droop, Michael, Droop, did he have a
 6 firearm to go shoot?
 7 A He had -- he had one at his house that I
 8 heard.
 9 Q Okay. What about Brendan; did he say he had
 10 a firearm to go shoot, the defendant?
 11 A Yes.
 12 Q Okay. And which gun was -- was going to be
 13 taken out there to use then?
 14 A Um, I believe -- Brendan was going to take
 15 his gun, and then we were going to pick up Droop and he was
 16 going to bring his gun too.
 17 Q Okay. Now, did you get in your car to go
 18 pick up Michael?
 19 A Yes.
 20 Q Did you go by yourself?
 21 A No.
 22 Q Who got in the car with you?
 23 A Tommie and Jottee.
 24 Q Where was the defendant?

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1 A He stayed at home.
 2 Q Do you know why?
 3 A Um --
 4 MR. SCISCENTO: I'm going to object as
 5 speculation, Your Honor.
 6 MR. COUMOU: It's not speculation, if he
 7 knows.
 8 THE COURT: Well, did Brendan Nasby tell you
 9 why he was going to stay home?
 10 THE WITNESS: No.
 11 THE COURT: Okay. Sustained.
 12 Next question.
 13 BY MR. COUMOU:
 14 Q Now, how far is it from the defendant's
 15 house to where Michael lived?
 16 A Roughly between one and three miles.
 17 Q One and three miles?
 18 A One to three.
 19 Q So it was close by?
 20 A Yes.
 21 Q And what are the major crossroads where
 22 Michael lived?
 23 A Um, it's off Clayton and, um -- I believe
 24 it's -- it's in between Cheyenne and Gowan?

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1 Q He wanted you to come inside?
 2 A Yes.
 3 Q For what?
 4 A To show us his son.
 5 Q And where was his his son at.
 6 A It was in his -- he was in his bedroom.
 7 Q And did the three of you go and look at his
 8 son?
 9 A Yes.
 10 Q Did you see the son?
 11 A Yes, I did.
 12 Q What was Michael's tone of voice when he
 13 wanted to show you his son?
 14 A He was proud of his son.
 15 MR. SCISCENTO: Your Honor, I'm going to
 16 object to this as relevant now. I don't see the relevancy
 17 of this.
 18 THE COURT: Mr. Coumou?
 19 MR. COUMOU: Judge, it's just showing that
 20 Michael, the victim, is -- is being lured out to the desert;
 21 he's feeling comfortable; he's feeling just fine and he
 22 trusts these individuals.
 23 And it's just setting up the
 24 mind set that Michael is going free willingly, taken out to

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1 Q Cheyenne and Gowan.
 2 A I think that's the name of the street.
 3 Q So it's just down the street from where the
 4 defendant lives then?
 5 A Yes.
 6 Q On Clayton?
 7 A Yes.
 8 Q Now, when you got to the neighborhood where
 9 Michael lived, what did you do?
 10 A We followed another car in -- into the gated
 11 community.
 12 Q It is a gated community?
 13 A Yes.
 14 Q And now you knew that Michael was expecting
 15 you, right?
 16 A Yes.
 17 Q Did you know where Michael lived?
 18 A Yes.
 19 Q Did you drive to Michael's house?
 20 A Yes.
 21 Q What happened when you got to his house?
 22 A Pulled up in front of his house and Tommie
 23 had got out to -- to see if Michael was ready to come. And
 24 um, he said: Not yet. He wanted us to come inside.

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1 his death march --
 2 THE COURT: I'm going to sustain it. I
 3 think --
 4 MR. SCISCENTO: Mr. Nasby wasn't present.
 5 MR. COUMOU: Okay.
 6 THE COURT: Let's move -- I think you made
 7 your point. Let's move on.
 8 MR. COUMOU: All right.
 9 BY MR. COUMOU:
 10 Q Just -- so you were looking at this baby
 11 while knowing that Michael was going to be killed --
 12 MR. SCISCENTO: Your Honor, I object and
 13 move to strike.
 14 THE COURT: Sustained.
 15 BY MR. COUMOU:
 16 Q Okay. Did Michael leave his baby just there
 17 by himself in the bedroom?
 18 A No.
 19 Q What did he do with it?
 20 MR. SCISCENTO: I'm going to object to that.
 21 I still don't see the relevance.
 22 THE COURT: Sustained.
 23 MR. COUMOU: Judge, I will make, if I may --
 24 if I may respond, it will make some relevance with the

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1 second after Mr. Deskin testifies.
 2 THE COURT: Okay. Well, just -- well, I'll
 3 let you go in to it subject to a motion.
 4 MR. COUNOU: Just real briefly.
 5 THE COURT: It will be subject to a motion
 6 to strike, Mr. Sciscento.
 7 Go ahead.
 8 MR. COUNOU: Thank you.
 9 BY MR. COUNOU:
 10 Q So do you know where he took his baby son,
 11 his newborn son?
 12 A In to another room where one of his family
 13 watched him.
 14 Q And then did Michael get in the car with
 15 you?
 16 A Yes.
 17 Q Did he take a gun with him?
 18 A No.
 19 Q And when he got in the car -- did you see
 20 anybody in his family that night?
 21 A No.
 22 Q So now it's four of you: You, Michael and
 23 the two Burnside brothers, Jottee and Tormie, correct?
 24 A Yes.

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1 Q What did you do next?
 2 A We drove to Brendan's house.
 3 Q Back to Brendan's house?
 4 A Yes.
 5 Q And when you got there, what did you do?
 6 A Ah, we had got out of the car and Brendan
 7 had met us from outside of the garage, and he showed around
 8 his gun, and then we went back into the car.
 9 Q Do you know what kind of gun it was?
 10 A It was a dark, kind of black, nine
 11 millimeter.
 12 Q Do you know what the brand name of that gun
 13 was?
 14 A It was a Browning.
 15 Q Browning?
 16 A Yes.
 17 Q Nine millimeter?
 18 A Yes.
 19 Q Had you seen that gun before?
 20 A Yes.
 21 Q With who? I mean, where did you see that
 22 gun before?
 23 A With Brendan, at his house.
 24 Q Do you know when?

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1 A Um, it was probably about a month prior.
 2 Q That's what you remember at least?
 3 A Yes, I --
 4 Q Do you know how he got this nine millimeter?
 5 A He purchased it from another boy.
 6 Q Do you know what that boy's name was?
 7 A It was David.
 8 Q David?
 9 A Yes.
 10 Q What relationship is David to -- to the
 11 defendant?
 12 A Ah, I -- I'd only seen him once.
 13 Q Okay. Do you know if this nine millimeter
 14 was loaded?
 15 A I don't remember.
 16 Q You said Michael (sic) came out and he was
 17 showing the weapon.
 18 Who did he show it to?
 19 A He showed it to -- to Michael and to the
 20 Burnside brothers.
 21 Q Was it your impression that this was the
 22 first time they saw the weapon?
 23 A Um --
 24 Q That Michael was -- the first time he saw

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1 this weapon?
 2 A Yes.
 3 MR. SCISCENTO: I'm going to object to that
 4 as speculation.
 5 THE COURT: Sustained. The jury will
 6 disregard the last answer.
 7 BY MR. COUNOU:
 8 Q What was Michael's attitude at this time? I
 9 mean, what was his behavior like in the car or at -- at the
 10 defendant's house?
 11 A I don't un- -- I don't understand.
 12 Q Okay. What was his temperament like? I
 13 mean, how -- how was he acting, Michael, when you were at
 14 Nasby's house?
 15 A Ah, kind of normal, but a little quiet.
 16 Q Since that earlier meeting in June, had you
 17 heard any more problems since that night?
 18 MR. SCISCENTO: I'm going to object to this
 19 as hearsay, Your Honor.
 20 MR. COUNOU: It's not hearsay. I'm not
 21 asking whether -- I'm just asking if he heard if there was
 22 any more problems.
 23 THE COURT: Overruled.
 24 Go ahead.

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BY MR. COUMOU:

Q Since that June meeting, and then this night when you got called into the garage and told to go pick him up to kill him, during that month period, had you heard that there was still friction between the defendant and the victim, Michael Beasley?

A I didn't -- I didn't hear.

Q So did you all get in the car?

A Yes.

Q Was there talk as to where you were going to go out to the desert?

A Just -- just to the desert.

Q And you were going to go smoke weed or -- is that also the reason?

A Yes.

Q Okay. Who had the weed?

A No one did.

Q No one did?

A No.

Q So you were driving, correct?

A Yes.

Q And who was sitting in the right front passenger seat?

A Brendan.

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until you came to a stop?

A It was about a half mile or maybe a mile.

Q Had you been there before?

A Yes.

Q How many times?

A Um, maybe twice.

Q And for what purposes were you there in the past?

A To -- to shoot guns.

Q Had you gone there by yourself to shoot guns?

A Um, no.

Q Had you gone -- had you gone over there in the past with any of the guys who were in the car with you?

A Brendan.

Q The defendant?

A Yes.

Q So he was familiar with the area?

A Yes, I -- I guess so.

Q So you came to a stop.

Where did you stop your car?

A Ah, towards the end where there was sort of a cliff or a -- a wash where there was like a lot of broken down metal.

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Q And the three other, the victim, Michael and the Burnside boys, were sitting in the back?

A Yes.

Q Now, where -- where in the desert did you drive out to?

A Um, up Alexander, past -- around the mountain a little bit.

Q Can you explain -- explain to the jury how did you get back there?

A Um, I took Craig up to Jones, up Alexander, to where it starts to become a dirt road, and went out about maybe a half a mile to a mile around the bend. (Indicating)

Q And this area, is it -- are there homes around there?

A Um, no.

Q And what -- about what time was this?

A Around 10:30, maybe eleven; around that time.

Q Was it dark out there?

A Yes.

Q Did you have any lights, street lights or anything like that?

A No.

Q How far did you drive on this gravel road

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Q By a wash area?

A Yes.

Q And where is the broken down metal?

A It's -- it's down into the wash.

Q What kind of broken down metal is that? Will you tell me about it?

A Old refrigerators and tires and stuff like that.

Q When you first got there and you stopped, did everybody stay in the car?

A No.

Q What happened? Who --

A Ah, we had all got out to -- to find things to shoot.

Q Including yourself?

A Yes.

Q Now, you said it was dark, so how could you -- how could you see out there?

A I -- I left my lights on.

Q From your car?

A From my car.

Q And who was holding the gun?

A Brendan.

Q Is that the only gun that was taken out

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1 there? *

2 A Yes.

3 Q And what was Brendan -- Brendan doing when

4 you got out of the car?

5 A Um, sort of standing over to my left.

6 Q Okay. How far away from you was he?

7 A From -- could you repeat, please?

8 Q How far away, distance wise, feet wise, was

9 Brendan from you?

10 A I would say 20 to 40 feet.

11 Q And how about Michael, do you know what

12 Michael was doing?

13 A He was looking for objects to shoot.

14 Q Did you see him having anything in his hand,

15 like a weapon or anything like that?

16 A He had picked up a -- a board, a piece of

17 wood, to shoot.

18 Q What were the Burnside brothers doing?

19 A They were standing off to my right a little.

20 Q On the other side of your car?

21 A Um, it would have kind of had been in front

22 of the car, maybe off to the right a little bit.

23 Q Now, were you expecting this killing to

24 happen any moment?

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1 A No.

2 Q When you got out, where was Michael at?

3 A He was still off to my left and, ah, holding

4 a piece of wood.

5 Q Did you see the Burnside brothers? Where

6 were they at?

7 A Ah, still off to my right where I had pulled

8 up the car. They were kind of standing there a little bit.

9 Q So they were on the other side of the car;

10 is that what you are saying?

11 A It would have been the left side, yes.

12 Q And you are getting out on the left side of

13 the car, right?

14 A Yes.

15 Q Where was the defendant at?

16 A Further off to the left.

17 Q Farther off to the left from who?

18 A From -- from me and -- well, I would --

19 everybody, I would say.

20 Q Was he the furthest one to the left?

21 A Yes.

22 Q And you already stated that Michael was to

23 your left, correct?

24 A Yes.

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1 A I didn't know when it would happen.

2 Q Did you expect it to still happen?

3 A Yes.

4 Q Did there come a point though that someone

5 asked you to move your car?

6 A Yes.

7 Q And who was that?

8 A It was Brendan and, I believe, Tommie.

9 Q Brendan and Tommie?

10 A Yes.

11 Q What did they want you to do with the car?

12 A Kind of move the car towards the edge of the

13 wash so the light would go down towards the refrigerators

14 and --

15 Q Do you know, is that to illuminate the area

16 better so you could shoot at it?

17 A Yes.

18 Q And did you move the car?

19 A Yes. I -- I pulled it up closer to the

20 edge.

21 Q And when did you that, did anybody else get

22 in the car with you when you --

23 A No.

24 Q -- when you repositioned the car?

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1 Q What was the distance feet wise between

2 Michael and Brendan?

3 A Ah, 10, maybe 15 feet.

4 Q Were you focused on Michael? Were you

5 looking at Michael?

6 A Yes.

7 Q Why?

8 A Well, I was looking towards that direction

9 because I had noticed Brendan start walking closer to him.

10 Q Closer to --

11 A Michael.

12 Q Okay. You said -- you said you saw him

13 walking closer to Michael?

14 A Yes.

15 Q And what was Michael doing?

16 A Still looking towards the -- the wash.

17 Q So he had his back to the defendant?

18 A Yes.

19 Q And what did you see next?

20 A Brendan raised his hand and fired on

21 Michael.

22 Q How did you -- how did you see his raise his

23 hand? Show -- show to the jury.

24 A Um, sort of just came up like that.

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1 (Indicating)
 2 MR. COUNOU: Judge, may the record reflect
 3 the witness has brought out his right arm and then went in a
 4 forward motion.
 5 THE COURT: The record will so reflect.
 6 BY MR. COUNOU:
 7 Q And when he pulled out his arm like that,
 8 what -- you said he fired?
 9 A Yes.
 10 Q Where was he aiming at?
 11 A The upper area around his head, upper back,
 12 neck area. (Indicating)
 13 Q And Michael never saw what was coming?
 14 A No.
 15 Q Did you hear the gun go off?
 16 A Yes.
 17 Q What happened? What did you see?
 18 A Michael grabbed at his shoulder-neck area,
 19 around here. (Indicating)
 20 Q How so? With what arm?
 21 A His left arm. (Indicating)
 22 MR. COUNOU: Judge, may the record reflect
 23 the witness is putting his left arm over his right shoulder,
 24 over his back.

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1 those two shots and you saw Michael roll over, what -- what
 2 did you see the defendant do after that?
 3 A Everybody had ran back to the car.
 4 Q You ran?
 5 A I -- I was right next to the car. I had got
 6 into the car, and the other three quickly paced to the car.
 7 Q Including the defendant?
 8 A Yes.
 9 Q Did he still have the weapon with him?
 10 A Yes.
 11 Q Was anything said when you -- when you first
 12 gathered in the car?
 13 A No. I -- I -- I started to, um, pull around
 14 to turn out and he had hopped back out of the car.
 15 Q Who is he?
 16 A Well, Brendan.
 17 Q He hopped out of the car when you started
 18 turning around?
 19 A Yes.
 20 Q Did you stop the car when he hopped out?
 21 A Yes.
 22 Q Did he say anything when he hopped out?
 23 A No.
 24 Q What was his mannerisms like? I mean, what

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1 THE COURT: The record will so reflect.
 2 MR. COUNOU: Thank you.
 3 BY MR. COUNOU:
 4 Q When you saw that happen, what -- is that
 5 all that Michael did?
 6 A No. Michael dropped down to one knee and
 7 his other hand kind of touched on the dirt.
 8 Q What did you see next?
 9 A Um, Brendan step a little closer and fire,
 10 again on his neck, head area. (Indicating)
 11 Q Was Brendan saying anything?
 12 A No.
 13 Q So what happened after that?
 14 A Um --
 15 Q What did you see Michael do --
 16 A He --
 17 Q -- after that second shot?
 18 A Sort of -- he just fell down and rolled over
 19 onto his back.
 20 Q Could you see Michael move?
 21 A No. Just -- just when he fell.
 22 Q When he rolled over?
 23 A Yes.
 24 Q And when you heard these two shots, after

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1 was his attitude like when he hopped out of the car?
 2 A Um, in a hurry.
 3 Q And what -- what did you see him do?
 4 A He, ah, stepped above Michael's head and
 5 shot down towards him.
 6 Q Stand up in front of the jury and show me
 7 exactly how -- how you saw the defendant walk back up to
 8 Michael.
 9 A Down -- down here. (Indicating)?
 10 Q Yeah. Stand in front of them right here.
 11 A He sort of stepped above him and fired down
 12 like that. (Indicating)
 13 MR. COUNOU: Judge, may the record reflect
 14 the witness is pointing down with his right hand in a -- in
 15 a firing motion.
 16 THE COURT: The record will so reflect.
 17 BY MR. COUNOU:
 18 Q Did you hear the gun go off?
 19 A Um, yes.
 20 Q As far as -- now the gun went off three
 21 times?
 22 A Yes.
 23 Q Did you -- did you -- you said he walked up
 24 to his head?

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1 A Yes, upper area, yes.
 2 Q Upper area?
 3 A Yes.
 4 Q Did he come to the side of -- the way that
 5 Michael was laying, did he come to the side of him or did he
 6 come from the -- you know, along the wash cliff right up to
 7 his head? What did you see?
 8 A Um, how -- how did he get to --
 9 Q To Michael, yes.
 10 A He had hopped out the car and it was, I
 11 guess a -- right towards him.
 12 Q Okay. Along that cliff line, would that be
 13 safe to say? I don't know. You tell me.
 14 A I was -- I was probably five, maybe ten feet
 15 from the cliff area.
 16 Q Okay. Did he walk to the back of your car
 17 to the front?
 18 A It was to the front.
 19 Q To the front?
 20 A To the passenger's side.
 21 Q So you hadn't moved yet the car too far
 22 back?
 23 A No.
 24 Q Okay. So he must have walked along the

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1 A Yes.
 2 Q So what -- what did you see the defendant do
 3 next?
 4 A Ah, after that, he had ran back to the car
 5 and hopped in.
 6 Q Again in the front passenger's seat?
 7 A Yes.
 8 Q Did he say anything when he got back in the
 9 car?
 10 A He had said, ah: Try to take me off of my
 11 own set.
 12 Q Try to take me off of my own set?
 13 A Yes.
 14 Q Do you know what that means?
 15 A Um --
 16 Q Well, what -- what did you think that that
 17 meant?
 18 A I interpreted that he had meant --
 19 MR. SCISCENTO: I would object as
 20 speculation on that, Your Honor.
 21 THE COURT: Overruled. Go ahead.
 22 BY MR. COUNCIL:
 23 Q Go ahead.
 24 A That he had done this because Michael was

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1 cliff line where you had parked to walk up to where the
 2 bed -- where Michael was laying?
 3 A Yes.
 4 Q And did you see a muzzle flash?
 5 A Did I see --
 6 Q Did you a muzzle flash?
 7 You heard the gun go off,
 8 right?
 9 A Yes.
 10 Q Did you see it flash or --
 11 A Yes.
 12 Q Did anybody else get out of the car when
 13 that happened?
 14 A No.
 15 Q And after he -- when you saw him go up to
 16 his head, did he aim for his head?
 17 A Um, wasn't --
 18 Q What did it look like that -- that the
 19 defendant was aiming at?
 20 A Ah, his upper area, his head.
 21 Q But now he's facing -- Michael was facing
 22 towards the ski, right --
 23 A Ah --
 24 Q -- with his back to the ground?

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1 trying to remove -- get him removed from the gang, Brendan.
 2 Q Where did you proceed to -- where did you
 3 drive to?
 4 A I headed back down, the same way I came, to
 5 Brendan's house.
 6 Q Is that road passable with your car? It's
 7 just a regular car, correct?
 8 A Yes.
 9 Q It's not a four wheel drive jacked up or
 10 anything like that?
 11 A No.
 12 Q Are you able to drive your car up on that
 13 road?
 14 A Um, slowly.
 15 Q Slowly?
 16 And on the way home, was there
 17 anything said in the car?
 18 A Yes.
 19 Q What was said?
 20 A Brendan had said if anyone had said anything
 21 or rat, they would die.
 22 Q Anybody would rat -- if anybody would rat,
 23 they would die?
 24 A Yes.

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1 Q What were you feeling when he said that.
 2 What were you thinking, I should say.
 3 A Ah, just -- stay quiet and just kind of
 4 scared.
 5 Q Did you go -- did you drive on home?
 6 A Yes.
 7 Q Whose home did you drive to?
 8 A Brendan's.
 9 Q And did you stay there?
 10 A No.
 11 Q Who -- who all got out?
 12 A Um, everybody had got out the car.
 13 Q Both Burnside brothers and yourself -- I
 14 mean, and Nasby?
 15 A Yes.
 16 Q Was anything said before you left?
 17 A Um, they had -- Brendan had asked people if
 18 they were okay, how they felt.
 19 Q Did you answer him?
 20 A I had said I feel all right, I guess.
 21 Q Well, how did you feel about it, knowing
 22 that you took a man out there to kill -- be killed in the
 23 desert?
 24 A Very bad.

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1 Q Why?
 2 A I -- I didn't see a reason in my eyes that
 3 he -- he should have been killed.
 4 Q Now --
 5 THE COURT: Sir, didn't you think of maybe
 6 warning him and saying don't go out in the desert whenever
 7 you went to pick him up? Did that cross your mind to do
 8 that?
 9 THE WITNESS: Yes.
 10 THE COURT: But you didn't do it?
 11 THE WITNESS: No.
 12 THE COURT: Okay. Mr. Counou.
 13 BY MR. COUNOU:
 14 Q Why not?
 15 A Ah, the other two brothers were with me at
 16 the time.
 17 Q The Burnside brothers?
 18 A Yes.
 19 Q Did you stay here in -- what -- what --
 20 this -- if this was on a Thursday night into a Friday
 21 morning, early hour, did you stay this week -- that weekend
 22 here in Las Vegas?
 23 A Yes.
 24 Q Did you remain here though?

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1 A No.
 2 Q What did you do? What did you do?
 3 A I moved to California.
 4 Q Why did you go to California?
 5 A I had a -- a son just born and I was -- I
 6 was scared.
 7 Q You had a son just born?
 8 A Yes.
 9 Q How old were you, Jerimiah, when this
 10 happened?
 11 A I believe I was 18.
 12 Q Did you know a guy who went by a street name
 13 of Sugar Bear?
 14 A Yes.
 15 Q Is -- how do you know him?
 16 A He -- he used to do music with us too.
 17 Q Is he part of this gang?
 18 A Yes.
 19 Q Now, is -- was Sugar Bear with you guys at
 20 all during that evening?
 21 A No.
 22 Q And you said you went to California, right?
 23 A Yes.
 24 Q Did you ultimately get arrested for this

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1 case?
 2 A Yes.
 3 Q And approximately when was that?
 4 A Oh, it -- I think it was September 12th.
 5 Q Did you get arrested here in Las Vegas?
 6 A No.
 7 Q Where did you get arrested?
 8 A In California.
 9 Q In California?
 10 A Yes.
 11 Q Prior to you getting arrested, did you --
 12 did you have a telephone conversation with the defendant?
 13 A Yes.
 14 Q And tell me about that telephone
 15 conversation.
 16 When was it?
 17 A Um, believe it was in August.
 18 Q In August?
 19 A Yes.
 20 Q Where -- when you spoke to him, what -- what
 21 did he tell you?
 22 A He had said not to say anything to his
 23 mother about the -- the warmer or the heater.
 24 Q The warmer or the heater?

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1 A Yes.
 2 Q Do you know what he meant by that?
 3 A Not to mention the gun.
 4 Q The gun, the nine millimeter?
 5 A Yes.
 6 Q So was -- was anything else said besides
 7 that, that he told you?
 8 A He said that he had heard that I was going
 9 to move up north.
 10 Q Was he happy about that?
 11 A I'm --
 12 MR. SCISCENTO: I'm going to object, Your
 13 Honor. I think it calls for speculation, unless he says
 14 specific -- specifically --
 15 THE COURT: Well, if they had a conversation
 16 about it, it wouldn't be speculation.
 17 BY MR. COUNTOU:
 18 Q What exactly was said when he said he heard
 19 that you were moving up north?
 20 A I -- I don't understand.
 21 Q What -- what brought on that conversation
 22 where the defendant said: I heard you are moving up north?
 23 A Um, as soon as I -- I had got on the phone,
 24 he had said: I -- I heard you are moving up north.

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1 Basically, um --
 2 Q Was there anything mentioned about the
 3 killing and what to do about the killing?
 4 A No.
 5 Q Now, you said you got arrested in
 6 California, correct?
 7 A Yes.
 8 Q What were you charged with? Tell the jury
 9 what you were charged with.
 10 A Murder and conspiracy to murder.
 11 Q And you were -- isn't it true you got
 12 extradited from California to Nevada?
 13 A Yes.
 14 Q Prior to this time of your arrest, you had
 15 not spoken to the police or they had not contacted you,
 16 correct?
 17 A That's correct.
 18 Q And you faced the same charges as the
 19 defendant did in this case, correct?
 20 A Yes.
 21 Q Now, tell the jury as to what -- have you
 22 pled guilty to your culpability in this case?
 23 A Yes, sir.
 24 Q And what is that?

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1 A To accessory to a murder.
 2 Q Accessory to murder?
 3 A Yes.
 4 Q How much time are you facing?
 5 A Um, I believe five years.
 6 Q Have you been sentenced yet in this case?
 7 A No, I haven't.
 8 Q Inform the jury if you have made any
 9 negotiations with the State and for your plea to accessory
 10 to murder.
 11 A I had -- I don't understand.
 12 Q Explain to the jury how -- how is it that
 13 you pled to accessory to murder and you are sitting on that
 14 witness stand right now?
 15 A Oh, I agreed if -- to testify, to plead to a
 16 less -- a lighter charge.
 17 Q For your involvement in this case?
 18 A Yes.
 19 Q And just to make it clear again: There were
 20 only five people in that car going up, correct?
 21 A Yes.
 22 Q There was only Jottee, Tommie, you, the
 23 defendant, Brendan Nasby, and then the victim, correct?
 24 A Going up, yes.

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1 Q Do you -- do you smoke, by the way?
 2 A Yes, I do.
 3 Q What kind of cigarettes do you smoke?
 4 A I smoke Camels.
 5 Q And did anybody in that group smoke Winston
 6 cigarettes by any chance?
 7 A No.
 8 MR. COUNTOU: Judge, if I may, from the
 9 clerk, have State's Proposed Exhibits 21 through 29.
 10 If the record could reflect I'm
 11 showing defense counsel State's Proposed Exhibits 21 through
 12 29.
 13 Your Honor, may I approach?
 14 THE COURT: Yes, you may.
 15 BY MR. COUNTOU:
 16 Q Mr. Deskin, Jeremiah, look at those
 17 collectively -- okay? -- to yourself, 21 through 29; and
 18 after you look at them, I'm going to ask you a question or
 19 two about them.
 20 A (Complies.) Okay.
 21 Q Having looked at State's Proposed Exhibits
 22 21 through 29, do you recognize what's depicted in all those
 23 photographs, sir?
 24 A Yes.

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1 Q What is that?

2 A The exterior and interior of my car.

3 Q Okay. Do they accurately and fairly depict

4 the car, how it may have appeared to you on -- on this July

5 16th evening?

6 A Yes.

7 Q Okay. Now, just to make something clear,

8 one of these photographs shows a bullet hole in the back

9 trunk part of your car; isn't that true?

10 A Yes.

11 Q Well, two of them do.

12 Looking at State's 22, did that

13 happen that night?

14 A No, it did not.

15 Q How did that happen?

16 A Ah, probably half a year, six months earlier

17 prior, I was coming from a Wal Mart and two Hispanic boys

18 had followed me out and fired on my car, chased me down.

19 Q Was that a type of gang thing?

20 A I would -- I --

21 Q What?

22 A I -- I guess so.

23 Q So that bullet hole has nothing to do with

24 this shooting, correct?

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1 if you can reach it. (Indicating)

2 A It would have been around here.

3 Q Where is the front?

4 A The front would have been here.

5 (Indicating)

6 Q Okay. Facing this pile of trash, facing

7 probably this way? And would it be safer to put it like

8 this? (Indicating)

9 A Oh, yes.

10 Q All right. Put an "F" and an arrow towards

11 the front of the car and write number one on it.

12 A (Complies.)

13 Q Did you write number one on there?

14 A Oh, I'm sorry.

15 Q Okay. And circle the one.

16 A (Complies.)

17 Q Okay. Now, where was the second one, the

18 second time when you --

19 A Would have been over --

20 Q Okay.

21 A I did move it --

22 Q So it would have been in approximately the

23 same spot, but around here?

24 A But facing down this way. (Indicating)

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1 A No.

2 Q Do all these photographs accurately and

3 fairly depict -- I think I've asked you that, how your car

4 looked like, correct?

5 A Yes.

6 MR. COUMOU: Judge, I move to admit State's

7 Proposed Exhibits 21 through 29.

8 MR. SCISCENTO: No objection, Your Honor.

9 THE COURT: Proposed 21 through 29 will be

10 received.

11 MR. COUMOU: Thank you.

12 (State's Exhibits 21 through

13 29 admitted into evidence.)

14 BY MR. COUMOU:

15 Q Jeremiah, I'm going to ask you to look at

16 State's Exhibit Number 1.

17 Do you recognize this?

18 (Indicating)

19 A Yes.

20 Q Is this the crime scene, the area where you

21 took Michael to be killed?

22 A Yes.

23 Q And show us exactly where you first parked

24 your car, using this little tag on this picture right here,

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1 Q Facing down into the wash?

2 A Yes.

3 Q Okay. Would it be safe to put it around

4 here, something like that?

5 A Facing this way a little bit.

6 Q Like that.

7 Circle number two and an F with

8 an arrow, F standing for front.

9 A (Complies.) Okay.

10 MR. COUMOU: Thank you.

11 Court's indulgence, Judge.

12 BY MR. COUMOU:

13 Q Is there a reason -- explain in your own

14 words why you chose to take the witness stand and tell --

15 tell what happened.

16 A Um, I don't -- I don't understand where --

17 Q Why -- why are you -- why will you

18 testify -- why did you decide to plead to accessory? Why

19 did you plead to accessory?

20 A Ah, so I could get a lighter charge of

21 access -- from the original --

22 Q Now, the State hasn't -- the State, I, has

23 not promised you anything as to probation or anything like

24 that, correct?

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1 A No.
 2 Q Everything you've testified to is true?
 3 A Yes.
 4 MR. COUNTOU: Pass the witness, Judge.
 5 THE COURT: Mr. Sciscento.
 6 MR. SCISCENTO: Thank you, Your Honor.
 7

8 CROSS-EXAMINATION

9 BY MR. SCISCENTO:
 10 Q Mr. Deskin --
 11 A Yes.
 12 Q -- you must have really hated Mr. Beasley.
 13 A No.
 14 Q You agreed to have him killed for a hundred
 15 dollars; isn't that correct?
 16 A Yes.
 17 Q You basically testified that for a loan that
 18 you owed Brendan, you would wipe it out if you set up Mr.
 19 Beasley to die, correct?
 20 A Yes.
 21 Q This loan about the hundred dollars, you
 22 gave a statement back on September 19th, '98 in front of
 23 Detective Buczek; is that correct?
 24 A Yes.

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1 BY MR. SCISCENTO:
 2 Q Mr. Deskin -- I guess I can make it easier
 3 for you. I've gone through this statement numerous times.
 4 There is not any mention of a hundred dollars in there.
 5 A Okay.
 6 Q November 5th, 1998, you had a preliminary
 7 hearing regarding this case.
 8 Do you remember that?
 9 A Yes.
 10 Q Do you remember being under oath?
 11 A Yes.
 12 Q Do you remember me asking you questions --
 13 A Yes.
 14 Q -- about, specifically, this case?
 15 A Yes.
 16 Q And, at that time, you never made mention of
 17 this hundred dollars, did you?
 18 A I -- I don't remember.
 19 Q If I told you it wasn't in there, you would
 20 agree with me?
 21 A I would guess so, yes.
 22 Q In your statement -- you said to the
 23 District Attorney that as soon as Brendan Nasby shot Mr.
 24 Beasley and you got in the car, you told him that Michael --

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1 Q And you promised to tell the truth in that
 2 statement, correct?
 3 A Yes.
 4 Q Can you please tell me: In this
 5 statement -- where in this statement it says that you owed
 6 Brendan -- that Brendan owed you -- or you owed Brendan a
 7 hundred dollars and that you would set Michael up for a
 8 hundred dollars.
 9 MR. COUNTOU: Judge, I'm going to object to
 10 the type of questioning. If counsel is trying to impeach,
 11 it's an improper way of impeaching; and, on top of that,
 12 impeachment only goes to material issues.
 13 This is -- I don't know if
 14 counsel sees this as a material issue, but --
 15 THE COURT: Well, it's a material issue, so
 16 I'll overrule it, but I think -- why don't you do this, Mr.
 17 Sciscento: Why don't you give him a chance to read it and
 18 see if he agrees with it and then you can ask him questions.
 19 MR. SCISCENTO: It's quite lengthy. We
 20 might be here for a while.
 21 But if you can, please review
 22 it and find the place where it says that you talked about a
 23 hundred dollars.
 24 (Whereupon, a sotto voce at this time.)

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1 that Brendan said "Don't anybody else say anything," or
 2 something to that effect?
 3 A Yes.
 4 Q Do you remember giving a statement to
 5 Officer Buczek on September 19th, 1998, when you were asked
 6 about any conversations occurring in the car or about
 7 anybody about the death? Do you remember that?
 8 A Yes.
 9 Q Do you remember what your answer was?
 10 A No, I do not.
 11 MR. SCISCENTO: If I may approach, Your
 12 Honor?
 13 THE COURT: Yes.
 14 MR. SCISCENTO: Page 16 on that.
 15 BY MR. SCISCENTO:
 16 Q Please, to yourself, review this.
 17 A (Complies.)
 18 Q Okay. Now, again, I'm going to ask you,
 19 upon review of your statement on September 16th -- September
 20 19th -- I'm sorry. That's October 19th, 10/19, that this
 21 was done -- what was your answer to the question by
 22 Detective Buczek
 23 MR. COUNTOU: Judge, I'm going to object.
 24 I ask if counsel could just

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1 phrase the entire question -- and it was by Detective Tom
2 Thowsen, the question -- but if he could read the question
3 and see if --

4 THE COURT: Okay, Mr. Sciscento, would you
5 read the question and answer, please.

6 BY MR. SCISCENTO:

7 Q Your question was:

8 "When you guys were driving away from the
9 scene, was there any conversation in the car with
10 anybody about -- about the death?"

11 Your answer:

12 "Um, no, just that what Brendan had said
13 and, you know, that was, you know, pretty much --
14 no one really said anything about it.

15 "No one said anything after that, but it was
16 kind of just quiet."

17 Was that your answer?

18 A Yes.

19 Q But now you are telling the District
20 Attorney that Brendan said, "If you say anything, I'll have
21 you killed," or something to that effect?

22 A Yes.

23 Q Yes?

24 A Yes.

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1 the parts you want to emphasize there. What I will allow
2 Mr. Coumou to do, if he feels it's out of context, is stand
3 up, object immediately here, and then we'll get that
4 clarified.

5 And vice versa, if the State is
6 doing anything, you have the same prerogative in handling
7 these witness statements then.

8 Okay. You may proceed.

9 MR. SCISCENTO: Thank you.

10 BY MR. SCISCENTO:

11 Q Mr. Deskin, you are a member of the San
12 Chukas; is that correct?

13 A No.

14 Q You are not a member of the San Chuka gang?

15 A No.

16 Q Are you associated with them?

17 A No.

18 Q I'm sorry?

19 A No, not any -- not anymore.

20 Q Back in July 1999 -- '98, were you
21 associated with that gang?

22 A No.

23 Q Do you remember giving testimony under oath
24 on November 5th, 1998 at a preliminary hearing in this case?

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1 MR. COUMOU: Judge, I would object to the
2 phrase of the question. Even the statement on page 16
3 leads -- leaves it open or you could read in there that
4 there was some statements made.

5 MR. SCISCENTO: I'm giving him the
6 opportunity --

7 THE COURT: Let Mr. Coumou finish.

8 MR. COUMOU: It just says:

9 "Was there any conversation in the car, you
10 know, when you were driving away?"

11 And the answer is:

12 "Um, no, just that what Brendan had said,
13 and that was, you know, pretty much, no one really
14 said anything."

15 So it -- it -- it's -- the way
16 the question is being posed, it's misstating the evidence.

17 MR. SCISCENTO: Your Honor, I'm giving him
18 the opportunity -- that's why I presented it to him -- to
19 correct any --

20 THE COURT: Okay.

21 MR. SCISCENTO: -- misstatements.

22 THE COURT: Here's how we will do it: We
23 will do it similar to a civil case and a deposition.

24 Mr. Sciscento, you can raise

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1 A Yes.

2 MR. SCISCENTO: Okay. If I may approach,
3 Your Honor, with this --

4 MR. COUMOU: Okay.

5 MR. SCISCENTO: I think line --

6 THE COURT: Yes.

7 MR. SCISCENTO: I think line six.

8 BY MR. SCISCENTO:

9 Q If I can refer -- refer you to page -- to
10 this page 53. Read it to yourself. Fifty-three.

11 A (Complies.)

12 Q Now I asked you just a few minutes ago
13 whether or not, in July, you were a member of any gang and
14 your answer was no.

15 A Yes.

16 Q Upon reading your transcript -- if you want
17 to review the whole thing, you can -- do you remember at the
18 preliminary hearing, I asked you that very same question?

19 A Yes.

20 Q And what was your answer then?

21 A That -- that I was.

22 Q You were a gang member?

23 A Yes.

24 Q Let me ask you the whole question:

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1 "Okay. Are you a gang member of the San
2 Chukas or are you associated with them?
3 Your answer was:
4 "I was a gang member."
5 Is that correct?
6 A Yes, I was.
7 Q Okay. So, in fact, on July 1998, you were a
8 member of the San Chukas?
9 MR. COUNTOU: Objection, Judge.
10 There is no reference -- he
11 just says I'm a gang member, but he says he was an associate
12 of -- he has -- he already has said that he's an associate
13 of the L.A. Riders and he's an associate of the San Chukas,
14 according to this, but it didn't say -- it's not specific
15 about it, so it's improper impeachment.
16 MR. SCISCENTO: Well, I'm asking, Your
17 Honor -- he's told me he's never been a gang member --
18 THE COURT: I'm going to let him use it for
19 cross-examination, and then redirect, you can clarify it,
20 Mr. Countou.
21 BY MR. SCISCENTO:
22 Q You were a member of the San Chukas; is that
23 correct?
24 A Yes.

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1 Q In 1998, were you a member of the San
2 Chukas?
3 A No.
4 Q When did you get out of that gang?
5 A Um, would have been probably late '96, maybe
6 early '97.
7 Q The San Chukas and this gang the L.A.
8 Riders, they have a rivalry; isn't that correct?
9 A I -- I don't know. I don't know.
10 Q You don't know if they have a rivalry?
11 A I -- I have -- I have heard they -- I mean,
12 the fact that the San Chukas are a Las Vegas gang and the
13 L.A. Riders are L.A.
14 Q Do you remember me asking you that specific
15 question at the preliminary hearing?
16 A Yes.
17 Q Do you remember what your answer was?
18 A No, I do not.
19 MR. SCISCENTO: If I may approach, Your
20 Honor, please?
21 THE COURT: Yes.
22 MR. SCISCENTO: Page 53, line 16.
23 MR. COUNTOU: Page what?
24 MR. SCISCENTO: Fifty-three, 16.

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1 BY MR. SCISCENTO:
2 Q Let's go to 16, right here, (indicating),
3 and read 19 to 21.
4 A (Complies.)
5 Q Okay?
6 A All right.
7 Q Now, again, I'm going to ask you: Did the
8 San Chukas and the L.A. Riders have a rivalry?
9 A Yes, I guess.
10 Q Yes?
11 A Yes.
12 MR. COUNTOU: Judge --
13 MR. SCISCENTO: I don't want you to guess.
14 MR. COUNTOU: -- I'm going to have to object.
15 There is too much guessing going on here and the way that
16 the question is read:
17 "Okay. The San and the L.A. Riders have
18 have a rivalry; isn't that correct?"
19 The answer is: "I guess, yes."
20 But the question is ambiguous
21 and I'd object to --
22 MR. SCISCENTO: Let me read the entire
23 thing.
24 THE COURT: Mr. Sciscento, are you going to

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1 offer this into evidence, this statement?
2 MR. SCISCENTO: Well, Your Honor, I think I
3 can get this out on cross-examination.
4 THE COURT: Okay. Let's go ahead.
5 But, again, if Mr. Countou feels
6 it's out of context, I'll allow him to point that out so he
7 can get the whole picture to the jury.
8 MR. SCISCENTO: If the Court would allow, I
9 can read from --
10 THE COURT: Go ahead and read whatever you
11 want to read. I wish you would because it may make it a
12 little clearer here.
13 BY MR. SCISCENTO:
14 Q All right. I asked you, back on the
15 preliminary hearing:
16 "Well, when you were associated with -- no,
17 let me start at line 13.
18 If I may approach, Your Honor,
19 and make this simple.
20 I say: "Okay. Are you a gang member of the
21 San Chukas or are you associated with them?
22 Your answer was?
23 A "I was a gang member."
24 Q Okay. "The San and the L.A. Riders have a

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1 * rivalry; isn't that correct?
 2 Your answer is?
 3 A "I guess, yes."
 4 Q "You know that they have a rivalry?"
 5 That was the question.
 6 Your answer is --
 7 A "Yes."
 8 Q "This card --
 9 MR. COUNTOU: Judge, I ask if counsel could
 10 just continue reading the next question.
 11 THE COURT: Please do so, Mr. Sciscento.
 12 BY MR. SCISCENTO:
 13 Q "The rivalry was heightened in June of this
 14 year; isn't that correct?"
 15 Your answer is -- do you want
 16 me to read that?
 17 MR. COUNTOU: Yes, please.
 18 MR. SCISCENTO: "I don't know."
 19 MR. COUNTOU: Okay.
 20 MR. SCISCENTO: Do you want me to keep
 21 going?
 22 MR. COUNTOU: No, that's fine.
 23 MR. SCISCENTO: Can I have 21 through 29,
 24 please.

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1 A Yes, he is.
 2 Q You are from California, aren't you?
 3 A Yes.
 4 Q You ran to California a couple days after
 5 this murder, correct?
 6 A Yes.
 7 Q You were stopped in Apple Valley,
 8 California.
 9 Sugar Bear is from Compton,
 10 California?
 11 A I have no idea.
 12 Q What part of California is he from?
 13 A Ah, I have no idea. I did -- I believe it's
 14 South Central.
 15 Q Prior to July 1998, how long did you know
 16 Sugar Bear?
 17 A Ah, any time between six months to a year.
 18 Q Did you ever know Sugar Bear to carry a gun?
 19 A Not -- not always or -- I mean --
 20 Q Have you ever seen Sugar Bear with a gun?
 21 A Yes.
 22 Q A nine millimeter?
 23 A Yes.
 24 A Yes.

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1 BY MR. SCISCENTO:
 2 Q You've identified items 21 through 29 as
 3 your car; is that correct?
 4 A Yes.
 5 Q And one of these, that being Exhibit 24, can
 6 you show that to the jury?
 7 There was a bullet hole in the
 8 back of your car; is that correct?
 9 A Yes.
 10 Q And that bullet hole came from where?
 11 A From -- I -- from --
 12 Q Somebody shooting at you?
 13 A Yes.
 14 Q And that was a rival gang shooting at you;
 15 is that correct?
 16 A I don't know what gang they were from.
 17 Q Okay. But they were a gang member?
 18 A I assume so, yes.
 19 Q And who was with you that day that this
 20 was -- that you got shot?
 21 A Um --
 22 Q Was Sugar Bear there?
 23 A Yes; yes.
 24 Q Sugar Bear is from California, isn't he?

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1 Q Were you ever over at Brendan's house when
 2 they were video taping, you guys having a jam session, so to
 3 speak?
 4 A Um, I -- I believe so. I'm not --
 5 Q Sugar Bear was there; is that correct?
 6 A I don't remember.
 7 Q Okay. We'll get to that.
 8 On October 19th, 1998, you gave
 9 a statement to Detective Buczek, and the people present were
 10 your attorney, Mr. Chappel Lidy, (ph) and Detective Thowsen;
 11 is that correct?
 12 A Yes.
 13 Q Okay. Why was your attorney there?
 14 MR. COUNTOU: Judge, objection.
 15 MR. SCISCENTO: I'm not asking for
 16 attorney/client privilege, Your Honor.
 17 MR. COUNTOU: That -- that's not the
 18 objection, Judge. I'm just asking, if it really is relevant
 19 to start asking this individual, Mr. Deskin, Jeremiah, why
 20 his lawyer is there? I mean, it really has no relevance.
 21 MR. SCISCENTO: I'll rephrase it, Your
 22 Honor.
 23 THE COURT: Okay. Go ahead.
 24 MR. SCISCENTO: I'll go right to where I

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1 want to get to.
 2 BY MR. SCISCENTO:
 3 Q Your attorney was there because he worked
 4 out a deal with the Metropolitan Police Department and
 5 probably the -- with the Metropolitan Police Department to
 6 give you a lighter sentence in this case if you testified;
 7 isn't that correct?
 8 A Yes.
 9 Q You have not been sentenced in the case you
 10 pled guilty to, have you?
 11 A No.
 12 Q On February 8th, 1999, you had a sentencing
 13 date in Department III of this District Court; is that
 14 correct?
 15 A I don't remember the date.
 16 Q Okay. You did have a court date when you
 17 were supposed to appear for a sentencing?
 18 A Yes.
 19 Q And that court case was continued?
 20 A Yes.
 21 Q Subsequently, this case was also
 22 previously -- previously this case had been continued, did
 23 you know that?
 24 A Yes.

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1 Q Okay. On May 13th, 1999, you were supposed
 2 to go to Department III, Judge Pavlikowski, to be sentenced
 3 in your case; is that correct?
 4 A Yes.
 5 Q But that case -- but that was continued,
 6 correct?
 7 A Yes.
 8 Q And that was --
 9 MR. COUMOU: Judge, I'm going to have to
 10 object. I don't know what kind of implications counsel is
 11 making, but the case was being continued at counsel's
 12 request, and so his sentencing has been continued.
 13 And so, if that's the point
 14 that's being made, that's the bottom line.
 15 THE COURT: Well, I mean, he can ask him why
 16 his case was continued, if he knows, and it goes to bias,
 17 then like that.
 18 Mr. Sciscento, you can proceed.
 19 MR. SCISCENTO: Thank you.
 20 BY MR. SCISCENTO:
 21 Q Your case was continued until after this
 22 case began; isn't that correct?
 23 A Yes.
 24 Q Your case has been continued until after you

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1 testify in this case; isn't that correct?
 2 A Yes.
 3 Q And the reason for it is what, if you know?
 4 A I --
 5 Q You are anticipating probation; isn't that
 6 correct?
 7 A No, a lighter charge, but it's --
 8 Q A lighter charge?
 9 A Yes.
 10 Q Remember I asked you in preliminary hearing
 11 about probation?
 12 A Yes.
 13 Q And you said, "I anticipate getting
 14 probation."
 15 Do you recall that?
 16 A Yes.
 17 Q Okay. You expect to get probation in this
 18 case?
 19 A I expect to get a lighter charge with a
 20 lighter sentence.
 21 MR. SCISCENTO: Okay.
 22 THE COURT: Sir, when is your sentencing set
 23 for?
 24 THE WITNESS: I don't know the exact day.

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1 THE COURT: Okay.
 2 THE WITNESS: It's --
 3
 4 (Whereupon, a sotto voce at this time.)
 5
 6 MR. SCISCENTO: Judge, could we approach for
 7 a moment?
 8 THE COURT: Yes.
 9
 10 (Unreported discussion at the bench.)
 11
 12 THE COURT: Okay. Mr. Sciscento, you can
 13 proceed.
 14 MR. SCISCENTO: Thank you, Your Honor.
 15 BY MR. SCISCENTO:
 16 Q Let's focus on that nine millimeter that you
 17 talked about.
 18 How many times, before July
 19 16th, 1998, had you seen that nine millimeter?
 20 A Twice.
 21 Q Twice before?
 22 A Yes.
 23 Q Where at?
 24 A Um, both times, it was at Brendan's house.

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1 Q And you cleaned it one time; is that
2 correct?
3 A Yes, I did.
4 Q You held that gun?
5 A Yes.
6 Q Did you fire that gun ever?
7 A No.
8 Q There is a person named Dave you identified
9 as a big white guy; is that correct?
10 A I --
11 Q I think you identified him.
12 A Who?
13 Q Do you know a person named Dave who sold
14 that gun to Brendan?
15 A I don't know him personally, no.
16 Q Were you there when it was -- when the gun
17 was sold?
18 A Yes.
19 Q Okay. Who else was there when this gun was
20 sold?
21 A Ah, that I saw was just me and Brendan and
22 David.
23 Q Anybody else present? Was Sugar Bear there?
24 A No.

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1 Q What kind of cigarettes was Brendan smoking?
2 A I believe they were Benson & Hedges.
3 Q Were any Winston cigarettes being smoked
4 that night?
5 A No.
6 Q Does Sugar Bear smoke cigarettes?
7 A Yeah, I think so; yes; yes, he does.
8 Q What is the answer to that?
9 A Yes.
10 Q What kind of cigarettes does he smoke?
11 A I don't know.
12 Q You don't know?
13 A I don't know the exact brand, no.
14 Q Do you ever buy cigarettes with him?
15 A Ah, I -- I might have.
16 Q Did you ever hear any statements that Sugar
17 Bear is the one that shot Mr. Beasley?
18 A Did I hear any statements?
19 Q Yes.
20 A As in --
21 Q From anybody? Did anybody ever tell you
22 that?
23 A Um, yes.
24 MR. SCISCENTO: Thank you.

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1 Q Are you sure about that?
2 A I'm positive.
3 Q When you went to pick up Mr. Beasley that
4 night, you left Brendan's house; Brendan was there with his
5 mother, with his two cousins -- or nephews and nieces --
6 which was it, the nephews and nieces?
7 A Ah, nephews.
8 Q Okay. And when you went over there, to
9 Michael Beasley's house, Brendan wasn't with you, was he?
10 A No, he was not.
11 Q And Brendan didn't hold Mr. Beasley's child?
12 A No.
13 Q It was you that went in and saw him?
14 A Yes.
15 Q And even after that, you didn't care; you
16 took Mr. Beasley out to that desert to be shot?
17 A I -- yes, I --
18 Q What kind of cigarettes -- was there smoking
19 going on in your car?
20 A On the way up, yes.
21 Q That being July 16th, 1998?
22 A Yes.
23 Q What kind of cigarettes were you smoking?
24 A Camels.

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1 Court's indulgence for one
2 moment, Your Honor.
3 THE COURT: Yes.
4
5 (Whereupon, a sotto voce at this time.)
6
7 BY MR. SCISCENTO:
8 Q You had a drawing -- I am showing you.
9 MR. COUMOU: Uh-huh.
10 BY MR. SCISCENTO:
11 Q -- on October 19th, 1998, am I correct --
12 A Yes.
13 Q -- when you gave that statement to Detective
14 Buczek and Detective Thowsen.
15 If I may approach, Your Honor?
16 THE COURT: Yes.
17 BY MR. SCISCENTO:
18 Q And this drawing shows your car?
19 A Yes.
20 Q And over here, you have some circles with
21 initials in it?
22 A Yes.
23 Q What is that initial? What are those
24 initials representing?

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1 A First name, last name.
 2 Q Okay. You've got the car pointing out
 3 towards the cliff?
 4 A Yes.
 5 Q Okay. But here, if I'm correct on this --
 6 on the State's Exhibit 1, the first time you pointed
 7 straight out here, (indicating), the car?
 8 A Yeah.
 9 Q Okay. When the shots were fired, where was
 10 the car pointed?
 11 A It was pointing toward the cliff.
 12 (Indicating)
 13 Q So --
 14 A The bottom.
 15 Q So that's where you have number two?
 16 A Two, yes.
 17 Q Driving out here, how many ways can you get
 18 out to this location? (Indicating)
 19 A I -- I believe two.
 20 Q Okay. Which way did you come?
 21 A Through the -- I guess it would be the south
 22 entrance, if there is --
 23 Q How many times have you been out here
 24 previously, (indicating), through July 16th, 1998?

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1 Q And there is a lot of ruts in there?
 2 A Uh --
 3 Q Ruts, ruts.
 4 A I don't understand.
 5 Q It's washed out?
 6 A Yeah.
 7 Q Okay. Sand on both sides, dirt on both
 8 sides?
 9 A Yes.
 10 Q Sagebrush on both sides?
 11 A Yes.
 12 Q A very small trail to get out there,
 13 correct?
 14 A Yes.
 15 Q All right. But you'd been out there
 16 previous times?
 17 A Yes.
 18 Q Now, you are here to testify today, why,
 19 because you have a change of heart about killing Michael
 20 Beasley?
 21 A Um, I don't understand.
 22 Q No?
 23 A I --
 24 Q Why are you here testifying today? What is

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1 A Before that?
 2 Q Before that date.
 3 A About -- I think around two.
 4 Q Two times?
 5 A Yeah.
 6 Q Those -- when you were driving out here on
 7 July 16th, 1998, was it light outside?
 8 A No.
 9 Q It was pretty dark, wasn't it?
 10 A It was dark, yeah.
 11 Q Was there any lights illuminating this
 12 place?
 13 A No.
 14 Q There was nothing there to guide you there?
 15 A No.
 16 Q The only way to get there is if you knew how
 17 to get there; would you agree with that?
 18 A Yes.
 19 Q If you hadn't been there before, you would
 20 have trouble getting there, right?
 21 A Ah, yeah.
 22 Q There is a dirt road, which has got a lot of
 23 undulations and bumps and things like that, am I correct?
 24 A Yes.

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1 your motivation?
 2 A To --
 3 Q Not to go to prison; isn't that correct?
 4 A Yeah.
 5 Q You have a son who is about a year and a
 6 half years old now?
 7 A Yes.
 8 Q Do you love that son?
 9 A Yes, I do.
 10 Q Do you want to watch him grow up?
 11 A Yes, I do.
 12 Q Could you watch him grow up in prison?
 13 A No.
 14 Q And you don't want that to happen, do you?
 15 A No, I do not.
 16 Q And, in fact, you want to be with him when
 17 he grows up, don't you?
 18 A Yes, I do.
 19 Q You would do anything to be with him?
 20 A Yes.
 21 MR. SCISCENTO: No further questions, Your
 22 Honor.
 23 THE COURT: Mr. Coundou.
 24 MR. COUNDOU: Thank you.

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REDIRECT EXAMINATION

BY MR. COUNTOU:

Q Jeremiah, was it -- we're dealing with gang members here: You -- you know, you, the defendant, Tommie Burnside and all of them, including Michael.

Is it common for you guys to have guns on occasion?

A On occasion.

Q And so it's not uncommon if -- if Sugar Bear or Tommie or you had a gun on a particular night, correct?

A No.

Q Now, that nine millimeter that you were asked about by both of us, both attorneys, are you sure that that is the same nine millimeter that you saw a month earlier or weeks earlier that was purchased?

A The one that was used that night on the 16th?

Q Yeah, the one that was used as the murder weapon.

A The same as the one that was purchased?

Q Yes.

A Yes.

Q Are you positive about that?

A Yes.

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A That night or when he purchased it?

Q Well, when he purchased it.

Do you -- do you exactly know the date when he purchased it?

A I do not know the exact date.

Q Okay. And you were also asked about this statement -- or have you heard since this -- since the murder of people giving -- or a statement going around saying that Sugar Bear did it?

You said yes?

A Yes.

Q Where did you hear that?

A The night when I had talked to Brendan over the phone.

Q Over the phone?

A In August, yes.

Q Okay. When -- when did you talk to him over the phone?

A I don't know the exact date.

Q Okay. Who -- who told you that Sugar Bear did it?

A No one said that Sugar Bear had did it.

Q Okay.

A I went downstairs and talked with his

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Q Could you be wrong?

A Highly unlikely.

Q Pardon?

A Highly unlikely.

Q Okay. And is it -- why do you say highly unlikely?

A Ah, too much resemblance and I didn't -- I don't -- I don't remember him ever having another hand pistol.

Q You don't remember him having another handgun?

A No, I do not.

Q Okay. And you think that you saw this purchase at least prior to the killing.

Do you know exactly how much time? I mean, can you explain that to me?

A Um, on the 16th --

Q Yeah, if the killing happened on the 16th, when do you think this weapon was -- when did you see him really for the first time with the weapon, with this weapon, and if you are positive that it's this weapon?

A When was the first time I seen him with the weapon?

Q Uh-huh; yes.

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girlfriend. She had said that they were saying that Sugar Bear was -- did it.

Q Oh, so the defendant's girlfriend told you that Sugar Bear had done it?

A Yes.

Q Do you happen to see this girlfriend here in court today?

A Yes, I do.

Q Tell me where she's seated.

A In the back row on the right-hand side.

Q What is she wearing?

A On the -- a white shirt with a --

MR. COUNTOU: Judge, if the record could reflect, it appears that there is a young lady in a white T-shirt that the defendant -- sitting in the back row that he has pointed out as being the defendant's girlfriend who told him that Sugar Bear did it.

THE COURT: What is her name, sir?

THE WITNESS: Coleen.

MR. COUNTOU: Coleen?

THE WITNESS: Yes, Coleen.

THE COURT: Okay. The record will so reflect.

MR. COUNTOU: Thank you, Judge.

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1 BY MR. COUMOU:

2 Q During this time, on this July 16th date,
3 where was -- do you know where Coleen was living?

4 A At the -- at Brendan's house.

5 Q Does the defendant and Coleen have any
6 children in common?

7 A Yes, they do.

8 Q And so when you came downstairs and you
9 talked to his girlfriend, she told you that Sugar Bear --
10 did she tell you how she knew this?

11 A No.

12 MR. COUMOU: Nothing further then, Judge.

13 THE COURT: Mr. Sciscento.

14 (Whereupon, a sotto voce at this time.)

15 MR. SCISCENTO: I'm sorry, Your Honor.

16 (Whereupon, a sotto voce at this time.)

17 MR. SCISCENTO: Your Honor, if I could have
18 the Court's indulgence for a moment.

19 THE COURT: Yes.

20 (Whereupon, a sotto voce at this time.)

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1 A Ah, that was about a -- I believe around a
2 month prior.

3 Q So back in June --

4 A Yes.

5 Q -- of '98?

6 A Yes.

7 Q Prior to this?

8 A Yes.

9 Q Okay. And then at the time you went to pick
10 up Mr. Beasley, it wasn't -- it was just you, Jottee,
11 Burnside and Tormie Burnside?

12 A To pick up Michael, yes.

13 Q Brendan was not there at that time?

14 A No, he was not.

15 MR. SCISCENTO: No further questions.

16 THE COURT: Do any of the ladies and
17 gentlemen of the jury have any questions for Mr. Deskin?

18 (Negative response.)

19 THE COURT: Okay. Ladies and gentlemen of
20 the jury, we're going to go ahead and take a 15 minute
21 recess at this time.

22 During this recess, you are

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1 MR. SCISCENTO: Your Honor, may I ask this
2 Court for indulgence?

3 THE COURT: Just hang on.

4 A JUROR: Could we have a restroom break?

5 THE COURT: You are going to have one in
6 just a moment, sir. Can you hang on just a couple more
7 minutes?

8 A JUROR: Yeah.

9 THE COURT: Okay. Mr. Sciscento.

10 MR. SCISCENTO: Yes, Your Honor.

11 RE-CROSS-EXAMINATION

12 BY MR. SCISCENTO:

13 Q Mr. Deskin, let me ask you very quickly:
14 You mentioned a meeting, before the District Attorney asked
15 you about that, whether or not this meeting -- there was
16 talk about doing Michael, killing Michael.

17 When did that happen?

18 A Which meeting?

19 Q Well, you said there was a meeting where
20 everyone was present; they were asking about whether or not
21 we should kill Michael.

22 A Yes.

23 Q When was that meeting?

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1 admonished not to talk or converse among yourselves or with
2 anyone else on any subject connected with this trial;

3 Or to read, watch or listen to
4 any report of or commentary on the trial or any person
5 connected with this trial by any medium of information,
6 including, without limitation, to newspaper, television,
7 the Internet and radio;

8 Or to form or express any
9 opinion on any subject connected with the trial until the
10 case is finally submitted to you.

11 It's about 3:15. If you would
12 meet Lisa at 3:30 right outside the courtroom door, we'll go
13 ahead and get started at that time.

14 (The following proceedings were had in open
15 court outside the presence of the jury:)

16 THE COURT: Okay. Let the record reflect
17 the jury has left the courtroom.

18 Just for counsels' information,
19 we looked it up. Okay? Mr. Deskin's sentencing is set in
20 Department VII at -- on October 28th.

21 MR. SCISCENTO: Oh, I know.

22 THE COURT: I didn't know if you did or not.

23 Okay. Any matters to put on
24 the record before we take our afternoon recess?

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1 MR. COUMOU: Is Jeremiah Deskin done?
 2 THE COURT: Mr. Sciscento, do you wish to
 3 recall Mr. Deskin as part of your case in chief?
 4 MR. SCISCENTO: No.
 5 MR. SANTACROCE: Wait a minute.
 6 MR. SCISCENTO: Maybe in the case in chief.
 7 MR. COUMOU: Judge, I can tell you it's
 8 not -- he's not on the video.
 9 THE COURT: Okay. Well --
 10 MR. SCISCENTO: I -- no, I -- I think he --
 11 he is on.
 12 THE COURT: Okay.
 13 MR. COUMOU: No, this T-Pot guy is.
 14 THE COURT: Okay. Let's do this, gentlemen:
 15 Mr. Sciscento --
 16
 17 (Whereupon, a sotto voce at this time.)
 18
 19 THE COURT: -- do you want to reserve the
 20 right to call him back in your case in chief?
 21 MR. SCISCENTO: I do want to reserve.
 22 THE COURT: We're not saying you're going
 23 to; just that you want to reserve the right.
 24 MR. COUMOU: Okay.

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1 Number C154293, The State of Nevada versus Brendan J. Nasby.
 2 Let the record reflect the
 3 presence of Mr. Nasby, together with his attorneys Mr.
 4 Sciscento and Mr. Santacroce; State of Nevada represented by
 5 Mr. Coumou.
 6 Mr. Coumou, will stipulate to
 7 the presence of the jury?
 8 MR. COUMOU: Yes, Judge.
 9 THE COURT: And Mr. Sciscento?
 10 MR. SCISCENTO: Yes, Your Honor.
 11 THE COURT: Okay. We can -- the State may
 12 call its next witness.
 13 MR. COUMOU: Thank you, Judge.
 14 The State calls Dr. Robert
 15 Jordan.
 16 THE COURT: Okay. Doctor, if you could just
 17 come on up here and step around to your right, please. Come
 18 on around the corner here.
 19 And if you could face me and
 20 raise your right hand, please.
 21
 22
 23
 24

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1 THE COURT: Okay. Then what I want you to
 2 do, Mr. Deskin, I want you to be in touch with Mr. Coumou.
 3 I'm not going to have Mr.
 4 Sciscento call you, but if Mr. Sciscento wishes to call you,
 5 I will have him notify Mr. Coumou and he will call you; and
 6 then we will need you to come back down to court then.
 7 He may not call you. So just
 8 respond if you get a phone call from Mr. Coumou or anybody
 9 from his office on what to do then.
 10 THE WITNESS: Yes, Your Honor.
 11 THE COURT: Okay? Anything else we need to
 12 put on the record before we take our afternoon recess?
 13
 14 (Whereupon, a sotto voce at this time.)
 15
 16 MR. SCISCENTO: No.
 17 MR. COUMOU: No.
 18 THE COURT: Okay. We'll be in recess until
 19 3:30.
 20 (Recess in proceedings.)
 21
 22 (The following proceedings were had in open
 23 court in the presence of the jury:)
 24 THE COURT: This is the continuation of Case

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1 Whereupon,
 2 ROBERT JORDAN
 3 having been called as a witness by the State and
 4 having been first duly sworn to tell the truth, the
 5 whole truth and nothing but the truth, was examined
 6 and testified as follows:
 7
 8 THE CLERK: Thank you. Please be seated.
 9 THE COURT: Okay. Doctor, the attorneys are
 10 going to ask you some questions here this afternoon. Please
 11 answer them the best you can without arguing with any of the
 12 attorneys.
 13 Also, if there is an objection
 14 to any question asked to you, please don't answer it unless
 15 I tell you it's permissible to do so.
 16 And could you state your name
 17 and spell your last name for the court reporter, please.
 18 THE WITNESS: Dr. Robert Jordan;
 19 J-o-r-d-a-n.
 20 THE COURT: You may proceed, Mr. Coumou.
 21 MR. COUMOU: Thank you.
 22
 23
 24

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DIRECT EXAMINATION

BY MR. COUNTOU:

Q Dr. Jordan, can you explain to the jury what line of work are you in.

A I'm retired.

Q And prior to retiring, what was your profession then?

A I was a forensic pathologist.

Q Could you explain to the jury what does that entail?

A Pathology is the study of trauma and disease and a forensic pathologist applies that data to the law.

Q Now, I'm going to draw your attention to July the 18th, 1998.

Were you working for the Clark County Coroner/Medical Examiner at the time?

A Yes.

Q In what capacity, sir?

A Deputy medical examiner of Clark County.

Q Did you have occasion -- well, back up.

First of all, have you been recognized as an expert in this field in -- in forensic pathology in the past year in the Eighth Judicial District Court?

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I can have State's 31 through 40.

May the record reflect, initially, I'm showing defense counsel State's proposed Exhibit 31.

(Whereupon, a sotto voce at this time.)

MR. COUNTOU: If I may approach, Judge?

THE COURT: Yes, you may.

BY MR. COUNTOU:

Q Dr. Jordan, showing you State's Proposed Exhibit 31.

For identification purposes, do you recognize what's depicted there, sir?

A State's Exhibit Number 31 is a photograph of the decedent, Michael Beasley, as he appeared at the time of the autopsy performed by myself, at which time, he was listed as a John Doe or unknown person.

Q Does that photograph fairly and accurately depict this young man, Michael Beasley, as you found him on this July 18th date?

A It does.

MR. COUNTOU: Okay. Judge, I move to admit State's Proposed Exhibit Number 31.

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A Yes, sir.

Q Approximately how many times?

A Ah, just in the last year?

Q Just in general here in the Eighth Judicial District Court, if you know the number.

A Probably a hundred or more.

MR. COUNTOU: Okay. Judge, unless counsel -- I ask the Court to recognize --

MR. SCISCENTO: We will stipulate, Your Honor.

THE COURT: Okay. The doctor may publish opinions to the jury in the area of medicine and pathology.

BY MR. COUNTOU:

Q Dr. Jordan, I'm going to draw your attention now to an autopsy that was performed under Coroner Number 98-3679.

Are you familiar with that number, sir?

A Yes, sir.

Q What is it about that number that makes you familiar with it?

A The number is -- was assigned to the autopsy performed by me on Michael L. Beasley.

MR. COUNTOU: For identification purposes, if

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THE COURT: Any objection?

MR. SCISCENTO: No objection.

THE COURT: Proposed 31 is received.

(State's Exhibit 31 admitted into evidence.)

BY COUNTOU:

Q Generally speaking, Doctor, could you explain to the jury the process or procedure that you take as you perform an autopsy.

A An autopsy is usually divided into three stages: The first is the body is disrobed and examined externally for any signs of disease or trauma.

The second stage, the body cavities are opened, including the head, chest and abdomen, and the organs therein examined again for any signs of natural disease or trauma.

And the third stage is the obtaining of body fluids or tissues for laboratory examination for the presence of toxic substances or illegal drugs.

Q Starting with the first one, did you perform an external examination of Michael Beasley?

A Yes, sir.

Q And in the process of doing this external

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1 examination, was there any significant pathology that you
2 noted?

3 A Michael Beasley was a well developed, well
4 nourished black male. He appeared his stated age of 18
5 years. He measured six feet two inches in length; weighed
6 approximately 163 pounds.

7 There were no signs of natural
8 disease on the external examination; however, there were
9 three bullet holes in the body, one in the head and two in
10 the chest.

11 Q Now, still with the external, did you notice
12 any scrapings, contusions, bruising on the body that were
13 shown on Michael Beasley on this evening --

14 A No, sir.

15 Q -- or on this date?

16 There was no scrapes, markings
17 or anything like that, other than these two or three bullets
18 holes. Excuse me.

19 A No, sir.

20 Q Focusing your attention on the bullet holes,
21 you indicated three, correct?

22 A Yes, sir.

23 Q In your field, can you tell the difference
24 between an entrance wound and an exit wound?

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1 the skin, which again, after it stretches, contracts back to
2 a smaller diameter than it was.

3 Exit wounds, on the other hand,
4 represent a bullet coming through the skin in the opposite
5 direction, from inside; and when the bullet stretches the
6 skin, it -- with a subcutaneous tissue and fat underneath,
7 it tears the skin so that the exit wound -- it doesn't
8 resemble a hole. It resembles a torn curtain, where the
9 tissue comes apart and is irregular and jagged.

10 Q After this external examination, did you
11 then conduct an internal examination?

12 A Yes, sir.

13 Q And any significant pathology as a result of
14 the internal examination?

15 A The examination of the chest revealed that
16 the projectile, in its passage from the back to the front,
17 went through the right upper lobe of the lung and creating
18 considerable hemorrhage. The right chest cavity was full of
19 blood.

20 And the bullet struck the first
21 rib and the adjacent subclavian artery, which lies quite
22 close to those structures, and then passed out through the
23 skin.

24 There were no fragments of the

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1 A Most of the time.

2 Q Okay. And in this particular case, could
3 you tell, as to the three bullet holes on the body of this
4 young man, which were entrance wounds and which may be exit
5 wounds?

6 A Yes.

7 Q And which were they?

8 A The bullet hole on the -- above the left eye
9 was an entrance wound and there was no corresponding exit.
10 I couldn't find anywhere where it came out.

11 The second bullet wound was on
12 the right chest; and a third was present on the right back.

13 And examination of the
14 characteristics of these wounds showed that the one in the
15 back was the entrance and the one in the chest was an exit.

16 Q Could you explain, Dr. Jordan, to the jury,
17 how can you tell which are entrance and which are exit
18 wounds? What are you looking for?

19 A The character of the wound itself.

20 When a bullet goes through the
21 skin, it usually creates a round hole and that round hole is
22 usually surrounded by what we call an abrasion collar.

23 As it passes through the skin,
24 it produces a concentric bruise around the hole itself in

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1 bullet found in the chest wound, either by exam --
2 examination with the eye or by the x-ray.

3 The wound in the head revealed
4 the bullet passed through the skull above the eye and went
5 through the very thin piece of bone known as the orbital
6 plate, scooted backwards into the what we call the posterior
7 cranial facet, which is the back of the head, going through
8 the brain and destroying portions of the bottom surface of
9 the brain, as well as part of the brain stem before it came
10 to rest in the back of the skull.

11 Q And having done this internal examination,
12 and also the external examination, did you recover any
13 projectiles in having done this?

14 A Nothing was recovered from the chest wound.
15 Multiple fragments of a jacket and the core of a bullet were
16 recovered from the skull and the dura, or the heavy membrane
17 covering the brain in the back.

18 The core is the central portion
19 of a bullet, which is usually made out of lead, and the
20 jacket is an outer covering, which is made of copper or some
21 other metal, and when they strike a hard object, they break
22 apart.

23 Q The bullet that may have gone through --
24 that entered through the back and exited through the

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1 wound -- through the chest -- excuse me -- do you know if
2 that was recovered or seen by you?

3 A No, sir. I -- I did not see it.

4 Q Okay. Now, Dr. Jordan, having done now your
5 internal and your external examination, did you come to a
6 conclusion as to the cause of death?

7 A Yes, sir.

8 Q And what is that, sir?

9 A In my opinion, Michael Beasley died as a
10 result of gunshot wounds to the head and chest.

11 Q And the manner, sir, how would you
12 characterize the manner of this death?

13 A In my opinion, the manner is homicide.

14 MR. COUNOU: If I may approach -- showing
15 defense counsel State's 32 through 40.

16 (Whereupon, a sotto voce at this time.)

17 MR. COUNOU: If I may approach, Judge?

18 THE COURT: Yes.

19 BY MR. COUNOU:

20 Q Doctor, showing you 32 through 40. Look at
21 them collectively on your own and then I'll ask you if you
22 recognize, in general, what is depicted in those
23
24

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1 MR. COUNOU: Thank you.

2 So they're all received into

3 evidence?

4 THE COURT: 31 through 30 -- what are the
5 numbers, Mr. Counou?

6 MR. COUNOU: 31 through 40.

7 Well, 31 has already been

8 admitted. 32 through 40.

9 THE COURT: Okay. 32 through 40 are
10 received.

11 MR. COUNOU: Thank you.

12 (State's Exhibits 32 through
13 40 admitted into evidence.)

14 MR. COUNOU: Dr. Jordan -- first of all, if
15 the record could reflect I'm showing defense counsel State's
16 Proposed Exhibit Number 3. (Indicating)

17 MR. SCISCENTO: Your Honor, for the record
18 also, I'm going to to be object to 3 because it contains a
19 blown up Exhibit Number 34, in which I object to on that
20 matter --

21 THE COURT: Okay. That objection --

22 MR. SCISCENTO: -- as being inflammatory.

23 THE COURT: That objection is overruled.

24 MR. COUNOU: Thank you.

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1 photographs?

2 A (Complies.)

3 A State's Exhibit Numbers 32 through 40 are
4 photographs taken during the autopsy of Michael Beasley.

5 Q Do they accurately and fairly depict the
6 photographs of the actual scene when you were performing the
7 autopsy, sir?

8 A They do.

9 MR. COUNOU: Judge, I move to admit State's
10 31 through 32. (sic)

11 MR. SCISCENTO: Your Honor, if I may have a
12 moment? I think I may object to one of these.

13 (Whereupon, a sotto voce at this time.)

14 MR. SCISCENTO: Your Honor, as to 34, if we
15 may approach?

16 THE COURT: Yes,

17 MR. SCISCENTO: I'm going to object to this.
18 I just want to approach him
19 with that. I object to Exhibit 34 as being inflammatory and
20 not necessary in order for the prosecution to put on its
21 case as to the cause of death.

22 THE COURT: The objection is overruled.

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1 BY MR. COUNOU:

2 Q Dr. Jordan, I'm showing you State's Proposed
3 Exhibit Number -- well, 30 --

4 THE COURT: Mr. Sciscento, is that your only
5 objection?

6 MR. SCISCENTO: That was Number 3.

7 THE COURT: Okay. It's overruled.
8 3 is received.

9 MR. COUNOU: Thank you.

10 THE COURT: Okay. You can show it to the
11 jury.

12 MR. COUNOU: All right.

13 (State's Exhibit 3
14 admitted into evidence.)

15 BY MR. COUNOU:

16 Q Dr. Jordan, I'm going to ask you: The
17 explanations that you had as to the entrance wound and the
18 exit wound, in looking at these photographs, would that help
19 you explain the characteristics of an entrance and exit
20 wounds as you performed the autopsy on -- on Michael
21 Beasley?

22 A Yes, sir.

23 Q Okay. I'll put this right here.

24 And, perhaps, if I can ask you

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1 to step down and perhaps use the pointer. I'll bring it to
2 you, sir.

3 Perhaps starting with the two
4 photographs on the bottom, explain to the jury what -- what
5 we have here.

6 A This photograph represents the back of the
7 decedent. (Indicating) And here is the neck and the head.
8 (Indicating) And here we see a nice round hole and very
9 faintly a ring around it, which is what we call an abrasion
10 collar.

11 This photograph is an exhibit
12 of the chest of the decedent, showing the exit wound, which
13 is quite irregular, and, of course, is surrounded by
14 blackened, dried blood, which is quite characteristic.

15 The upper photographs are of
16 the head of the decedent; and over here on the left side,
17 (indicating), you see a markedly contused, swollen upper
18 eyelid, with a bullet hole, which is not too well delineated
19 on the picture, but approximately there. (Indicating)

20 And, of course, you see it
21 again here and all this blackened discoloration in this
22 white area are a result of decomposition. They were early
23 signs of decomposition in the decedent.

24 There is, of course, no exit to

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CROSS-EXAMINATION

1 BY MR. SANTACROCE:

2 Q Dr. Jordan, where did you perform the
3 autopsy?

4 A At the office of the coroner and medical
5 examiner of Clark County.

6 Q Was -- do you recall what time that was
7 done?

8 A Yes, sir, 11:30 in the morning.

9 Q Was the body already there when you arrived?

10 A You mean was the body at that location when
11 I arrived at work?

12 Q Yes.

13 A I don't know.

14 Q Well, how is it that you got the assignment
15 to perform this autopsy?

16 MR. COUMOU: Objection; relevance.

17 THE COURT: Overruled.

18 Go ahead, Doctor.

19 THE WITNESS: Ah, the duties -- the
20 autopsies assigned to medical examiners are -- are
21 relatively arbitrary. If somebody is there, he does the
22 case or somebody else is there -- or if I'm tied up on
23 something, Dr. Green does it. There is no formal
24

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1 the one in the head, just the entrance wound above the eye.

2 MR. COUMOU: Thank you, Doctor.

3 Judge, I'm going to just put it
4 down here in case counsel needs for his cross-examination.

5 THE COURT: Mr. Sciscento, do you want to
6 put it away?

7 MR. SCISCENTO: Yes, Your Honor, I would
8 ask --

9 THE COURT: Okay. Why don't you put it
10 away, Mr. Coumou.

11 MR. COUMOU: Sure.

12 BY MR. COUMOU:

13 Q The -- that third phase that we talked
14 about, regarding checking body fluids for narcotics or
15 anything like that, that -- was that also performed, to your
16 knowledge, on Michael Beasley?

17 A Yes, sir.

18 Q And was there anything found on Michael?

19 A No, sir.

20 MR. COUMOU: Judge, I'll pass the witness.

21 THE COURT: Mr. Santacroce.

22 MR. SANTACROCE: Thank you, Your Honor.

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1 assignment.

2 BY MR. SANTACROCE:

3 Q How does the body get from the scene of the
4 crime to the location of the autopsy?

5 A It's usually brought in by one of the
6 funeral homes.

7 Q In this particular case, do you know how the
8 body got there?

9 A I could check my record, if I may.

10 Q Sure.

11 A There usually is a note to that effect in
12 the investigator's report; and it says:

13 "Custody of body, removed by Desert, Driver
14 C.R. Crebia, (ph), assisted by A.J. Jones on
15 rotation."

16 Q Does that tell you how it got there, either
17 by Metro or by private funeral home?

18 A It came by private funeral home.

19 Q Was the body fully clothed?

20 A Yes, sir.

21 Q Who removed the clothing?

22 A The crime scene analyst.

23 Q And who was that, do you know?

24 A Sherree Norman; probably assisted by one of

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1 the pathologist's assistants.

2 Q Were you present when the clothing was
3 removed?

4 A Yes.

5 Q Who else was present?

6 A Ah, Detectives Thowson, Buczek and Sheree
7 Norman, and -- let's see -- that's it.

8 Q And these individuals, do you know them?

9 A Yes, sir.

10 Q And how do you know them?

11 A Ah, I know most of the homicide detectives
12 and crime scene analysts for Metro.

13 Q So these three individuals were either
14 homicide detectives or crime scene analysts?

15 A Yes, sir.

16 Q And is that customary in an autopsy?

17 A Yes.

18 Q Do you have any independent recollection as
19 to who removed the clothing?

20 A No, sir.

21 Q But it's your assumption that one of those
22 officers did?

23 A Usually, the homicide detectives don't
24 participate in the removal of the clothing unless the crime

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1 Q But as far as you know, if there was any
2 relevant evidence on the body, it would have been retrieved
3 by the crime scene analyst; is that correct?

4 A Yes, sir.

5 Q In your initial stage one overview of the
6 body, what are you looking for?

7 A Actually, anything that must be described,
8 such as the external condition, whether it be normal or
9 abnormal, and any findings which are pertinent to pathology,
10 either in the past or in a recent period of time.

11 Q When you receive a body, you obviously know
12 that there is foul play suspected if there is detectives and
13 crime scene analysts there; is that correct??

14 A Yes, sir.

15 Q So as you're viewing the body, are you
16 looking possibly for evidence that can be used later in a
17 trial?

18 A Yes, sir.

19 MR. SANTACROCE: Excuse me. May I have
20 those photos, 32 through 40.

21 (Whereupon, a sotto voce at this time.)
22
23
24

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1 scene analyst needs help.

2 Q To your knowledge, what was done with the
3 clothing?

4 A The usual procedure is that the clothing is
5 itemized, described and bagged for -- as evidence.

6 Q Was that done in this case?

7 A I would presume so.

8 Q Did you see it done?

9 A I have no independent recollection of that.

10 Q Do you recall if there were any -- if there
11 was any jewelry on the decedent?

12 A No, sir.

13 Q You do not recall or there wasn't any?

14 A I don't recall.

15 Q If there were jewelry on the decedent, would
16 that have been removed also?

17 A Yes, sir.

18 Q By the crime scene analyst?

19 A Yes, sir.

20 Q Bagged up for evidence?

21 A Yes, sir.

22 Many times, the jewelry is
23 turned over to the office of the coroner, the medical
24 examiner for return to the next-of-kin.

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1 BY MR. SANTACROCE:

2 Q Now, you testified earlier regarding State's
3 Exhibits 32 to 40, that you took the photographs of those;
4 is that correct?

5 A No, sir. The crime scene analyst took the
6 photographs.

7 Q Okay. I'm sorry then. I misspoke.

8 You were present when it was
9 done?

10 A Yes, sir.

11 Q Okay. And photograph 38, you were present
12 when that was taken?

13 A Yes.

14 Q Why was that photograph taken?

15 A Ah, bullet wounds are usually photographed
16 in -- in cases of either hom- -- homicide, accident or
17 suicide, as a record.

18 Q Isn't there other relevant information that
19 you can glean from that photograph in looking at that bullet
20 wound?

21 A Other than it appears to be a classic
22 entrance wound, no, sir. I can't think of anything.

23 Q How about powder burns or scorch marks?
24 Would you be looking for those?

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1 A If they were there. There appears to be
2 none.
3 Q And what does that indicate to you?
4 A That the range of the fire is probably
5 indeterminate or greater than 24 to 36 inches.
6 Q Isn't it a fact, sir, that the scorching
7 diminishes usually at about 12 inches.
8 A That is a reliable figure.
9 Q And the farther away the shooter is the less
10 scorching you would have; isn't that also correct?
11 A Yes, sir.
12 Q You don't detect any scorching around that
13 wound, do you?
14 A No.
15 Q So that would tell you that the shooter had
16 to be farther away than you and I are?
17 A Yes, sir.
18 Q I want you to look at State's Exhibit Number
19 37.
20 Do you see any scorching around
21 that wound?
22 A No, sir.
23 Q Again, the same conclusion, is that correct,
24 about the distance of the shooter?

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1 THE COURT: Could you show it to Mr. Coumou,
2 too.
3
4 (Whereupon, a sotto voce at this time.)
5
6 MR. SANTACROCE: May we approach, Your
7 Honor?
8 THE COURT: Yes.
9
10 (Unreported discussion at the bench.)
11
12 MR. SANTACROCE: I'd like to mark the
13 doctor's report as Defense A.
14 THE COURT: Are you going to object to
15 admitting this?
16 MR. COUMOU: No, I have no objection.
17 THE COURT: It will be received -- Jo,
18 received as Defendant's Exhibit A.
19 MR. SCISCENTO: Thank you.
20 (Defendant's Exhibit A
21 admitted into evidence.)
22 BY MR. SANTACROCE:
23 Q Doctor, I'm going to show you Defendant's
24 Exhibit A and ask you to take a look at it and tell me if

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1 A Yes, sir.
2 Q In fact, did you find any scorching around
3 any of the wounds?
4 A No, sir.
5 MR. SANTACROCE: May I have those back,
6 please.
7 BY MR. SANTACROCE:
8 Q Continuing with your stage one investigation
9 or autopsy, did you find any fragments on the skin of the
10 body?
11 A Ah, fragments of what?
12 Q Foreign material.
13 A None that made any impression. There
14 probably was some sand or dirt, other things, but none that
15 I recorded as relevant to the autopsy.
16 Q And if it would have been relevant, you
17 would have recorded it in your report; is that correct?
18 A Yes, sir.
19 Q And you did prepare a report in this matter;
20 isn't that also correct?
21 A Yes, sir.
22 MR. SANTACROCE: I'm going to show you what
23 purports to be your -- may we mark this as -- Court's
24 indulgence.

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1 you can identify that document.
2 A Defense Exhibit A is a copy of the autopsy
3 report prepared by myself on Michael L. Beasley.
4 Q Directing your attention to page two of the
5 document, on the last sentence, you say -- or second to the
6 last sentence, you say:
7 "There is no obvious powder burning or
8 stippling."
9 What do you mean by
10 "stippling"?
11 A Stippling is a phenomenon seen in gunshot
12 wounds of close -- what we call close range, and is
13 synonymous with the phenomenon known as tattooing, which
14 describes what happens to the skin when particles of
15 unburned or burning powder and other substances found in the
16 bullet are discharged from the muzzle of the gun and strike
17 the skin.
18 They strike the skin at a high
19 velocity penetrating skin, and creating not only some
20 discoloration due to their own color, but small areas of
21 hemorrhage, which look like a rash, and this is called
22 stippling, indicating that the range of fire was fairly
23 close, anywhere from six to 15 inches, give or take a few
24 inches.

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1 Q And you didn't find that with regard to this
2 wound and what wound was that?

3 A The wound to the back.

4 Q Are you sure? Are you sure that's the wound
5 that you are referring to in that paragraph?

6 A Well, there is -- there are two bullet
7 wounds described on page two, neither of which showed any
8 obvious powder burning or stippling.

9 Q The first paragraph, however, says "there is
10 no corresponding exit."

11 A That is correct.

12 Q So which wound would that have been?

13 A That is the wound to the head.

14 Q Thank you.

15 So the wound to the head, you
16 can determine was not done at close range?

17 A It did not appear so.

18 Q Go on to the second paragraph, last
19 sentence:

20 "There is no powder burning or stippling."

21 Again, same conclusion with
22 regard to that bullet wound, correct?

23 A Yes, sir.

24 Q And that would have been the back wound?

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1 Q And tell me how you did it.

2 A The scalpel is held, depending on the
3 handedness of the operator, in one hand while the second
4 hand is used to steady the head and the incision is made
5 across the top of the scalp.

6 Q And why did you choose to make the incision
7 there?

8 A Because the scalp has to be reflected both
9 forward and backward.

10 Q What do you mean by "reflected"?

11 A The scalp is forcibly removed from the
12 underlying skull.

13 Q And what is your purpose for doing that?

14 A In order to expose the calvarium, or top of
15 the skull, which is later removed.

16 Q And you did that in this case?

17 A Yes.

18 Q What was the next thing you did with that
19 area of the body?

20 MR. COUNTOU: Judge, I'm going to object.

21 I don't know -- really don't
22 see the relevance about procedures of cutting up --

23 MR. SANTACROCE: Your Honor, it's very
24 relevant. If you would like me to approach and make an

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1 A Yes, sir.

2 Q Now, I want to talk about -- a little bit
3 about what you did in stage two, particularly what you did
4 with the brain matter.

5 Can you walk me through,
6 step-by-step, what you did regarding that area of the body?

7 A The scalp is reflected; an incision is made
8 from one ear across the top of the head to the other
9 (indicating) --

10 MR. SANTACROCE: Okay. I want to stop you
11 there.

12 And I -- I don't -- for the
13 Court's benefit -- I'm going to ask the doctor to be very
14 graphic, and for the sensibilities of the family that are
15 here, I'm going to warn the families and the Court that I'm
16 going to ask the doctor to be very graphic.

17 THE COURT: Okay.

18 BY MR. SANTACROCE:

19 Q Can you tell me what kind of tools that you
20 used to do that?

21 A To make the incision, we used a scalpel.

22 Q What is a scalpel?

23 A It's a knife with a replaceable blade, with
24 a very sharp single edge.

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1 offer of proof, I will be happy to do that.

2 THE COURT: But you are going to get to the
3 point pretty soon?

4 MR. SANTACROCE: Well, the point may not be
5 through this particular witness, however.

6 THE COURT: Okay. Why don't you approach.

7 (Unreported discussion at the bench.)

8 THE COURT: Okay. Mr. Santacroce, you may
9 proceed.

10 MR. SANTACROCE: Thank you.

11 BY MR. SANTACROCE:

12 Q Doctor, did you eventually remove a bullet
13 fragment or casing from the decedent's brain area?

14 A I described what I removed as multiple
15 fragments of jacket and core.

16 Q Let's talk about the jacket first.

17 Did you re- -- remove one
18 jacket or multiple -- you say multiple fragments.

19 Describe those fragments for
20 me.

21 A Fragments of jacket usually look like
22 distorted pieces of copper. They are usually copper

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1 'colored.' They may be, if they are made of some other kind
2 of metal, a different color. But they appear twisted and
3 out of any alignment with one another. And this occurs when
4 the bullet literally explodes when it strikes a hard
5 surface.

6 So rather than describe each
7 tiny fragment of lead or copper or some other substance,
8 which represent the bullet, we describe it as multiple
9 fragments.

10 Q How big were the fragments you recovered, do
11 you know?

12 A No, sir, I don't.

13 Q Were they microscopic or were they visible
14 to the naked eye?

15 A They were visible to the naked eye.

16 Q Could you see those -- when you removed the
17 skull of the decedent, could you see those lodged into the
18 brain area?

19 A No, sir.

20 Q How did you find them?

21 A By removing the brain.

22 Q And how did you do that?

23 A The dura is incised, again, with a scalpel,
24 and reflected, and by -- the brain is literally scooped out

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1 A Yes, sir.

2 Q So there is a possibility that you may have
3 used forceps in this case or you may have used your hands?

4 A That's possible.

5 Q Would you have used any other tools to
6 remove the copper jacket fragments from the brain area of
7 the decedent?

8 A Not that I recall.

9 Q I guess I should say medical instruments --
10 and I apologize.

11 Any other medical instruments
12 that were used?

13 A Occasionally, the fragments are imbedded
14 very deeply into the bone and, in that case, you would have
15 to use chisels and hammers and other tools to get them out,
16 but I don't recall that I did that.

17 Q If they were in the bone matter of this
18 decedent, you may have had to do that though; is that
19 correct?

20 A Yes.

21 Q I'm sorry?

22 A That is correct.

23 Q Now, let's talk about the -- you recovered
24 some other kind of material other than the jacket, the

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1 of the cavity of the skull, thereby exposing the base of the
2 skull.

3 Q And where did you find these various
4 fragments?

5 A They were --

6 Q I'm talking about the copper fragments now.

7 A They were in what we call the posterior
8 facet. The floor of the skull is divided into three areas:
9 Anterior, middle and posterior facii, which literally means
10 a space.

11 And the back of the skull, this
12 facet contained, at the base of it, these multiple fragments
13 of what was left of the bullet that had passed through the
14 front of the skull and back.

15 Q Did you use forceps to remove those copper
16 jacket fragments?

17 A I have no independent rec- -- recollection
18 of that.

19 Q Would protocol dictate that you might have
20 used forceps?

21 A Not usually. If the fragments are not
22 imbedded in the underlying bone, you can usually remove them
23 with your hand; otherwise, you would use forceps.

24 Q Otherwise, you would use forceps?

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1 multiple fragments of jacket.

2 What else did you remove.

3 A Core.

4 Q Okay. And what is the core?

5 A Core is the center of the bullet. It's
6 usually made out of lead.

7 Q Okay. And is that softer material than the
8 jacket material that you removed?

9 A I would say yes.

10 Q Was that in fragments or was that in one big
11 chunk?

12 A I -- again, I don't recall. It -- the
13 protocol just mentions multiple fragments of core and
14 jacket.

15 Q When you remove a jacket, what do you do
16 with it?

17 A The -- any bullet fragments removed at
18 autopsy are given to the crime scene analyst, who places
19 them in the appropriate containers and labels them and keeps
20 them as evidence.

21 Q And that's what you did in this case?

22 A Yes, sir.

23 Q So all fragments that you recovered, all
24 cores that you recovered, were given to the crime scene

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analyst? *

A That is correct.

Q And as I read your report, the only metal fragments or the only fragments of the jacket and the core were found in the brain area; is that correct?

A As far as my personal recollection, yes.

MR. SANTACROCE: Well, could you refer to your report and tell me if the -- if I'm mistaken.

MR. COUMOU: Judge, I think as he answered is sufficient, as far as he remembers.

THE COURT: Okay. Sustained.

Okay. Next question.

BY MR. SANTACROCE:

Q As regards the bullet wound that I believe you said entered the back, is that correct, exited the front --

A That is correct.

Q Is that what you told me?

A Yes.

Q -- did you find any metal jacket fragments or core fragments regarding that bullet wound?

A None that I have reported in my protocol.

Q In fact, your report says no bullets are recovered regarding that area or that gunshot wound,

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anywhere from six inches to about 15 inches?

A Well, it depends on which book you read.

Q Okay.

A The -- the truth of the matter is that you cannot determine with any accuracy the range of fire unless you use the same weapon, the same type of ammunition, fire at a target to see if the distribution of that stippling or that tattooing or whatever we're talking, about is the same.

So people approximate. Some people say, well, it's -- it's six inches away or eight inches away or 14 inches away; and that's an approximation, but that's all it is.

Q And so there is a very good chance if somebody is holding a gun three feet away, that stippling would not even show up?

A Well, there is other factors operating here.

Q Such as clothing, perhaps?

MR. SANTACROCE: Objection; leading.

THE COURT: Sustained. Rephrase it.

MR. COUMOU: Okay.

BY MR. COUMOU:

Q What factors are you talking about?

A Presence of clothing may interfere with passage of particles into the skin. If all the particles

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correct?

A That is correct.

Q Doctor, finally, there is no way for you, in your autopsy report, to connect the gunshot wound, the metal fragments or the core to my client, Brendan Nasby, is there?

A No, sir.

MR. SANTACROCE: Thank you.

No further questions.

THE COURT: Mr. Coumou.

MR. COUMOU: Thank you, Judge.

REDIRECT EXAMINATION

BY MR. COUMOU:

Q Just leading up on that, that is left up for experts in firearms and tool mark examination, isn't that correct, tool mark -- to identify what gun is firing this particular bullet?

A Yes, sir.

Q That's completely outside your field of autopsy, forensic pathology?

A Yes, sir.

Q Now, Doctor, this stippling effect that you talked about, and just real briefly, you indicated that: Close range to you, in order for a stippling to show, is

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are in the clothing, obviously, none of them are going to strike the skin or only a few.

The type of ammunition that's used, some of the newer powders, for instance, the powder particles themselves are pretty well expended after the bullet leaves the muzzle and you will get a fairly close range shot with no stippling. Many factors influence the presence of stippling or tattooing.

Q And, Doctor, you indicated that you don't even participate in the removal of clothing from subjects that you are going to be performing the autopsy on, correct?

A Not usually, no.

Q Yeah. And isn't it part of your protocol to review reports that are presented or prepared by coroner investigators?

A Yes, sir.

Q And what's the purpose for that?

A To give me some insight into the circumstances of the death.

Q And on this particular case, did you review a report that was written by John L. Stallings?

A Yes, sir.

Q And if I showed you that report, would that help refresh your memory as to whether or not a projectile

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1 was recovered from the wound by the chest area?

2 A Yes.

3 MR. COUMOU: Okay. If I could maybe have
4 the Defendant's Exhibit A -- I believe that's in front of
5 you.

6 BY MR. COUMOU:

7 Q Directing your attention to the second to
8 the last page of Mr. Stallings' report, the fourth paragraph
9 from the bottom.

10 Would you read that to yourself
11 and see if that refreshes your memory, if it does.

12 A Yes, sir.

13 Q Having read that, has that refreshed your
14 memory?

15 A Yes.

16 Q Do you recall if there was a second
17 projectile recovered from -- from the wound area by the
18 chest?

19 MR. SANTACROCE: I'm going object to his
20 refreshing the recollection. He's still reading the report.
21 I don't think that's the proper way to refresh the
22 recollection.

23 THE COURT: Overruled.

24 THE WITNESS: The paragraph, as written,

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1 not present in this autopsy room, was he?

2 A No, sir.

3 Q And the clothes were still on the decedent
4 at the time that the body was brought to you, correct?

5 A Yes, sir.

6 Q And you have no idea when or where Stallings
7 recovered this bullet, do you?

8 A No, sir.

9 Q With regard to the stippling that counsel
10 mentioned, you obviously thought it was an important factor
11 because you included it in your report, isn't that correct,
12 that there was no stippling or powder?

13 A Yes, sir.

14 MR. SANTACROCE: Thank you.

15 No further questions.

16 THE COURT: Do any of the ladies and
17 gentlemen of the jury have any questions for Dr. Jordan?

18 (Negative response.)

19 THE COURT: Okay. Doctor, thank you very
20 much for coming in to court this afternoon and testifying.
21 You are excused then.

22 (Witness excused.)

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1 reads as follows --

2 MR. SANTACROCE: I'm going to object. The
3 document speaks for itself.

4 THE COURT: Well, it's in evidence, Mr.
5 Santacroce. He can read from it.

6 Go ahead, Doctor.

7 BY MR. COUMOU:

8 Q Go ahead, Doctor.

9 A "One spent projectile was located between
10 the decedent's skin and his shirt on the right side
11 of the body near his neck area."

12 Now, when I say no bullet was
13 recovered in the autopsy protocol, that means that I, during
14 my examination, recovered no bullets or fragments from this
15 person's body.

16 If a bullet were found between
17 the shirt and the skin or lying in the road or in a fence
18 behind the body, I would not put it in the protocol.

19 MR. COUMOU: Thank you.

20 Nothing further, Judge.

21 RECROSS-EXAMINATION

22 BY MR. SANTACROCE:

23 Q The fact of the matter is that Stallings was
24

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1 THE COURT: Okay. You may call your next
2 witness.

3 MR. COUMOU: Thank you, Judge.

4 The State will call Sheree

5 Norman.

6 THE COURT: Miss Norman, if you would just
7 come on up here, straight ahead, and just go around to your
8 right here.

9 If you could face me and raise
10 your right hand, please.

11 Whereupon,

12 SHEREE NORMAN

13 having been called as a witness by the State and
14 having been first duly sworn to tell the truth, the
15 whole truth and nothing but the truth, was examined
16 and testified as follows:

17 THE CLERK: Thank you. Please be seated.

18 THE COURT: Okay. Miss Norman, the
19 attorneys are going to ask you some questions here this
20 afternoon. Please answer them the best you can without
21 arguing with any of the attorneys.

22 Also, if there is an objection
23
24

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1 to any question asked to you, please don't answer it unless
2 I tell you it's permissible to do so.

3 And could you state your name
4 for the record and spell your first and last name, please.

5 THE WITNESS: Sheree Norman; S-h-e-r-e-e,
6 N-o-r-m-a-n.

7 THE COURT: Thank you.

8 Mr. Courou, you may proceed.

9 MR. COUMOU: Thank you.

10
11 DIRECT EXAMINATION

12 BY MR. COUMOU:

13 Q Good afternoon, Miss Norman.

14 Could you please detail to the
15 jury what line of work are you in.

16 A I'm employed by the Las Vegas Metropolitan
17 Police Department as a senior crime scene analyst. I've
18 been with them in that capacity for 14 years.

19 Q And as senior crime scene analyst, what does
20 that differentiate you from an individual by the name of
21 Kelly Neil, who testified earlier in this case?

22 A Kelly is a co-worker in my office.

23 Q Now, do you hold then the same type of
24 duties as he would have described to the jury?

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1 Q In order to perform the -- the autopsy --
2 well, let me ask you this: Was Michael Beasley clothed when
3 you first saw him?

4 A Yes.

5 Q And did he still have jewelry or any other
6 personal items on his person?

7 A He was clothed. He was in the body bag. I
8 don't recall jewelry, because it's usually maintained by the
9 Coroner's Office, but there were other personal effects in
10 his pockets.

11 Q Now, during the course of the autopsy and
12 removing of the clothing, are there any items that you
13 impounded of -- that you felt that were of evidentiary
14 significance?

15 A Yes.

16 Q And what is that?

17 A In this case, I impounded all the clothing
18 the victim was wearing. We do a DNA kit, serology kit; and
19 there were projectiles and casings, firearms evidence
20 collected from the body.

21 Q Okay. You said projectiles and casings.

22 Could you explain to the jury
23 the difference between those two.

24 A I would like to make it very simple. A

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1 A Essentially, the same. I've just been there
2 longer and I'm in a senior position.

3 Q Miss Norman, I'm going to direct your
4 attention now to July the 18th, 1998.

5 Were you working on that
6 evening or that day?

7 A Yes.

8 Q And on that date, were you asked to respond
9 to the Clark County Coroner's Office?

10 A Yes.

11 Q For what purpose?

12 A They had an autopsy scheduled that day and I
13 needed to participate in that.

14 Q And as you go to an autopsy, what are the
15 functions of a crime scene analyst?

16 A As a crime scene analyst, I will document --
17 I do that basically through photography -- collect and
18 preserve any evidence.

19 Q And in this particular date, what did you
20 observe as you first got to the coroner's office?

21 A There is a body bag containing my victim,
22 identified to me as a Michael Beasley; and I work hand in
23 hand with -- I believe you just met Dr. Jordan, the medical
24 examiner.

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1 projectile is the item that comes out the barrel of a
2 weapon. The casing is an entire bullet prior to being
3 fired. That's where the primer and the -- the gun powder is
4 going to be in there, along with the item that eventually
5 would be fired would come out of a weapon.

6 So a casing is very often
7 either left in a revolver type weapon or it's kicked out
8 automatically when you have a semi-automatic type weapon and
9 would be either with the weapon or near the weapon and the
10 projectile is projected.

11 Q Now, you said you had projectiles and
12 casings, cartridge casings and so forth that you recovered.

13 How -- how did -- what
14 condition was the -- was all this in when you first saw it?

15 A The body had a lot of debris; the body had
16 bled. There was moisture from the body and the body, as I
17 understood, had been recovered in an outside location.

18 There was a lot of the debris,
19 rocks, dirt, other types of pieces of -- in this case some
20 older looking casings, projectiles, that were stuck to the
21 body.

22 Q Now, pursuant to a subpoena, did you bring
23 something to court today?

24 A Yes, I did.

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1 *Q And if I could please refer to what you
2 brought and explain that to the jury.
3 Can you tell the jury what you
4 brought in?
5 A Yes. This is an evidence envelope that we
6 use at the Las Vegas Metropolitan Police Department. I
7 place items of evidence in here, fill out the pertinent
8 information containing the case number, location and what
9 the items are.
10 These are items number 11
11 through 17 that I have listed as casings, bullets and
12 fragments.
13 Q Okay.
14 A I --
15 Q And are these the items that you recovered
16 at the crime scene -- or at the autopsy? Excuse me.
17 A These are from the autopsy.
18 Q Okay. Now, in that evidence envelope, were
19 there also items that have been removed from the -- from the
20 actual body itself, projectiles or anything like that?
21 A Yes.
22 Q And can you -- is it separated enough where
23 you can tell by -- once you open that, to see which one
24 is -- which -- which piece came from where?

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1 Is it still in the same
2 condition as it was when you impounded it?
3 A No.
4 Q What's different about it?
5 A When I impound my evidence, there is a seal
6 placed upon the opening. (Indicating) In this particular
7 package, there has been an additional seal placed upon the
8 bottom. (Indicating) If anyone opens this package, they're
9 required to sign a chain of custody so we know who else has
10 opened this package.
11 Q Okay. And so who else has opened the
12 package?
13 A I recognize the signature to be Torrey
14 Johnson. He is one of our firearms examiners.
15 Q Miss Norman, you indicated you have items 11
16 through 17 in there, correct?
17 A Correct.
18 Q What is item 11? Can you tell that from the
19 front of your evidence envelope?
20 A I have it listed as a casing.
21 Q Okay. Do you know what size casing or --
22 A Let me check my report here.
23 Q If that helps refresh your memory.
24 A There are several casings, a total of seven

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1 A Yes. As I list my items, I do an evidence
2 impound report corresponding to that. I will list where
3 each of these items are recovered.
4 And each of the items are
5 numbered. In this case, they're in little plastic bags and
6 you can -- I write the number on that so everything matches.
7 MR. COUNOU: Judge, if I can approach and
8 have your clerk mark this as State's Proposed Exhibit 41.
9 THE COURT: Yes.
10 (Whereupon, State's Exhibit 41
11 marked for identification.)
12 THE COURT: Is there going to be an
13 objection, Mr. Santacrose?
14 MR. SANTACROCE: Yes, there is.
15 THE COURT: Okay. Go ahead and mark it for
16 identification.
17 MR. COUNOU: If the record could reflect I'm
18 showing defense counsel State's Proposed Exhibit 41.
19 THE COURT: Okay. The record will so
20 reflect.
21 MR. COUNOU: May I approach again, Judge?
22 THE COURT: Yes, you may.
23 BY MR. COUNOU:
24 Q Now, looking at State's Proposed Exhibit 41,
that's the evidence envelope you brought in.

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1 I listed, as a .22 caliber and one large caliber, but being
2 in a very corroded state, making the head stamp illegible.
3 Q And where was that item -- where were those
4 casings found?
5 A These were found stuck to the exterior of
6 the body or inside the body bag.
7 Q Now, item number 12 in your evidence bag,
8 what is that?
9 A I list that as a projectile, noting that
10 it's corroded.
11 Q And where is that located?
12 A Inside the body bag.
13 Q How about item number 13.
14 A That's -- I list that as a projectile. This
15 was recovered from inside the victim's shirt.
16 Q Item number 14 then?
17 A Projectile fragments.
18 Q What is the difference between a projectile
19 and projectile fragments, if you -- if you know?
20 A Broken pieces of projectile. It's just
21 fragments and little pieces of metal. I wouldn't be able to
22 tell what size, originally, the bullet was.
23 Q Okay. And where is -- were those little
24 fragments found in item number 14?

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1 A They were also inside the body bag.
 2 Q Number -- item number 15?
 3 A Projectile. I received that from Dr.
 4 Jordan, who recovered it from the back portion of the
 5 victim's skull.
 6 Q Then item number 16?
 7 A Projectile and fragments.
 8 Q And where was that recovered from?
 9 A That was also received from Dr. Jordan, who
 10 recovered it from the front portion of the victim's skull.
 11 Q Okay. Still inside the victim's skull that
 12 is?
 13 A Yes.
 14 Q Then the last one, which is item number 17?
 15 A I list that as a projectile fragment. That
 16 was recovered from the exterior surface of the victim's left
 17 eye, where there was an injury.
 18 Q And now, if we opened that evidence envelope
 19 would all these items, 11 through 17, be individually
 20 marked?
 21 A Yes.
 22 Q Okay. Using a pair of scissors that you
 23 have, please open that without disturbing any of the current
 24 seals.

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1 correct?
 2 A Correct.
 3 Q And when you arrived at the autopsy room,
 4 can you describe how the body was?
 5 A Yes. The body was inside a sealed body bag.
 6 There is a little plastic tag and seal that is placed on the
 7 zipper of the body bag.
 8 Q Now, you -- strike that.
 9 How does the body get into a
 10 body bag? You didn't put it there, correct?
 11 A That's correct.
 12 Q Okay. Do you know who put it there?
 13 A In this case, it's a mortuary that responds
 14 to the scene. The body is placed into the body bag, and
 15 this is all under the guidance of a deputy coroner
 16 representing the Medical Examiner's Office in Clark County.
 17 They take the appropriate
 18 paperwork and they place a seal upon the bag at that time,
 19 to transport it to the coroner's office.
 20 Q And do you know who the deputy coroner was
 21 that accompanied the mortuary?
 22 A I was not at that scene, so I don't have
 23 that information.
 24 THE COURT: Mr. Santacroce, let's get to the

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1 A (Complies.)
 2 Q Are they all individually marked as we read
 3 them off, items 11 through 17?
 4 A Yes, they are all accounted for.
 5 Q Now, Miss Norman, looking at all those
 6 items, do they accurately and fairly depict what you
 7 impounded on this July 18th date?
 8 A Yes.
 9 MR. COUNCO: Judge, at this time I would
 10 move to admit State's Proposed Exhibits 41-A -- or what I'll
 11 be asking correspondingly to be marked, starting with item
 12 11 as 41-A, all the way down to 41-G, being item 17.
 13 THE COURT: Any objection?
 14 MR. SANTACROCE: Yes, Your Honor.
 15 May I voir dire the witness?
 16 THE COURT: Yes, you may.
 17
 18 VOIR DIRE EXAMINATION
 19 BY MR. SANTACROCE:
 20 Q Miss Norman, where were you when you
 21 recovered these items?
 22 A At the Clark County Coroner's Office, in the
 23 autopsy room.
 24 Q And that was on July 18th, 1998; is that

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1 exhibit. Okay? You can do this on your cross-examination.
 2 MR. SANTACROCE: No, I am. I'm trying to
 3 get to a chain of custody here.
 4 I don't think that -- my
 5 objection is that the items were found -- specifically, I'm
 6 going to object to items 11, 12, 13 and 14. These were
 7 items that were found inside the body bag.
 8 Now, she did not accompany the
 9 body from the --
 10 THE COURT: Oh, okay. Go ahead.
 11 MR. SANTACROCE: Thank you.
 12 BY MR. SANTACROCE:
 13 Q You were not the crime scene analyst at the
 14 crime scene, were you?
 15 A No, I was not.
 16 Q That was O'Neil or Neil?
 17 A Kelly Neil.
 18 Q And you never saw the body at the crime
 19 scene, did you?
 20 A That's correct.
 21 Q And you never recovered any evidence from
 22 that crime scene, did you?
 23 A No.
 24 Q And you don't know what happened to the body

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1 from the time it got to the crime scene until the time that
2 you saw it at the autopsy room on July 18th, 1998, do you?

3 A I don't know.

4 MR. SANTACROCE: I'm going to object as no
5 chain of custody has been established, at least as far as
6 items 11 through 14 are concerned.

7 I have no objections for the
8 ones that the doctor removed and gave to her.

9 THE COURT: Mr. Coumou.

10 MR. COUMOU: Judge, the witness has stated
11 that they were removed from the body bag, or, as in item
12 number 13, was actually removed between the skin and the
13 victim's shirt, which is a projectile.

14 The State is not obligated to
15 show a perfect chain. Again, I renew my motion to have
16 these items --

17 THE COURT: Okay. The objection is
18 overruled. They will be received.

19 MR. COUMOU: Thank you.

(State's Exhibits 41-A through
41-G admitted into evidence.)

22 MR. COUMOU: And then, Judge, if I could
23 just ask your clerk then, as stated before --

24 THE COURT: Let's get these numbers for our

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1 photographs then taken of the clothing and other items that
2 were recovered?

3 A Yes.

4 MR. COUMOU: Judge, if the record could
5 reflect I'm showing defense counsel 42 through 51.

6 THE COURT: The record will so reflect.

7 MR. COUMOU: May I approach, Judge?

8 THE COURT: Yes.

9 BY MR. COUMOU:

10 Q Miss Norman, please look at 42 through 51
11 collectively; and then ask -- and then tell me if you
12 recognize what's depicted in all of those photographs?

13 A (Complies.) Yes, I recognize the photos.

14 Q What's -- what's depicted in those State's
15 exhibits -- proposed exhibits? Excuse me.

16 A These are photographs of the victim's
17 clothing and personal effects found in his pockets,
18 including a ring, items recovered as evidence.

19 Q And do they accurately and fairly depict
20 what you saw and impounded on July the 18th, 1998?

21 A Yes.

22 MR. COUMOU: Judge, I'll move now to admit
23 State's Proposed Exhibits 42 through 51 into evidence.

24 MR. SANTACROCE: I'm going to object on the

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1 court clerks because they are -- they are -- did you get
2 them all, Jo?

3 THE CLERK: Yeah.

4 THE COURT: Okay.

5 MR. COUMOU: I will give them to you now.

7 DIRECT EXAMINATION (Resumed)

8 BY MR. COUMOU:

9 Q Now, you indicated, Miss Norman, that you
10 also impounded clothing, jewelry items and stuff like that,
11 correct?

12 A The clothing -- let me get my report here.
13 There was two other items. Yes, a beeper, a hotel key and
14 some rolling papers.

15 Q Now, were the -- some of the clothing in
16 these items with blood on them?

17 A Yes.

18 Q And to your knowledge, is it safe to open
19 packages with -- that are contaminated with blood?

20 A These are biological hazards. We wear the
21 appropriate garb when working with them, gloves, in
22 particular. Pathogens can be airborne, so we don't normally
23 expose people to them.

24 Q Now, in this particular case, were

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1 same basis that I set forth earlier with regard to 11
2 through 14.

3 THE COURT: Okay. The objection's
4 overruled.

5 Proposed 42 through 51 will be
6 received.

(State's Exhibits 42 through
51 admitted into evidence.)

9 MR. COUMOU: Thank you.

If I may approach real briefly?

11 BY MR. COUMOU:

12 Q Finally, do some of these photographs
13 actually show the sticking of debris on the victim's
14 clothing?

15 A Yes.

16 Q And I'll ask you to hold up, just for the
17 purposes of identification, 49 through 51 for the jury and
18 see if you can explain to the jury what -- what you are
19 showing them. Hold it up for the jury to see.

20 A Yes. State's Exhibit 51, (indicating), this
21 is a shirt that was removed from the victim. It is a white
22 shirt that is -- the red coloring is blood. (Indicating)

23 This is a close up of the --
24 this is State's Exhibit 50, a close up with an arrow.

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1 (Indicating) I put the arrow here to assist in visualizing
2 a hole within the shirt. (Indicating)

3 And State's Exhibit 49 is
4 another view of the shirt, showing, besides blood, a lot of
5 rocks, casings, other debris that is also stuck to the
6 clothing item. (Indicating)

7 MR. COUNTOU: Thank you very much.

8 I'll pass the witness, Judge.

9 THE COURT: Mr. Santacroce.

10
11 CROSS-EXAMINATION

12 BY MR. SANTACROCE:

13 Q Miss Norman, I suppose that your function is
14 the same as Mr. Neil's; that is, to gather and preserve
15 evidence, correct?

16 A Yes.

17 Q And in this case that's -- at least that's
18 what you did from the autopsy room; is that correct?

19 A Yes.

20 Q And those items that have just been
21 admitted, 11 through -- what was your last one? -- 57, I
22 believe it was, were items that you recovered from the
23 autopsy room; is that correct?

24 MR. COUNTOU: 42 through 51.

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1 MR. COUNTOU: Nothing by the State, Judge.

2 THE COURT: Okay. Any of the ladies and
3 gentlemen of the jury have any questions here of Miss
4 Norman?

5 (Negative response.)

6
7 THE COURT: Okay.. Miss Norman, thank you
8 very much for coming to court this morning.

9 Do you have all our -- you got
10 our scissors here and all. Thank you.

11 (Witness excused.)

12
13 THE COURT: Do you have another witness?

14 MR. COUNTOU: I do, Judge. I don't think she
15 will be very long.

16 THE COURT: Is she brief?

17 MR. COUNTOU: Yes.

18 THE COURT: Okay. Go ahead and call your
19 witness then.

20 MR. COUNTOU: Jomeka Beavers.

21 THE COURT: Okay. Miss Beavers, would you
22 just step around to your right here, please.

23 Okay. If you could face me and
24

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1 (Whereupon, a sotto voce at this time.)

2
3 MR. SANTACROCE: Yeah, 41-A through -G and
4 then 42 to 57, (sic)

5 BY MR. SANTACROCE:

6 Q Those are items you recovered from the
7 autopsy room; is that correct.

8 A Yes.

9 Q And other than that -- other than recovering
10 and preserving the evidence, you have really no other
11 function in the criminal investigation whatsoever; is that
12 correct?

13 A Gather evidence and, in this case,
14 photograph and document the body.

15 Q That's it.

16 A I'm under the direction of Dr. Jordan in
17 this case.

18 Q Do you perform any other kind of criminal
19 investigation or did you perform any other kind of criminal
20 investigation with regard to this case?

21 A Just the autopsy in this case.

22 MR. SANTACROCE: Thank you.

23 I have no further questions.

24 THE COURT: Mr. Coutou.

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1 raise your right hand, please.

2
3 Whereupon,

4 JOMEKA BEAVERS

5 having been called as a witness by the State and
6 having been first duly sworn to tell the truth, the
7 whole truth and nothing but the truth, was examined
8 and testified as follows:

9
10 THE CLERK: Thank you. Please be seated.

11 THE COURT: Okay. Ma'am, the attorneys are
12 going to ask you some questions here this afternoon. Please
13 answer them the best you can without arguing with any of the
14 attorneys.

15 Also, if there is an objection
16 to any question asked to you, please don't answer it unless
17 I tell you it's permissible to do so.

18 Could you state your name and
19 spell your first and last name for our court reporter,
20 please.

21 THE WITNESS: Jomeka Beavers; J-o-m-e-k-a,
22 B, as in boy, e-a-v-e-r-s.

23 THE COURT: Thank you.

24 Mr. Coutou, you may proceed.

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MR. COUNOU: Thank you, Judge.

DIRECT EXAMINATION

BY COUNOU:

Q Good afternoon, Miss Beavers.

Are you related to Michael

Beasley?

A Yes, I am.

Q Could you explain to me, or actually to the jury, what kind of relationship are you to him?

A I am his aunt.

Q His aunt?

A Uh-huh; yes.

Q And Miss Beavers, I'm going to ask you to direct your attention to July 16th, 1998.

Were you living here in Clark

County, Nevada?

A Yes, I was.

Q And who were you living with?

A My mother and my stepfather and Mike.

Q Your mother, your stepfather and who else?

A Michael.

Q Now, on that evening, were you home in the nighttime?

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A I didn't know know their names in the beginning. I just know what they went by.

Q Like their street names?

A Yes.

Q Okay. Do you see anybody here in court today that you knew was friends with him or that Michael hung around with?

A Yes.

Q Could you please point to him and tell me what he is wearing today in court.

A He has on a blue suit, white shirt, color blue tie, whatever, looks like green knit and glasses.

MR. COUNOU: Judge, if the record could reflect -- I believe that's sufficient identification of the defendant.

THE COURT: Is that the gentleman sitting in the middle there at the table, ma'am?

THE WITNESS: Yes, it is.

THE COURT: Okay. The record will so reflect that the defendant has been identified.

BY MR. COUNOU:

Q How did you know his name? What was his street name?

A Blue.

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A Yes, I was.

Q And was Michael home?

A Yes, he was.

Q Was anybody else home besides you and Michael?

A My mother and my stepfather was there and so was Jovan, his baby.

Q Jovan, his baby?

A Uh-huh.

Q Michael's baby?

A Yes.

Q How old was Jovan at this time?

A Oh, he wasn't even one. He was maybe -- he wasn't near one. I don't recall. Like, maybe four or five months.

Q Okay. So basically still a newborn?

A Yeah.

Q And did you know a lot of the friends that Michael hung around with?

A I didn't know them know them, but I seen them. I took them to some of their houses.

Q You've given them rides before?

A Yes.

Q So did you know some of their names also?

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Q Blue?

And did you know any other names of friends that your -- that Michael hung around with?

A I knew Woodpecker -- well, I didn't know him, but I knew of him. Sugar Bear. I knew Marcus by Marcus, not his street name.

Q Okay. Now, on that July or -- excuse me -- July 16th, 1998 evening, did the telephone ring?

A Yes, it did.

Q And who answered?

A I answered.

Q Do you know about what time that telephone rang?

A Um, no. I didn't pay attention to what time the call came in.

Q Was it night or day outside?

A It was night.

Q And when you answered the phone, who -- who was calling?

A It was a male's voice. Who, I don't know. I just know it was a male's voice.

Q What was the male -- what -- what did the male want on the other line?

A He wanted Michael.

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1 Q So did you -- what did you do when they
2 asked for Michael?
3 A Told him -- told Michael: Telephone.
4 Q Were you in separate rooms at this time
5 or --
6 A Yes.
7 Q Okay. And where was your room in relation
8 to Michael's room?
9 A The -- well, the way the house is, my room
10 is here and you got to go, like, a little -- down the hall
11 and then around to get to his room. (Indicating)
12 Q Is your room in the front then or kind of in
13 the front?
14 A Yeah.
15 Q Okay. So they call for Michael and you --
16 you called -- you called out for Michael; is that what you
17 do?
18 A Yeah.
19 Q What -- what happens next?
20 A He gets the phone. I hand it -- he picks up
21 the other phone and I hung up my phone and that was it.
22 Q Sometime after that telephone call, did
23 Michael come to you?
24 A Yes, he did.

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1 Q What -- for what -- what did he want?
2 A He wanted me to watch his baby for a while
3 until he came back.
4 Q Did he say for how long?
5 A About 30 minutes.
6 Q Did he say why?
7 A No.
8 Q And did he -- did he give you the baby?
9 A Yes, he did.
10 Q Right there, when he asked you to watch him?
11 A Yes, he did.
12 Q Could you hear if anybody had arrived to the
13 house prior to him coming to you for -- with the baby?
14 A I can't recall.
15 Q Okay.
16 A I'm not for sure.
17 MR. SCISCENTO: Your Honor, we object unless
18 this is related to something relevant. I don't see the
19 relevancy yet. She doesn't know who the caller was; she
20 doesn't know if anybody has gotten there.
21 I don't know --
22 THE COURT: Well, why don't we let Mr.
23 Councou ask the questions here and if it's not relevant, I'll
24 strike it, Mr. Sciscento.

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1 The objection is is overruled.
2 MR. COUNCOU: Thank you.
3 BY MR. COUNCOU:
4 Q So you take in the baby.
5 Do you take occasion to see
6 where Mike was going?
7 A I didn't ask him where he was going, but
8 once he left -- I didn't look out, but I -- you know how you
9 like peek to see and that was it.
10 Q Okay. And what did you see?
11 A I saw him leaving with Woodpecker, who -- I
12 couldn't see if there was anyone else because, like I say, I
13 just peeked out. I didn't stand there and actually look.
14 Q Did you see Sugar Bear --
15 A No.
16 Q -- by any chance?
17 A Sugar Bear was not there.
18 Q And so he gets in the car -- a car?
19 A Yes.
20 Q Do you recall what kind of car it was?
21 A No, I don't.
22 Q And he leaves?
23 A Yes.
24 Q Did Michael come home that night?

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1 A No, he did not.
2 After that time passed, I paged
3 him and I didn't get a response.
4 Q Did he ever come home?
5 A No, he did not.
6 Q What happened the next day?
7 A I found out what happened -- I found out
8 that he was dead after I got home that evening, around
9 five -- I think I got home about 5:30. I quit school about
10 five o'clock, so it takes me about 30 minutes to get from
11 school to the north side.
12 Q And this -- you found this out on the next
13 date, the 17th?
14 A Yes.
15 Q Which was a Friday?
16 A Yes.
17 Q Did you have any idea, at that point, who --
18 who could have done this?
19 A No, I did not.
20 Q Did any of his friends eventually come that
21 weekend to -- to your house?
22 A Yes.
23 Q And who were they?
24 A Four people came to the house. One was

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1 Blue; one was Marcus; the other, I don't know.
 2 Q And what -- what did -- did Blue talk to you
 3 when he came -- what date was that? Was that the -- the
 4 same weekend?
 5 A That was -- oh, I -- I don't recall. It's
 6 been -- it's been a while. I don't recall. It wasn't like
 7 a week passed by. It was not too soon after it happened.
 8 Q And what was Blue doing when he came over
 9 with these three other guys, one of which you remember as
 10 Marcus?
 11 A They were just -- I met them -- I didn't
 12 meet them in the house. We just -- I stood in my doorway.
 13 They stood on the porch. And they just wanted to know did
 14 we hear of who did it and do we know why.
 15 Q Who was doing the talking?
 16 A Marcus was doing most of the talking.
 17 Q And what was Blue doing?
 18 A He just pretty much stood there; and the
 19 other guys, they stood there.
 20 Q After that time, did Blue ever come back to
 21 the house?
 22 A Yes, he did.
 23 Q Do you remember when that was?
 24 A Um, no, I don't.

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1 Q Who did he come -- who did the defendant
 2 come back to the house with? Was he by himself or was he
 3 with somebody?
 4 A With his girlfriend and baby.
 5 Q Do you -- do you know his girlfriend's name?
 6 A Coleen or something like that.
 7 Q Okay. And what -- what happened during
 8 this -- I mean, what -- what did he say when he came -- when
 9 he came the second time?
 10 A Um, he wanted to know did we find out -- he
 11 heard that he was being blamed for it. He wanted a -- he
 12 asked me to -- if we had an obituary that he could have; and
 13 just pretty much saying that he wasn't the one who did it;
 14 that was his home boy; he wouldn't do anything like that.
 15 Q That's what he was telling you.
 16 A Uh-huh; yes.
 17 Q Now Michael was -- Michael was how old when
 18 he -- when he died?
 19 A Eighteen.
 20 MR. COUNOU: Judge, if I can, from the
 21 clerks, have State's Proposed Exhibit Number 30.
 22 Let the record reflect I'm
 23 showing defense counsel State's Proposed Exhibit Number 30.
 24 THE COURT: The record will so reflect.

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1 MR. COUNOU: May I approach, Judge?
 2 THE COURT: Yes.
 3 BY MR. COUNOU:
 4 Q Miss Beavers, I'm showing you State's
 5 Proposed Exhibit 30.
 6 I ask you to look at that and
 7 see if you can identify that person in that photograph.
 8 A Yes, I can.
 9 Q And who is that?
 10 A Michael.
 11 Q And does that accurately and fairly depict
 12 how Michael was when he was alive?
 13 A Yes.
 14 MR. COUNOU: Judge, at this time, I'll move
 15 to admit State's Proposed Exhibit Number 30.
 16 THE COURT: Any objection?
 17 MR. SCISCENTO: No objection.
 18 THE COURT: Proposed 30 is received.
 19 (State's Exhibit 30
 20 admitted into evidence.)
 21 THE COURT: Could I have that picture,
 22 me'am? Thank you.
 23 BY MR. COUNOU:
 24 Q Did your folks have a funeral?

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1 A Yes, we did.
 2 Q And where was --
 3 MR. SCISCENTO: Your Honor, I -- now, I
 4 don't see the --
 5 THE COURT: Mr. Counou?
 6 MR. COUNOU: Well --
 7 THE COURT: I'll sustain that.
 8 Thank you.
 9 MR. COUNOU: I'll pass the witness then.
 10 THE COURT: Mr. Sciscento.
 11
 12 CROSS-EXAMINATION
 13 BY MR. SCISCENTO:
 14 Q Jomeka Beavers?
 15 A Yes.
 16 Q Miss Beavers, on July 16th, you said that
 17 Woodpecker came to pick up Michael.
 18 A Yes.
 19 Q And Woodpecker is -- do you know Woodpecker
 20 by sight?
 21 A Yes.
 22 Q Okay. Did he come inside the house?
 23 A I don't recall that.
 24 Q Okay. But you did see him?

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1 A Yes.
 2 Q Did you see anybody -- and did you see a car
 3 that he pulled up in?
 4 A No, I couldn't see what kind of car it was.
 5 I didn't see him pull up.
 6 Q I'm sorry?
 7 A Yes. I didn't see him pull up.
 8 Q Okay.
 9 A Like I said, I kind of glanced out and that
 10 was it.
 11 Q But you saw that it was Woodpecker?
 12 A Yes.
 13 Q Did you look inside the car to see if
 14 anybody else was there?
 15 A No, I did not.
 16 Q But you didn't see Sugar Bear that night?
 17 A No, I did not.
 18 Q Do you know what Sugar Bear looks like?
 19 A Yes, I do.
 20 Q Do you remember giving a statement on July
 21 20th, 1998?
 22 A I don't recall what date, but I did give a
 23 statement.
 24 Q That's to Detective Buczek?

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1 the -- if it refreshes your recollection, I can show you a
 2 copy of the statement you gave.
 3 A No. It's -- yeah, it's possible. I mean,
 4 it's been over a year. I can't -- I don't have those
 5 pictures no more, so -- I mean, it's been so long.
 6 Q Did you ever have a picture of Sugar Bear?
 7 A I -- I have pictures that were Michael's
 8 pictures.
 9 Q Which showed Sugar Bear having the gun in
 10 his waistband and the pump shotgun?
 11 A That's correct.
 12 MR. SCISCENTO: No further questions, Your
 13 Honor.
 14 THE COURT: Mr. Coumou.
 15 MR. COUMO: Nothing by the State, Judge.
 16 THE COURT: Do any of the ladies and
 17 gentlemen of the jury have any questions for Miss Beavers?
 18
 19 (Negative response.)
 20
 21 THE COURT: Okay. Ma'am, thank you very
 22 much for coming to court and testifying this afternoon. You
 23 are excused then.
 24 (Witness excused.)

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1 A Yes.
 2 Q Okay. And they showed you a picture of --
 3 of a person that you identified as Sugar Bear, correct?
 4 A Yes.
 5 Q Do you remember that?
 6 A Vaguely.
 7 MR. COUMO: What page are you on?
 8
 9 (Whereupon, a sotto voce at this time.)
 10
 11 BY MR. SCISCENTO:
 12 Q Detective Buczek showed you a picture of
 13 somebody that -- on the day you gave the statement?
 14 A We looked at pictures, yes.
 15 Q And the picture was one of Sugar Bear?
 16 A Yes.
 17 Q And you know him from his face?
 18 A Yes.
 19 Q Do you remember what Sugar Bear was wearing?
 20 A No.
 21 Q Do you remember if he was carrying -- if he
 22 had a handgun in his waistband and a pump shotgun?
 23 A Um, it's --
 24 Q If you want, I could show you a copy of

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1 THE COURT: Okay. Ladies and gentlemen,
 2 we're going to go ahead and take our evening recess at this
 3 time.
 4 During this recess, you are
 5 admonished not to talk or converse among yourselves or with
 6 anyone else on any subject connected with this trial;
 7 Or to read, watch or listen to
 8 any report of or commentary on the trial by any person
 9 connected with this case or by any medium of information,
 10 including, without limitation, to newspapers, television,
 11 and the Internet or radio.
 12 You are further admonished not
 13 to form or express any opinion on any subject connected with
 14 this trial until the case is finally submitted to you.
 15 And I'm going ask you to return
 16 to the -- right outside the courtroom tomorrow afternoon at
 17 1:30 p.m. and we'll get started promptly at 1:30 tomorrow
 18 afternoon.
 19 Okay. Again, if you will leave
 20 your badges and your tablets.
 21 As a matter of fact, could you
 22 do this for me? Could you put them underneath your chairs,
 23 your badges and tablets underneath your chairs this
 24 afternoon.

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1 Thank you very much. And we
2 will see you tomorrow afternoon at 1:30 then.

3 (The following proceeding were had in open
4 court outside the presence of the jury:)

5 THE COURT: Okay. Let the record reflect
6 the jury has left the courtroom.

7 Do you have any matters to put
8 on the record before we take our evening recess?

9 MR. COUNOU: Nothing by the State, Judge.

10 MR. SCISCENTO: Nothing, Your Honor.

11 THE COURT: Thank you. We'll be in recess.

12
13 (Proceedings recessed until Thursday,
14 October 14, 1999, at 1:30 p.m.)

15 *****

16 ATTEST: Full, true and accurate transcript of proceedings.

17
18 *Renee Silvaggio*
19 RENEE SILVAGGIO, C.C.R. NO. 762
20 OFFICIAL COURT REPORTER
21
22
23
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BY

BY Tina Hurd
TINA HURD DEPUTY

Defendant.

Docket No. P

ORDER FOR TRANSCRIPT

IT IS HEREBY THE ORDER OF THE COURT that the court reporter prepare the trial transcript and the concordance in the above referenced case on a daily basis and such will be paid for by the county at the daily copy rate.

DATED THIS 15th day of October, 1999.

HONORABLE MARK GIBBONS
District Court Judge, Dept. VII

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SHIRLEY B. PARRAGUIRRE, CLERK

BY

JANA HURD

DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN JAMES NASBY,

Defendant.

Case No. C154293

Dept. No. VII

Docket No. P

VOLUME IV

Before the Honorable Mark Gibbons

Thursday, October 14, 1999, 1:30 p.m.

Reporter's Transcript of Proceedings

JURY TRIAL

CONDENSED TRANSCRIPT

APPEARANCES:

(See separate page)

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

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A P P E A R A N C E S

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Las Vegas, Nevada, Thursday, October 14, 1999, 1:30 p.m.

(The following proceedings were had in open court in the presence of the jury:)

THE COURT: Okay. Good afternoon, ladies and gentlemen.

This is the continuation of Case Number C154293, the State of Nevada versus Brendan Nasby.

Let the record reflect the presence of Mr. Nasby, together with his attorneys Joe Sciscento, Frederick Santacroce; Frank Coumou, deputy District Attorney representing the State of Nevada.

Mr. Coumou, will you stipulate to the presence of the jury?

MR. COUMOU: Yes, Judge.

THE COURT: Mr. Sciscento?

MR. SCISCENTO: Yes, Your Honor.

THE COURT: Okay. The State may call its next witness.

MR. COUMOU: Thank you, Judge.

The State calls Tanesha Banks.

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THE COURT: Okay. Miss Banks, you can come on up; just step around to your right, please.

And if you could face me and raise your right hand.

Whereupon,

TANESHA BANKS

having been called as a witness by the State and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Thank you. Please be seated.

THE COURT: Okay. Miss Banks, the attorneys are going to ask you some questions here this afternoon. Please answer them the best you can without arguing with any of the attorneys.

Also, if there is an objection to any question asked to you, please don't answer it unless I tell you it's permissible.

And could you state your name and spell your first and last name for the court reporter, please.

THE WITNESS: Tanesha Banks; T-a-n-e-s-h-a,

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B-p-n-k-s.

THE COURT: Thank you.

Mr. Coumou, you may proceed.

MR. COUMOU: Thank you, Judge.

DIRECT EXAMINATION

BY MR. COUMOU:

Q Tanesha, I'm going to ask you: Back in 19 -- June of '97, did you meet and then eventually become romantically involved with a young man by the name of Michael Beasley?

A Yes, I did.

Q And how long had you known Michael Beasley when you actually got involved with him?

A Oh, about a month or two.

Q A month or two?

A Uh-huh.

Q And as of today, do you have something in common with -- with Michael?

A Yes, I do.

Q What is that?

A A child.

Q How old and what's the name of this child?

A He's one and his name is Javon.

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member of that -- that group?

A Yes, I do.

Q Can you please point to him and tell me what he is wearing and what is his name.

A It's Brendan Nasby, Blue. He has a blue suit on, a tie, white shirt and glasses. He's sitting in the middle.

MR. COUMOU: Judge, may the record reflect the witness has identified the defendant.

THE COURT: The record will so reflect.

BY MR. COUMOU:

Q To your knowledge, back in May -- this is when your son was born -- was Michael good friends with Blue or -- characterize that relationship, if you know.

A I'm not sure.

Q Did -- did you hang around this group?

A Yes, I did.

Q For how long?

A Not for long; for about a month or two before I found out I was pregnant.

Q Did you -- did you develop a friendship with any -- any other girls that hung out with this group?

A Yes, I did.

Q And what's her name?

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Q When was -- when was your son born?

A May 12th, '98.

Q May 12th, 1998?

A Uh-huh.

Q And did you ever marry Michael Beasley?

A No, I didn't.

Q When -- when your son was born, what was the status of your relationship, between yourself and Michael?

A We weren't together, though we were friends.

Q You were friends?

A Uh-huh.

Q If you could, just speak up a little louder.

Now, did you know of any friends that the defendant had or --

A Yeah --

Q -- excuse me -- that Michael had that he hung around with all the time?

A Yes.

Q Did that group of friends have any particular name that they went by?

A Yes.

Q And what name is that?

A L.A. Crazy Riders.

Q Do you see a person here in court that was a

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A Crystal Bradley.

Q Did you develop a good friendship with her?

A Yes, I did.

Q Now, I'm going to draw your attention to July 16th, 1998 in the evening hours.

Did you see Michael that night?

A Yes, I did.

Q Where -- where did you see him at?

A He was at my house.

Q Why was he at your house?

A To pick up my child.

Q Pick up Javon?

A Yes.

Q And what was the idea for him to pick up -- why was he picking up your child?

A Oh, because he was going to spend time with him and Javon was going to stay his first night over with his dad.

Q And how long did he -- about what time did he leave with Javon?

A From my house?

Q Yes.

A I'm not sure. He got there about 7:30 and he stayed about 10, 15 minutes, so --

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1 Q And you left amicably? I mean, you guys
2 weren't fighting, correct?
3 A No.
4 Q Now, that night, did you ever hear -- that
5 night, did you hear from Michael? Did he call or anything
6 like that?
7 A No, I didn't.
8 Q And the following morning -- now getting
9 your attention to the 17th of July -- were you talking to
10 anybody on the telephone?
11 A Crystal.
12 Q Crystal Bradley?
13 A Yes.
14 Q And without saying what Crystal was saying,
15 but what was the conversation about?
16 A Um, Michael.
17 Q For what purpose? What -- what were you
18 talking about Michael about?
19 A Different things; about the baby, about --
20 just different things; about -- um, everybody had -- a lot
21 of people had been saying he was acting funny and had I seen
22 any of that?
23 Q Seen any of what?
24 A Michael acting funny towards people.

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1 A Yes.
2 Q Was there a third call placed on a three way
3 call where all three of you could speak?
4 A Yes.
5 Q And who placed the three way call?
6 A Crystal did.
7 Q Do you know that for a fact?
8 A Yes. She clicked over and -- you have to
9 click over and then you dial the number. It was a dial tone
10 and then you dial the number; and then you click the other
11 person that was already on the phone back on.
12 Q Do you know who she was going to call for a
13 three way?
14 A Yes.
15 Q Who was that person?
16 A Blue.
17 Q And did you hear the third person come on
18 the telephone?
19 A Yes, I did.
20 Q And this person, did you recognize his or
21 her voice?
22 A Yes, I did.
23 Q And whose voice was it?
24 A Blue's.

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1 Q So you kind of were gossiping about Michael?
2 A Yeah.
3 Q And did there come a point that either you
4 or somebody else joined in the conversation using a three
5 way call?
6 A Yes, Crystal called Blue.
7 Q And what -- why was she calling --
8 MR. SCISCENTO: Your Honor, I'm going to
9 object to this.
10 If Crystal called Blue -- I
11 think it might be speculation on this witness' part whether
12 or not Crystal called Blue, what number she used.
13 This may be leading to
14 inadmissible hearsay; and at least lay a foundation that we
15 know the number she called was actually Brendan's number,
16 Mr. Nasby's number, and, in fact, the person on the other
17 end, if it was Mr. Nasby.
18 THE COURT: Well, first of all, Mr. Coumou
19 didn't ask for that about the conversation. But what I will
20 do is I will sustain the objection just to lay a foundation
21 how she would have known who she called.
22 BY MR. COUMO:
23 Q So, for a while, the two of you were
24 talking, right?

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1 Q Have you heard the defendant's voice in the
2 past?
3 A Yes.
4 Q On how many occasions?
5 A I -- I can't say very -- I mean --
6 Q Many occasions?
7 A Yeah.
8 Q And did he identify himself as -- as being
9 the defendant also?
10 A Yes.
11 Q Now, what -- when the defendant got on the
12 telephone, what was the purpose for getting the defendant on
13 this three way call?
14 A Um, to find -- she wanted to know the same
15 thing --
16 MR. SCISCENTO: Your Honor, I'm going to
17 object to this. Crystal wants to know, that's speculation
18 as to why Crystal calls, unless she knows specifically why
19 Crystal called.
20 THE COURT: Mr. Coumou.
21 MR. COUMO: Judge, it's not -- it's not
22 hearsay. It's not being offered for the truth of the matter
23 asserted. And if the Court does see it as hearsay, it would
24 be a general --

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THE COURT: Okay. What we're going to do, ladies and gentlemen, I'm going to let Miss Banks tell you what Crystal Bradley said about the purpose of the call.

You are not to consider it for the truth of why she made the call, only for the effect it had on Miss Banks and the other people that participated in the phone call.

Okay. Mr. COUNOU.

MR. COUNOU: Thank you.

BY MR. COUNOU:

Q Go ahead and continue then, Miss Banks.

A Crystal was calling Blue to -- I guess to see how he was doing and also to see if Michael was acting funny towards him. It was mostly about Michael.

Q Okay. Did -- did you ask the defendant anything about Michael?

A No. He asked me.

Q He asked you?

A Uh-huh.

Q What did he say?

A Asked me when was the last time that I seen Michael.

Q And what -- what did you say?

A I was kind of tired. So I -- at first, I

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A Yes.

Q And then he asked you if you've seen Michael lately?

A Yes.

Q After -- after you said that he sounded panicky, what happened next?

A He told Crystal, "I -- I need to talk to you by yourself for about -- I need to talk to you by yourself."

Q And so what -- what happened next?

A Um, Crystal said, "I'll call you back." And I said okay.

Q How much time -- did -- did you get a call back after -- after you hung up?

A Yes, about ten minutes later.

Q And what -- who was on the other line?

A Crystal.

Q Describe the tone of voice that Crystal had.

A Calm, but a little shaky.

Q And did you learn anything from the conversations you had with Cris- --

MR. SCISCENTO: Your Honor, I'm going to object to this as hearsay now. What he's trying to do is get in to what Crystal says. Crystal is here to testify.

MR. COUNOU: I'm not asking what Crystal

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said um, this -- this morning. And he said, "What do you mean this morning?"

I said: "Oh. Excuse me. I mean last night. He came to get the baby."

Q Okay. When he says "What do you mean this morning," what -- what was his tone of voice like?

A Like panicky, but I didn't notice it at the time.

Q Did -- was there any question before -- before he -- he asked you about what do you mean about this morning, was there any reference to whether or not Michael was still part of the L.A. Crazy Riders?

MR. SCISCENTO: I'm going to object as leading, Your Honor.

THE COURT: Sustained.

BY MR. COUNOU:

Q Okay. Was there anything else said prior to the defendant asking you if you had seen Michael?

A Yes.

Q And what was that?

A Crystal asked was Michael a part of L.A. Riders; and then he says, "No, he's not part of that anymore."

Q He said that?

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said. It's just: What did you learn? I'm not going to go into the details of the conversation.

Crystal will testify to that.

MR. SCISCENTO: Exactly as to what?

I mean, he's basically saying: What did you hear from Crystal; what did you learn from Crystal; just two different words.

THE COURT: I think Mr. Sciscento is right, Mr. COUNOU. You can ask her what she did after the conversation with Miss Bradley or what her reaction was or whatever like that.

But I -- you can't have her get -- I think you are trying to get into the fact of --

MR. COUNOU: Well, I'm just trying to ask her what did she learn, not -- not --

THE COURT: Why don't you ask her what she did or what her reaction was.

MR. COUNOU: That's fine. I'll move on.

BY MR. COUNOU:

Q How long were you on the phone with Crystal?

A After -- after she called me back the second time?

Q Yes.

A About a half hour.

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Q And as a result of talking to Crystal, did you do anything?

A I cried.

Q Okay. Why did you cry?

MR. SCISCENTO: I'm going to object to this, Your Honor, too, as being hearsay.

THE COURT: Overruled.

Go ahead, ma'am.

BY MR. COUNOU:

Q Why did you cry?

A Because I found out that Michael was dead.

Q Did you do anything to verify it?

A I called the news people.

Q And -- and why did you call the news people?

A Because they came on the news, trying to identify him, because they couldn't identify him. He didn't have no identification. They were trying to identify him and they read off his tattoos and I knew about his tattoos.

Q Did you watch the news?

A Yes, I did.

Q Okay. Was this the -- what -- what time, 12 o'clock, six o'clock?

A The one o'clock news because the first -- the original broadcast comes on at 12 and I watched the one

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after, which comes on at one.

Q Okay. Do you know which channel?

A One -- 1 and 39 have the same channel.

Q Okay.

A It's the same news.

Q Las Vegas 1 channel?

A Yes.

Q What was it about the broadcast that you knew that caused you to call?

A His tattoos.

Q What was tattoos?

A CYN and T-Zone. And they didn't know what the last one was. It was Droop. But they didn't know; they needed help to figure it out. They just knew the first initial and the last initial.

Q CYN, did you know what that stood for?

A Crazy Young Niggers.

Q Is that a group that Michael belonged to?

A Yes.

Q Now after you spoke to the -- to the media and you verified that that was Michael, what -- what happened next?

A Um, the police called me.

Q And did you -- did you talk to the police as

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to what happened?

A Yes.

Q Did you inform the police about the conversation that you had with Crystal Bradley then?

A Yes, I did.

Q Now, as a result of your conversations that you've had with Crystal Bradley and then the police, you were aware that the defendant was arrested, correct?

A Not until later.

Q Not until later?

A Yes.

Q But back then, you knew that the defendant -- well, you knew what the defendant had told Crystal 'cause Crystal relayed that to you?

A Yes.

Q Did you -- did you know a young lady by the name of Brittney Adams?

A Yes, I did.

Q How -- how did you know her?

A She also hung around L.A. Crazy Riders too.

Q And how long have you known her?

A Um, approximately the same time that I met Crystal.

Q Did you see -- after finding out about

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Michael's murder, did you have occasion to run in to Brittney?

A Yes, she came to my house.

Q When was that?

A August 1st.

Q And what time did she come over?

A Um, I'd say about eleven o'clock at night.

Q Do you know why she came over?

A To beat me up.

Q Tell the jury exactly what happened on that August 1st night.

A She came over to my house. My dad let her in, 'cause I didn't know she had a bad intentions. I hadn't seen her. And she talked to me and my mom and played with Javon for a few minutes and then asked me to come outside to talk to her. So I did.

And I went outside and she started questioning me as to whether I knew what happened to Michael. Scared, I said: No. I know as much as you guys know. I said: He was shot and killed.

And she says: Well, I'm hearing that you are saying that Blue did it.

I says: No, I didn't say that because I don't know if he did it or not.

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Electronically Filed

Tracie K. Lindeman

VS.

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7	02/18/2011	MOTION FOR EVIDENTIARY HEARING	1528 - 1544
6	12/05/2002	MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL PETITION	1256 - 1258
5	01/30/2002	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	1149 - 1152
7	02/18/2011	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	1545 - 1545
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5	12/08/1999	ORDER APPOINTING COUNSEL	1011 - 1011
6	08/07/2002	ORDER APPOINTING COUNSEL	1251 - 1251
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6	05/29/2003	ORDER AUTHORIZING FIRST INTERIM PAYMENT	1265 - 1265
6	05/08/2006	ORDER AUTHORIZING PAYMENT OF FEES	1464 - 1464
7	02/12/2007	ORDER AUTHORIZING PAYMENT OF FEES	1492 - 1492
5	09/21/2001	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS	1067 - 1068
1	12/21/1998	ORDER DENYING DEFENDANTS MOTION FOR OWN RECOGNIZANCE RELEASE OR HOUSE ARREST	212 - 213
7	02/28/2011	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	1555 - 1555
6	05/04/2005	ORDER FOR PRODUCTION OF INMATE BRENDAN J. NASBY, BAC #63618	1375 - 1376
6	05/23/2002	ORDER FOR PRODUCTION OF INMATE BRENDAN JAMES NASBY, BAC #63618	1249 - 1250
2	09/16/1999	ORDER FOR PRODUCTION OF INMATE JOTEE BURNSIDE, BAC #60729	378 - 379
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5	05/31/2001	ORDER RELEASING EVIDENCE	1051 - 1051
5	12/08/1999	ORDER WAIVING COSTS (INSUFFICIENT PROPERTY OF INCOME WITH WHICH TO PAY COSTS OF FILING)	1012 - 1013
6	11/02/2004	PETITION AND ORDER FOR HONORABLE DISCHARGE FROM PROBATION	1277 - 1277
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4	10/19/1999	PROPOSED INSTRUCTIONS TO THE JURY (UNFILED)	961 - 963
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6	11/28/2005	REPORTER'S TRANSCRIPT OF NOVEMBER 9, 2005	1383 - 1434
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5	10/19/1999	REPORTER'S TRANSCRIPT OF OCTOBER 18, 1999 (CONTINUATION)	981 - 994
5	01/28/2000	REPORTER'S TRANSCRIPT OF OCTOBER 19, 1999	1035 - 1041
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2	07/14/1999	RESPONSE TO MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS INTIMIDATION	305 - 306
5	09/14/2001	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY PRODUCTION AND TRANSMISSION OF DOCUMENTS	1064 - 1066
6	02/04/2005	STATE'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	1334 - 1365
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5	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL	1201 - 1203
5	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR EVIDENTIARY HEARING	1204 - 1206
6	01/28/2004	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBSTITUTION OF ATTORNEYS	1271 - 1274
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6	04/05/2002	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) (CONTINUATION)	1226 - 1240
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6	11/10/2004	STIPULATION AND ORDER	1283 - 1284
6	02/01/2005	STIPULATION AND ORDER	1332 - 1333
6	03/25/2005	STIPULATION AND ORDER	1373 - 1374
6	06/16/2005	STIPULATION AND ORDER	1377 - 1378
6	08/10/2005	STIPULATION AND ORDER	1379 - 1380

Arrested: WAR REQ
Submitted: 8/14/98

NOTICE OF DENIAL OF REQUEST
CLARK COUNTY DISTRICT ATTORNEY

TO: BUCZEK/THOWSEN
METRO - HOMICIDE

DATE: 8/18/98
EV/DR/CIT#: 9807170541
DA FILE #: 98F11673X / TK3

STATE vs.

DESKIN, Jeremiah John

CHARGE: MWDW

REASON FOR DENIAL

CONSOLIDATED UNDER CASE NO 98F11168A-B

DISTRICT ATTORNEY

BY: LYNN ROBINSON /jgw
Deputy

* ATTN: FRANK COUMOU /

DISTRIBUTION: Addressee D.A. SCOPE Metro Jail

*Humphrey's
Class of 1
Pack*

1 **NOTC**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

Shirley B. Riggins

MAR 9 3 13 PM '99

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.
14

Case No. C154293A
Dept. No. III
Docket E

15 NOTICE OF EXPERT WITNESSES
16 [NRS 174.234 (2)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call expert witnesses in its case in chief as follows:

21 Robert Jordan - Clark County Medical Examiner - He will articulate the cause and manner
22 of death of the decedent and will testify that the manner of death was homicide.

23 Torrey Johnson - Las Vegas Metropolitan Police Department - He will testify regarding the
24 firearms and bullet trajectory comparison of certain evidence collected from the various crime scenes.

25 The substance of each expert witness' testimony and a copy of all reports made by or at

26 ///

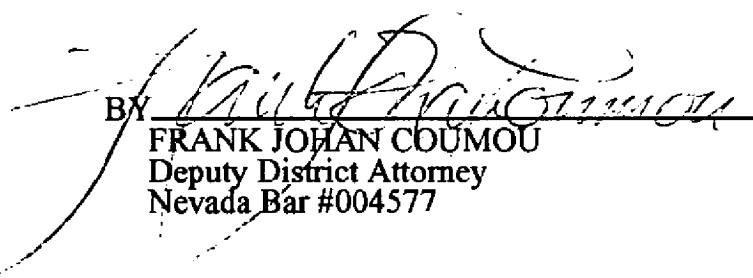
27 ///

28 ///

1 the direction of the expert witness has been provided in discovery.

2 A copy of each expert witness' curriculum vitae, if available, is attached hereto.


3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

10 RECEIPT OF COPY

11 RECEIPT OF COPY of the above and foregoing Notice of Expert Witnesses is hereby
12 acknowledged this 9th Day of March, 1999.

13 JOSEPH SCISCENTO, Esq.
14 ATTORNEY FOR DEFENDANT

15 BY 
16 330 S Third Street #860
17 Las Vegas, Nevada 89101

18
19
20
21
22
23
24
25
26
27
28 msr

CURRICULUM VITAE

ROBERT A. JORDAN

Birthplace: Rochester, New York
Date: July 10, 1926

Premedical Education: B.S., Defiance College,
Defiance, Ohio, 1949
M.S., Bowling Green State University
Bowling Green, Ohio, 1950
Ph.D., Tulane University of Louisiana
New Orleans, Louisiana, 1954

Medical Education: M.D., Tulane University of Louisiana
New Orleans, Louisiana, 1958

Internship: General rotating, U.S.P.H.S., Hospital
Norfolk, Virginia, July, 1958 to July, 1959

Residency: Pathology: U.S.P.H.S. Hospital,
Baltimore, Maryland, July, 1959 to July,
1963

Military Service: U.S.A.F., Pacific Theatre of Operations
1945-1947

U.S.P.H.S., Division of Hospitals, 1958-
1966

Experience in Pathology: Chief Pathologist, U.S.P.H.S. Hospital,
Boston, Mass. (300 bed General Hospital),
1963-1965

Chief Pathologist, U.S.P.H.S. Hospital,
Staten Island, N.Y. (800 bed General
Hospital),
1965-1966

Assistant Medical Examiner of Harris
County, Texas, 1966-1968

Laboratory Director, Kelsey-Seybold
Clinic, Houston, Texas, 1968-1984

Medical Director: Smith-Kline
Bioscience Laboratories, Houston,
Texas, 1983-1990

Assistant Medical Examiner of Harris
County, Texas, 1984-1990

Deputy Medical Examiner of Clark County,
Nevada, 1991-1996. Retired.

Contract pathologist to Office of Coroner
Medical Examiner of Clark County, Nevada
January 1998 to present.

Teaching Appointments:

Assistant Professor of Pathology, Tufts
University School of Medicine, Boston,
Mass. 1963-1965

Assistant Professor of Pathology, New
Jersey State College of Medicine,
Jersey City, New Jersey, 1965-1966

Clinical Assistant Professor of Pathology,
Baylor College of Medicine, Houston,
Texas, 1968 to present

Consultant to Tumor Registry, The
University of Texas M.D. Anderson
Hospital and Tumor Institute at Houston,
1968 to present

Active staff in Pathology, The Methodist
Hospital, Houston, Texas, 1968-1970

Courtesy Staff, St. Luke's Episcopal
Hospital, Houston, Texas, 1968-1990

Medical Licensure:

Nevada, 1991 to present

Curriculum Vitae
Robert A. Jordan
Page 3

Certification:

American Board of Pathology
Pathologic Anatomy, 1966
Clinical Pathology, 1966
Forensic Pathology, 1986

Societies:

Fellow, emeritus College of American
Pathologists
Fellow, emeritus American Society of
Clinical Pathologists
Member, American Society of Tropical
Medicine
Member, Harris County Medical Society
Member, Texas Medical Association
Member, Texas Society of Pathologists
Member, Houston Society of Clinical
Pathologists

Publications:

Intestinal nematodes in well-cared-for
Dogs. American Journal of Tropical
Medicine and Hygiene. 9:1, pp. 29-31.
January, 1960

The laboratory diagnosis of amebiasis.
Maryland Society of Medical
Technologists News Letter. May 1962

Eastern Equine Encephalitis: report of
Case with autopsy. American Journal
of Tropical Medicine and Hygiene. 14:3,
pp. 470-474. April 1965

March 1973

Primary Melanoma of the lung, chest.
62:3, pp. 629-631. November, 1972

**ASSOCIATED PATHOLOGISTS LABORATORIES
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 10/09/97

Name: Ted D. Johnson

Title: Toxicology Technical Supervisor

EXPERIENCE IN THE FOLLOWING DISCIPLINES			
Controlled Substances	XXX	Blood Alcohol	XXX
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology	XXX	Firearms	
Latent Prints		Crime Scene Investigation	
Serology		Clandestine Laboratory Response Team	
Document Examination	XXX	DNA Analysis	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University of Wisconsin- Stout, Rice Lake, WI.	1974-1976	Biology	A.S.
University of Wisconsin- LaCrosse, LaCrosse, WI,	1976-1979	Microbiology	B.S.
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
Mass Spectral Interpretation, Finnigan MAT Institute			
Frontline Leadership, Zenger Miller			
	California Association of Toxicologists		

COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
Eighth Judicial District Court, Juvenile Division Clark County, Nevada	Expert Witness to testify regarding the analysis of alcohol and controlled substance.	One
Clark County Justice Court, Las Vegas Nevada	Expert Witness to testify regarding the analysis of alcohol and controlled substance.	Several
City of Las Vegas Municipal Court, Las Vegas, Nevada	Expert Witness to testify regarding the analysis of alcohol and controlled substance	Several
North Las Vegas Municipal Court, North Las Vegas, Nevada	Expert Witness to testify regarding the analysis of alcohol and controlled substance	Several
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Associated Pathologists Laboratory, Las Vegas, Nevada	Toxicology Clinical Supervisor	1984-present
University Medical Center, Las Vegas, Nevada	Toxicologist	1981-1983
Illinois Masonic Medical Center, Chicago, Illinois	Toxicologist	1979-1981
PROFESSIONAL AFFILIATIONS		
Organization	Date	
California Association of Toxicologists		
College of American Pathologists - Forensic Urine Drug Testing Program Inspector		
PUBLICATIONS / PATENTS		
K. McCamby, R.C. Kelly, T.D. Johnson, J. Johnson, W.C. Brown. Robotic Solid Phase Extraction of Amphetamines from Urine by GC/MS. Journal of Analytical Toxicology, SOFT special edition, 1997.		
Patent Pending, 08/85173 - Method and Buffer for Forensically Screening Hair Samples for the Presence of Cannabinoids.		
Patent Pending, 85/851735 - Forensically Acceptable Method for Screening Hair Samples for Indication of Use of Drugs of Abuse.		
OTHER QUALIFICATIONS		

1 **ORDR**

2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

Shirley B. Rasmussen

JAN 7 2 29 PM '99

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

FILED

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JEREMIAH DESKIN,
11 TOMMY BURNSIDE,
12 JOTEE BURNSIDE,

Defendants

Case No. C154293B,C,D
Dept. No. III
Docket E

ORDER FOR TRANSCRIPT

13
14 Upon the ex-parte application of the State of Nevada, represented by STEWART L.
15 BELL, District Attorney, by and through, FRANK JOHAN COUMOU, Deputy District
16 Attorney, and good cause appearing therefor,

17 IT IS HEREBY ORDERED that a transcript of the entry of plea of JEREMIAH DESKIN
18 heard on the 12th day of November, 1998; and the entry of pleas of TOMMY BURNSIDE AND
19 JOTEE BURNSIDE, heard on the 10th day of December, 1998, be prepared by the Court
20 Reporter for the above-entitled Court.

21 DATED this 6 day of January, 1999.

22
23 *[Signature]*
DISTRICT JUDGE

24 STEWART L. BELL
25 District Attorney
26 Nevada Bar #000477

27 BY *[Signature]*
28 FRANK JOHAN COUMOU
Deputy District Attorney
Nevada Bar #004577

CEB

District Court

CLARK COUNTY, NEVADA

JAN 21 3 42 PM '99

FILED

THE STATE OF NEVADA,

Plaintiff,

—vs—

BRENDAN JAMES NASBY

Defendant.

Case No. C154293A

Dept. No. III

Docket No. E

SUBPOENA

☒ Regular ☐ Duces Tecum

THE STATE OF NEVADA SENDS GREETINGS TO:

THERESA ADAMS-- Clark County Detention Center.

YOU ARE HEREBY COMMANDED, that all and Singular, business and excuses set aside, you appear and attend on the 22nd day of January, 19 99 at the hour of 8:30 A.M. in Department No. III of the District Court, Clark County, Nevada. The address where you are required to appear is the Clark County Courthouse, 200 South Third Street, Las Vegas, Nevada. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred (\$100.00).

Issued at the request of:

JOSEPH S. SCISCENTO, ESQ.

330 S. Third Street #860

Las Vegas, Nevada 89101

LORETTA BOWMAN, CLERK OF COURT

By [Signature]

DEPUTY CLERK

JAN 21 1999

Date

STATE OF NEVADA

COUNTY OF CLARK

AFFIDAVIT OF SERVICE

MICHAEL L. YEPKO, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the 21st day of JANUARY, 19 99, and served the same on the 21st day of JANUARY, 19 99 by delivering a copy to the witness at (state address) 330 SOUTH CASINO CENTER DRIVE LAS VEGAS, NEVADA 89101.

Michael L. Yepko

Signature of Affiant

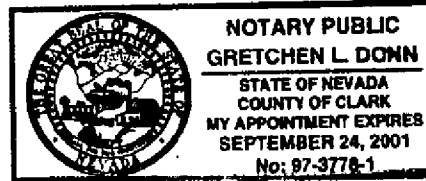
SUBSCRIBED AND SWORN to before me this 21st day of JANUARY, 19 99.

Gretchen L. Donn

NOTARY PUBLIC in and for

County of CLARK,

State of Nevada



ITEMS TO BE PRODUCED

District Court

CLARK COUNTY, NEVADA

JAN 28 3 44 PM '99

FILED

THE STATE OF NEVADA,

Plaintiff,

—vs—

BRENDAN JAMES NASBY

Defendant.

Case No. C154293A

Dept. No. III

Docket No. E

SUBPOENA

☒ Regular ☐ Duces Tecum

THE STATE OF NEVADA SENDS GREETINGS TO:

THERESA ADAMS--Clark County Detention Center.

YOU ARE HEREBY COMMANDED, that all and Singular, business and excuses set aside, you appear and attend on the 29th day of Janaury, 19 99 at the hour of 8:30 A.M. in Department No. III of the District Court, Clark County, Nevada. The address where you are required to appear is the Clark County Courthouse, 200 South Third Street, Las Vegas, Nevada. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred (\$100.00).

SHIRLEY B. PARRAGUIRRE

LORETTA BOWMAN, CLERK OF COURT

Issued at the request of:

JOSEPH S. SCISCENTO, ESO.

330 S. Third Street #860

Las Vegas, Nevada 89101

By:

Dana Rivera
DEPUTY CLERK

DANA RIVERA

Date

JAN 28 1999

STATE OF NEVADA

COUNTY OF CLARK

AFFIDAVIT OF SERVICE

MICHAEL L. YEPKO, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the 28th day of JANUARY, 19 99, and served the same on the 28th day of JANUARY, 19 99 by delivering a copy to the witness at (state address) 330 SOUTH CASINO CENTER DRIVE LAS VEGAS, NEVADA 89101.

Michael L. Yepko

Signature of Affiant

SUBSCRIBED AND SWORN to before me this

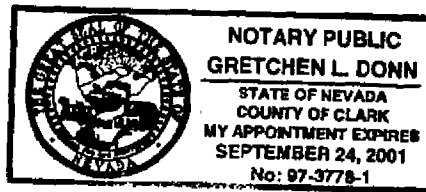
28th day of January, 19 99.

Gretchen L. Donn

NOTARY PUBLIC in and for

County of Clark,

State of Nevada



ITEMS TO BE PRODUCED

1 **ORDR**
2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No. 4380
4 330 S. Third Street #860
5 Las Vegas, Nevada 89101
6 Attorney for Defendant

Shirley B. Ruggione

FEB 24 12 30 PM '99

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

FILED

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,) CASE NO: C154293
10) DEPT NO: III
11 v.) DOCK NO: W
12)
13 BRENDAN JAMES NASBY,)
14)
15 Defendant.)
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ORDER FOR VISITATION OF INMATE BY PARENT, CHILD AND FINANCE

THIS MATTER COMING before this Court on February 10, 1999, the State being represented by FRANK J. COUMOU, ESQ., Deputy District Attorney, and the Defendant being present and represented by JOSEPH S. SCISCENTO, ESQ., and JOHN L. DUFFY, ESQ., this Court reviewing the Motion filed therein, all papers and all oral arguments.

GOOD CAUSE APPEARING:

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Defendant BRENDAN JAMES NASBY, shall have his jail privileges as to visitors revoked, and further that the Defendant BRENDAN JAMES NASBY, shall be placed in isolation;

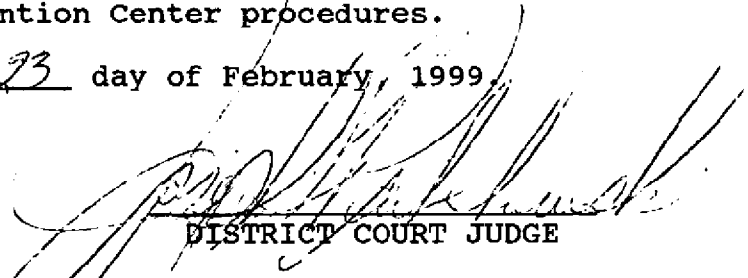
IT IS FURTHER ORDERED that the Defendant BRENDAN JAMES NASBY shall be allowed to have regular non-contact visitation only with his mother, BRENDA NASBY, his minor child LYNAE NASBY, and/or his finance COLLEEN WARNER;

IT IS FURTHER ORDERED that the Defendant BRENDAN JAMES

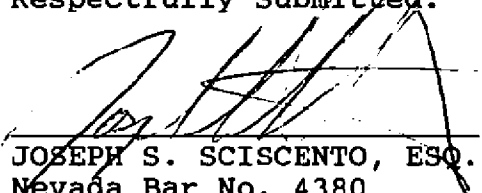
JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

1 NASBY shall be allowed to receive and send correspondence
2 through the mail as long as it is monitored pursuant to the
3 Clark County Detention Center procedures.

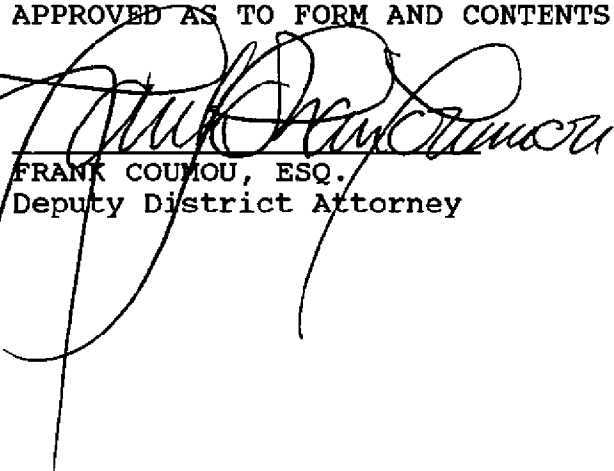
4 Dated this 23 day of February, 1999.

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7 
DISTRICT COURT JUDGE

8 Respectfully Submitted:

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10 
11 JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
Attorney for Defendant NASBY

12
13 APPROVED AS TO FORM AND CONTENTS

14 
15 FRANK COUMOU, ESQ.
16 Deputy District Attorney
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JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

FEB 24 11 05 AM '99

THE STATE OF NEVADA,

Plaintiff,

vs.

TOMMY BURNSIDE,

Defendant.

FILED
C154293

Case No. C154293/C152990
Dept. No. III
Docket No. "E"

BEFORE THE HONORABLE JOSEPH PAVLIKOWSKI, DISTRICT JUDGE

DECEMBER 10, 1998, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff:

F. COUMOU, ESQ.
DEPUTY DISTRICT ATTORNEY

For the Defendant
TOMMY BURNSIDE:

D. FIGLER, ESQ.
DEPUTY SPECIAL PUBLIC
DEFENDER
and
S. DICKINSON, ESQ.
DEPUTY PUBLIC DEFENDER

For the Defendant
JOTEE BURNSIDE:

H. BROOKS, ESQ.
DEPUTY PUBLIC DEFENDER

REPORTED BY: JAMES A. HELLESO, C.C.R. NO. 15

0102

1 LAS VEGAS, NEVADA, DECEMBER 10, 1998, 9:00 A.M.

2 * * * * *

3 THE COURT: State of Nevada v. Tommy Burnside,
4 case number C154293 and C152990.

5 Mr. Coumou representing the State, Mr.
6 Brooks appearing for defendant -- which case?

7 MR. BROOKS: I am appearing on behalf of Jotee
8 Burnside, your Honor, in this case.

9 THE COURT: Ms. Dickinson appearing with defendant
10 in case number C152990, Tommy C. Burnside. Is that
11 correct?

12 MS. DICKINSON: That's correct, your Honor.

13 MR. COUMOU: Judge, as to the accessory to murder
14 case we are going to be pleading guilty too, Mr. Figler has
15 not shown up. I have tried to call his office. We don't
16 know where he is so Mr. Brooks and I were going to ask you
17 if we could just pass this case to tomorrow.

18 THE COURT: All right, I will put it back on
19 calendar tomorrow at 8:30, case number C154293.

20 MR. BROOKS: Judge, I will talk to Mr. Figler's
21 office and make sure he gets over there to get the plea
22 bargain agreement signed today.

23 Also, would there be any problem in my
24 case, Jotee Burnside case, being back on calendar Tuesday
25 for a motion for O.R. release if that is going to fit the

1 Court's schedule?

2 THE COURT: Where is Tommy Burnside?

3 Where is Jotee Burnside?

4 MR. BROOKS: Judge, Jotee is in the back.

5 THE COURT: You represent him on C154293.

6 What about Tommy Burnside in C152990?
7 You represent him? Is that correct?

8 MS. DICKINSON: That's correct, we have a pre-
9 sentence report, however.

10 THE COURT: He failed to appear for interview.

11 MS. DICKINSON: He's in custody and they didn't
12 come over. He's been in custody since October, so I don't
13 know if you want them to go --

14 THE COURT: I want him re-interviewed.

15 Mr. Figler, where have you been?

16 MR. FIGLER: In trial in Department XVI.

17 THE COURT: And you represent Tommy Burnside in
18 C154293. Is that correct?

19 MR. FIGLER: Yes, your Honor.

20 THE COURT: It is my understanding Mr. Brooks
21 wants it passed over?

22 MR. BROOKS: Judge, actually I think since he's
23 here if we could pass it for five minutes I think we can
24 possibly get a plea agreement signed this morning.

25 THE COURT: All right.

1 And as to C152990, Mr. Tommy Burnside
2 has to be re-interviewed.

3 I will put that matter back on calendar
4 on February the 18th at 8:30 for imposition of sentence.

5 Tommy, you are remanded to the custody
6 of the Metropolitan Police Department on that case.

7 Now, in this case C154293, we will pass
8 it. Are you going to be ready today, Mr. Figler?

9 MR. FIGLER: Yes, I believe so, your Honor.

10 THE COURT: All right.

11 (Some cases were heard and
12 then the following proceed-
13 ings took place on this
14 case).

15 THE COURT: Recall State of Nevada v. Tommy
16 Burnside and Jotee Burnside, case number C154293.

17 Mr. Coumou representing the State, Mr.
18 Figler appearing with the defendant Tommy C. Burnside, Jr.
19 Is that your name?

20 DEFENDANT TOMMY BURNSIDE: Yes, sir.

21 THE COURT: And Mr. Brooks appearing with defen-
22 dant Jotee Burnside. Is that your name?

23 DEFENDANT JOTEE BURNSIDE: Yes, sir.

24 THE COURT: What is happening?

25 MR. COUMOU: Judge, this matter is resolved. They

1 unconditionally waived their right to a preliminary
2 hearing. They are going to be pleading guilty to one count
3 of accessory to murder.

4 There have been guilty plea agreements
5 signed as to Jotee. The State would be retaining the right
6 to argue.

7 As to Tommy Burnside, the State is
8 retaining the right to argue but not oppose concurrent time
9 with the cases before your Honor today also.

10 THE COURT: Mr. Figler?

11 MR. FIGLER: That's correct, your Honor.

12 THE COURT: Mr. Brooks?

13 MR. BROOKS: That's correct as to Jotee Burnside,
14 your Honor.

15 THE COURT: Mr. Brooks, do you waive the reading
16 of the information and waive the filing of a list of
17 witnesses?

18 MR. BROOKS: Yes, we do.

19 THE COURT: Mr. Jotee Burnside, do you waive that
20 right?

21 DEFENDANT JOTEE BURNSIDE: Yes.

22 THE COURT: Have you discussed this charge with
23 your attorney and do you understand the charge?

24 DEFENDANT JOTEE BURNSIDE: Yes, sir.

25 THE COURT: What is your plea?

1 DEFENDANT JOTEE BURNSIDE: Guilty.

2 THE COURT: Mr. Figler, do you waive the reading
3 of the information and waive the filing of a list of
4 witnesses?

5 MR. FIGLER: Yes, your Honor.

6 THE COURT: Mr. Tommy Burnside, do you waive that
7 right?

8 DEFENDANT TOMMY BURNSIDE: Yes, your Honor.

9 THE COURT: Have you discussed this charge with
10 your attorney and do you understand the charge?

11 DEFENDANT TOMMY BURNSIDE: Yes, your Honor.

12 THE COURT: What is your plea?

13 DEFENDANT TOMMY BURNSIDE: Guilty.

14 THE COURT: What I am about to say applies to both
15 of you.

16 Are these pleas of guilty freely and
17 voluntarily given on each of your parts?

18 DEFENDANT TOMMY BURNSIDE: Yes.

19 DEFENDANT JOTEE BURNSIDE: Yes.

20 THE COURT: Has there been any promises or rewards
21 offered to either of you to get you to plead guilty?

22 DEFENDANT TOMMY BURNSIDE: No, your Honor.

23 DEFENDANT JOTEE BURNSIDE: No.

24 THE COURT: Has there been any threats made to
25 you or any members of your family?

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DEFENDANT TOMMY BURNSIDE: No, your Honor.

DEFENDANT JOTEE BURNSIDE: No, your Honor.

THE COURT: Do each of you understand your right to a jury trial?

DEFENDANT TOMMY BURNSIDE: Yes.

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: Do each of you understand your right to a jury trial?

DEFENDANT TOMMY BURNSIDE: Yes.

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: Do each of you understand the negotiation?

DEFENDANT TOMMY BURNSIDE: Yes.

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: Do each of you understand the matter of sentencing is up to the Court?

DEFENDANT TOMMY BURNSIDE: Yes.

DEFENDANT JOTEE BURNSIDE: Yes, your Honor.

THE COURT: The Court is not bound by any recommendation the State may make or your attorneys may make at the time of sentencing.

DEFENDANT TOMMY BURNSIDE: Yes.

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: Tommy Burnside, do you understand you are facing four years in the Nevada State Prison, a fine of

1 \$1,000.00 and you may not get probation?

2 DEFENDANT TOMMY BURNSIDE: Yes, sir, your Honor.

3 THE COURT: Jotee Burnside, do you understand you
4 are facing four years in the Nevada State Prison, a fine of
5 \$1,000.00 and you may not -- five years in the Nevada State
6 Prison and you may not get probation?

7 DEFENDANT JOTEE BURNSIDE: Yes.

8 THE COURT: Do you understand that?

9 DEFENDANT JOTEE BURNSIDE: Yes.

10 THE COURT: Tommy, do you understand, I told you
11 four years but it is five years. Do you understand that?

12 DEFENDANT TOMMY BURNSIDE: Yes.

13 THE COURT: Knowing that both of you may not get
14 probation, you may get five years in the Nevada State
15 Prison, do you each of you wish to plead guilty to this
16 charge?

17 DEFENDANT TOMMY BURNSIDE: Yes.

18 DEFENDANT JOTEE BURNSIDE: Yes, sir.

19 THE COURT: When each of you plead guilty you are
20 giving up certain rights: a right to a public and speedy
21 trial, a right to call witnesses to testify in your behalf,
22 a right to cross-examine witnesses called by the State, a
23 right to remain silent during the course of a trial and the
24 State cannot comment on your silence, and the right to have
25 an attorney represent you through all stages of a trial.

1 Jotee Burnside, have you discussed
2 those rights with your attorney?

3 DEFENDANT JOTEE BURNSIDE: Yes.

4 THE COURT: Do you understand them?

5 DEFENDANT JOTEE BURNSIDE: Yes, sir.

6 THE COURT: Tommy Burnside, have you discussed
7 these rights with your attorney?

8 DEFENDANT TOMMY BURNSIDE: Yes, sir.

9 THE COURT: Do you understand them?

10 DEFENDANT TOMMY BURNSIDE: Yes, sir.

11 THE COURT: When each of you plead guilty to this
12 charge you are both admitting this charge. Do you under-
13 stand that, Tommy?

14 DEFENDANT TOMMY BURNSIDE: Yes.

15 THE COURT: And Jotee Burnside, do you understand
16 that?

17 DEFENDANT TOMMY BURNSIDE: Yes.

18 THE COURT: Tommy, in Clark County, Nevada, on or
19 about the 17th day of July, 1998, were you with Jotee
20 Burnside?

21 DEFENDANT TOMMY BURNSIDE: Yes.

22 THE COURT: And on that date and in Clark County,
23 Nevada, did both of you wilfully, unlawfully and
24 feloniously harbor or conceal one Brandon James Nasby?

25 DEFENDANT TOMMY BURNSIDE: Yes.

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JOTEE BURNSIDE: Yes.

THE COURT: And at the time, Tommy, when you concealed this gentleman, did you know or did you have reason to believe he had murdered somebody?

DEFENDANT TOMMY BURNSIDE: Yes.

THE COURT: Did you inform the Metropolitan Police Department of that fact at that time and place?

DEFENDANT TOMMY BURNSIDE: No.

THE COURT: Did you tell someone that somebody else did the killing?

DEFENDANT TOMMY BURNSIDE: No -- yes.

THE COURT: You told them that somebody by the name of Sugar Bear actually did the killing. Is that right?

DEFENDANT TOMMY BURNSIDE: Yes.

THE COURT: And in fact you made that statement and you knew Brandon James Nasby was the killer and might be doing this to avoid escape and capture?

MR. FIGLER: Your Honor, with regard to the last case, he can tell you who all the people were there and didn't include Sugar Bear and his contention was to conceal.

THE COURT: Were you going to conceal Nasby from being caught by the Metropolitan Police Department. Is that correct?

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DEFENDANT TOMMY BURNSIDE: Yes.

MR. FIGLER: Your Honor, if you would state that
or anyone else.

THE COURT: Or anyone else. Is that correct?

DEFENDANT TOMMY BURNSIDE: Yes.

THE COURT: Jotee Burnside, were you with Tommy
Burnside on or about the 17th day of July, 1998?

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: And on that date did you wilfully,
unlawfully, feloniously harbor or conceal or aid Brandon
James Nasby to escape capture from the Metropolitan Police
Department?

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: And when you did that did you have
reason to believe or did you know that Brandon James Nasby
might be involved in some type of murder?

DEFENDANT JOTEE BURNSIDE: Yes, sir.

THE COURT: You have to answer out loud.

DEFENDANT JOTEE BURNSIDE: Yes, sir, I did.

THE COURT: Yes?

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: And at that time and place in Clark
County did you try to help him escape capture by the
Metropolitan Police Department?

DEFENDANT JOTEE BURNSIDE: Yes.

1 THE COURT: I am going to accept your pleas of
2 guilty to this charge and adjudge each of you guilty of
3 this crime.

4 Was there a preliminary hearing, Mr.
5 Coumou?

6 MR. COUMOU: Judge, they waived. There was a
7 preliminary hearing as to the defendant Nasby and he is set
8 for trial I believe sometime in February in this court.

9 THE COURT: All right. Mr. Burnside, Tommy
10 Burnside and Jotee Burnside, I am going to accept your
11 pleas of guilty to this charge and adjudge you guilty of
12 this crime. I am going to make the official police report
13 a part of this plea -- their guilty plea.

14 Mr. Tommy Burnside, did you earlier
15 sign a guilty plea memorandum?

16 DEFENDANT TOMMY BURNSIDE: Yes.

17 THE COURT: Did you review it with your attorney?

18 DEFENDANT TOMMY BURNSIDE: Yes.

19 THE COURT: Do you understand it?

20 DEFENDANT TOMMY BURNSIDE: Yes.

21 THE COURT: It will be filed in open court.

22 Jotee Burnside, did you earlier sign a
23 guilty plea memorandum?

24 DEFENDANT JOTEE BURNSIDE: Yes.

25 THE COURT: Did you review it with your attorney?

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DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: Do you understand it?

DEFENDANT JOTEE BURNSIDE: Yes.

THE COURT: It will be filed in open court.

We will put the matter down for
imposition of sentence on February 25th at 8:30.

MR. BROOKS: Judge, may I ask as to Jotee Burnside
this matter be on calendar December 15 which is this coming
Tuesday for a motion for O.R. release?

MR. FIGLER: We join in that motion.

THE COURT: Both defendants will be passed over to
December 15 for O.R. release.

MR. COUMOU: Judge, due to the high nature of this
crime including the involvement of these two individuals
and another individual, I ask that something like this
ought to be considered by the Court in writing.

MR. BROOKS: We will submit a written motion.

THE COURT: File a written motion and get me
something from intake services.

MR. COUMOU: Will you allow the State to respond?
We are entitled to respond. Ten days.

MR. BROOKS: Court's indulgence.

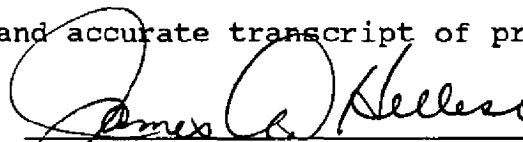
The State's okay by responding Tuesday.

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MR. COUMOU: Thank you, your Honor.

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.



JAMES A. HELLESO, C.C.R. NO. 15
OFFICIAL COURT REPORTER

ORIGINAL

Shirley B. Pangione

DISTRICT COURT

CLARK COUNTY, NEVADA FEB 24 11 05 AM '99

FILED

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JEREMIAH DESKIN,)
)
Defendant.)

Case No. C154293
Dept. No. III
Docket No. "E"

BEFORE THE HONORABLE JOSEPH PAVLIKOWSKI, DISTRICT JUDGE

NOVEMBER 12, 1998, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff: F. COUMOU, ESQ.
DEPUTY DISTRICT ATTORNEY

For the Defendant: C. GOLIGHTLY, ESQ.

REPORTED BY: JAMES A. HELLESO, C.C.R. NO. 15

CE42

1 LAS VEGAS, NEVADA, NOVEMBER 12, 1998, 9:00 A.M.

2 * * * * *

3 THE COURT: State of Nevada v. Jeremiah Deskin,
4 case number C1541293.

5 Mr. Coumou representing the State, Mr.
6 Golightly representing the defendant.

7 Is your name Jeremiah Deskin?

8 THE DEFENDANT: Yes.

9 THE COURT: What are the negotiations?

10 MR. COUMOU: If I may approach I will be filing
11 the guilty plea agreement.

12 The defendant is going to be pleading
13 to one count of accessory to murder along with all the
14 other terms as set forth in the guilty plea agreement.

15 THE COURT: And also attached to that guilty plea
16 agreement is another statement. Is that correct?

17 MR. GOLIGHTLY: Yes.

18 THE COURT: Are you familiar with that?

19 MR. GOLIGHTLY: Yes, I am.

20 THE COURT: Do you waive the reading of the
21 information and waive the filing of a list of witnesses,
22 Mr. Golightly?

23 MR. GOLIGHTLY: Yes.

24 THE COURT: Mr. Deskin, do you waive that right?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you discussed this charge with
2 your attorney and do you understand the charge?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: What is your plea?

5 THE DEFENDANT: Guilty.

6 THE COURT: Is this plea of guilty freely and
7 voluntarily given on your part?

8 THE DEFENDANT: YES.

9 THE COURT: Has there been any promises or rewards
10 offered to you to get you to plead guilty to this charge?

11 THE DEFENDANT: No.

12 THE COURT: Has there been any threats made to you
13 or any members of your family?

14 THE DEFENDANT: No.

15 THE COURT: Do you understand your right to a jury
16 trial?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand the negotiation?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you further understand the matter
21 of sentencing is up to the Court?

22 THE DEFENDANT: Yes.

23 THE COURT: The Court is not bound by any recom-
24 mendation the State may make or your attorney may make at
25 the time of sentencing?

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THE DEFENDANT: Yes.

THE COURT: And you are facing five years in the Nevada State Prison, a fine of \$1,000.00 and you may not get probation. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: When you plead guilty you are giving up certain rights: a right to a public and speedy trial, a right to call witnesses to testify in your behalf, a right to cross-examine witnesses called by the State, a right to remain silent during the course of a trial and the State cannot comment on your silence, and the right to have an attorney represent you through all stages of a trial.

Have you discussed those rights with your attorney?

THE DEFENDANT: Yes.

THE COURT: Do you fully understand them?

THE DEFENDANT: Yes.

THE COURT: When you plead guilty to this charge you are admitting this charge. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: In Clark County, Nevada, on or about the 17th day of July, 1998, did you wilfully, unlawfully and feloniously harbor one Brendan Nasby?

THE DEFENDANT: Yes.

1 THE COURT: What did you do at that time, Mr.
2 Deskin?

3 THE DEFENDANT: I was the driver of the getaway
4 car and so I took the car out of the jurisdiction.

5 THE COURT: At that time and place when you did
6 that did you know Mr. Nasby had committed a felony murder
7 charge?

8 THE DEFENDANT: Yes.

9 THE COURT: And that you knew he was liable for
10 arrest?

11 THE DEFENDANT: Yes.

12 THE COURT: You tried to prohibit that arrest?

13 THE DEFENDANT: Yes.

14 THE COURT: The Court is going to accept your plea
15 and adjudges you guilty of this crime.

16 Did you earlier sign a guilty plea
17 memorandum?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you earlier sign another state-
20 ment?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you review these statements with
23 your attorney before you signed them?

24 THE DEFENDANT: Yes.

25 THE COURT: They will be filed in open court.

1 Get a slip from the bailiff and go by
2 the Department of Parole and Probation so they may inter-
3 view you.

4 We will put the matter down for
5 imposition of sentence --

6 MR. COUMOU: Your Honor, that matter went for
7 preliminary hearing just last week. He should be arraigned
8 I believe next week.

9 THE COURT: How about February the 8th at 8:30 for
10 imposition of sentence?

11 MR. COUMOU: That would be great, Judge.

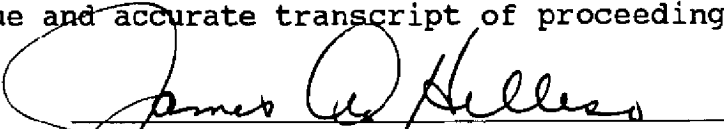
12 THE COURT: All right. That's the order.

13 MR. GOLIGHTLY: Thank you, your Honor.

14 MR. COUMOU: Thank you, Judge.

15 * * * * *

16 ATTEST: Full, true and accurate transcript of proceedings.

17 
18 JAMES A. HELLESO, C.C.R. NO. 15
19 OFFICIAL COURT REPORTER

1 **JOCP**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 **Nevada Bar #000477**
5 **200 S. Third Street**
6 **Las Vegas, Nevada 89155**
7 **(702) 455-4711**
8 **Attorney for Plaintiff**

Shirley B. Pangione

FEB 26 12 11 PM '99

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JOTEE BURNSIDE,

12 Defendant.

Case No. C154293D
Dept. No. III
Docket E

15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 10th day of December, 1998, the Defendant JOTEE BURNSIDE,
17 appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s)
18 of ACCESSORY TO MURDER (Category C Felony), committed on the 17th day of July, 1998,
19 in violation of NRS 195.030, 195.040, 200.010, 200.030 and

20 WHEREAS, thereafter on the 25th day of February, 1999, the Defendant being present
21 in court with his counsel HOWARD BROOKS, Public Defender, and FRANK JOHAN
22 COUMOU, Deputy District Attorney, also being present; the above entitled Court did adjudge
23 the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00
24 Administrative Assessment Fee, sentenced Defendant to a minimum term of Twelve (12) months
25 and a maximum term of Thirty (30) months in the Nevada Department of Prisons with 121 days
26 credit for time served.

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CE-05

MAR 01 1999

FEB 25 1999

1 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
2 Judgment of Conviction as part of the record in the above entitled matter.

3 DATED this 26 day of February, 1999, in the City of Las Vegas, County of Clark,
4 State of Nevada.


DISTRICT JUDGE

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27 DA#98-154293D/msr
LVMPD EV#9807170541
28 ACC TO MURD - F
(TK3)

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

2
Shirley B. Rungius

MAR 9 3 18 PM '99

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293A
Dept. No. III
Docket E

14
15 NOTICE OF WITNESSES
16 [NRS 174.234 (1)(b)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21	<u>NAME</u>	<u>ADDRESS</u>
22	Thowsen, Thomas D.	LVMPD P#1467
23	Cabrales, Allen	LVMPD P#2045
24	Hefner, Kenneth	LVMPD P#2185
25	McGhie, Gordon	LVMPD P#2883
26	Falvey, Darlene	LVMPD P#3176
27	Carroll, James	LVMPD P#3656
28	Buczek, James	LVMPD P#3702

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice of Witnesses is hereby
acknowledged this 17 Day of March, 1999.

JOSEPH SCISCENTO, Esq.
ATTORNEY FOR DEFENDANT

BY Joseph S. Scimento
330 S Third St. #860
Las Vegas, Nevada 89101

1 **JOCP**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 **Nevada Bar #000477**
5 **200 S. Third Street**
6 **Las Vegas, Nevada 89155**
7 **(702) 455-4711**
8 **Attorney for Plaintiff**

Shirley B. Panagione

MAR 15 1 56 PM '99

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 TOMMIE C. BURNSIDE, JR.,
12 #1591598

13 Defendant.

Case No. C154293C
Dept. No. III
Docket H

14
15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 10th day of December, 1998, the Defendant TOMMIE C.
17 BURNSIDE, JR., appeared before the Court herein with his counsel and entered a plea of guilty
18 to the crime(s) of ACCESSORY TO MURDER (Category C Felony), committed on the 17th
19 day of July, 1998, in violation of NRS 195.030, 195.040, 200.010, 200.030 and

20 WHEREAS, thereafter on the 4th day of March, 1999, the Defendant being present in
21 court with his counsel DAYVID FIEGLER, Special Public Defender, and FRANK JOHAN
22 COUMOU, Deputy District Attorney, also being present; the above entitled Court did adjudge
23 the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00
24 Administrative Assessment Fee, sentenced Defendant to a minimum term of Twelve (12) months
25 and a maximum term of Thirty-six (36)) months in the Nevada Department of Prisons with 139
26 days credit for time served.

27 ///

28 ///

CE-05

MAR 18 1999

MAR 12 1999

1 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
2 Judgment of Conviction as part of the record in the above entitled matter.

3 DATED this 15 day of March, 1999, in the City of Las Vegas, County of Clark,
4 State of Nevada.

5
6 
7 _____
8 DISTRICT JUDGE
9
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24
25

26 DA#98-154293C/msr
27 LVMPD EV#9807170541
28 ACCESS TO MURD - F
(TK 3)

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

JUN 9 8 50 AM '99

Shirley S. Ruggione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293A
Dept. No. III
Docket E

15 NOTICE OF EXPERT WITNESSES
16 [NRS 174.234 (2)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call expert witnesses in its case in chief as follows:

21 Johnson, Torrey - LVMPD - He will testify regarding the firearms and bullet trajectory
22 comparison of certain evidence collected from the various crime scenes.

23 Jordan, Robert - Clark County Coroner's Office - He will articulate the cause and manner of
24 death of the decedent and will testify that the manner of death was homicide.

25 Wahl, Thomas - LVMPD - He will testify regarding the identification, location, and preservation
26 of certain evidence collected from the various crime scenes.

27 The substance of each expert witness' testimony and a copy of all reports made by or at

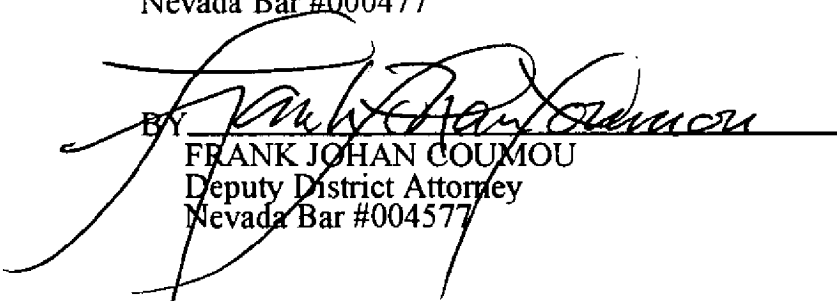
28 ///

CE43

1 the direction of the expert witness has been provided in discovery.

2 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

10 RECEIPT OF COPY

11 RECEIPT OF COPY of the above and foregoing Notice of Expert Witnesses is hereby
12 acknowledged this 8th Day of June, 1999.

13 JOSEPH SCISCENTO, Esq.
14 ATTORNEY FOR DEFENDANT

15 BY 
16 370 S Third Street #860
17 Las Vegas, Nevada 89101

28 msr

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

FILED
JUN 9 8 50 AM '99
eB...
CLERK

Case No. C154293A
Dept. No. III
Docket E

14
15 NOTICE OF WITNESSES
16 [NRS 174.234 (1)(b)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

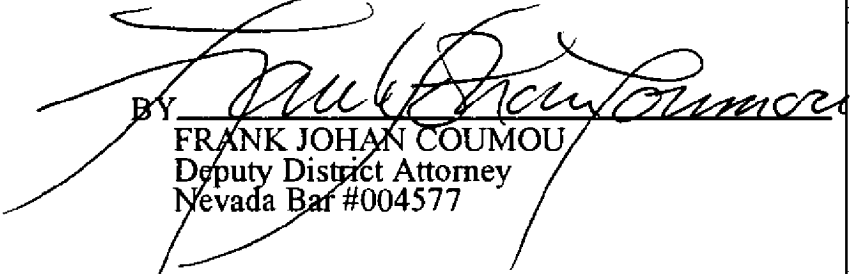
21	<u>NAME</u>	<u>ADDRESS</u>
22	Thowsen, Thomas	LVMPD P#1467
23	Cabrales, Allen	LVMPD P#2045
24	Hefner, Kenneth	LVMPD P#2185
25	McGhie, Gordon	LVMPD P#2883
26	Norman, Sheree	LVMPD P#3110
27	Falvey, Darlene	LVMPD P#3176
28	McPhail, Randall	LVMPD P#3326

CE48

1	<u>NAME</u>	<u>ADDRESS</u>
2	Carroll, James	LVMPD P#3656
3	Buczek, Jame	LVMPD P#3702
4	Smith, David	LVMPD P#4124
5	Giersdorf, Daniel	LVMPD P#4521
6	Sams, Jessie	LVMPD P#4793
7	Johnson, Torrey	LVMPD P#4820
8	Neil, Kelly	LVMPD P#4510
9	Crait, Jeffrey	4409 Twin Peaks Dr., NLV, NV 89030
10	Gilmore Robert	5910 Fannine Way, LV, NV 89130
11	Beavers, Jomeka	3327 Outlook Point St., NLV, NV 89030
12	Banks, Tanesha	2651 Napa Dr., Las Vegas, NV 89115
13	Bradley, Crystal	3506 N Freestone St., NLV, NV 89030
14	Beasley, Velma	8519 S Main St. #2, Los Angeles, CA 90003
15	Jordan, Robert	Coroner - 1704 Pinto LN, NV 89107
16	Deskin, Jerimiah	18344 Taloga #6, Apple Valley, CA 92307
17	Adams, Brittany	1390 Honey Lake St., Las Vegas, Nv 89110
18	Von Lewis, Damion	Unknown
19	Garland, Mark	Unknown
20	Wahl, Thomas	LVMPD P#5019
21	Debrutz,	NLVPD P#
22	Holmes, John	1901 Arpa Way #A, LV, NV 89108
23	///	
24	///	
25	///	
26	///	
27	///	
28	///	

1 These witnesses are in addition to those witnesses endorsed on the Information and any
2 other witness for which a separate Notice has been filed.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

10 RECEIPT OF COPY

11 RECEIPT OF COPY of the above and foregoing Notice of Witnesses is hereby
12 acknowledged this 8th Day of June, 1999.

13 JOSEPH SCISCENTO, Esq.
14 ATTORNEY FOR DEFENDANT

15 BY 
16 320 S Third Street #860
17 Las Vegas, Nevada 89101

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2684 • Fax (702)382-2670



1 MTN

2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No. 4380
4 330 S. Third Street #860
5 Las Vegas, Nevada 89101
6 Attorney for Defendant

FILED

JUL 9 11 31 AM '99

Emily A. Ryzman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)
7)
8 Plaintiff,)
9 v.)
10 BRENDAN JAMES NASBY,)
11 Defendant.)

CASE NO: C154293
DEPT NO: III
DOCK NO: W

12 MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE
13 OF WITNESS INTIMIDATION

14 COMES NOW, the Defendant Brendan Nasby, by and through
15 his counsel of record JOSEPH S. SCISCENTO, ESQ., and moves
16 this Court for an order precluding the prosecution from
17 presenting any evidence of witness intimidation. This motion
18 is based upon the attached Memorandum of Points and
19 Authorities, the file herein, and any argument that this court
20 may hear is support of this motion

21 Dated this 8 day of July, 1999.

22 *[Signature]*
23 JOSEPH S. SCISCENTO, ESQ.
24 Nevada Bar No. 4380

25 // //

26 // //

27 // //

JOSEPH S. SCIASCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

YOU AND EACH OF YOU PLEASE TAKE NOTICE that counsel for Defendant will bring the above and foregoing Motion on for hearing before the above-entitled Court on the 15 day of July, 1999 at the hour of 8:30 a.m., or as soon thereafter as counsel may be heard.

DATED this 8 day of July, 1999.

JOSEPH S. SCISCENTON, ESQ.
Nevada Bar No. 4380
330 S. Third Street #860
Las Vegas, Nevada 89101
Attorney for Defendant

AFFIDAVIT OF JOSEPH S. SCISCENTO, ESO.

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

COMES NOW, JOSEPH S. SCISCENTO, ESQ., and being duly sworn deposes and states as follows:

1. That he is a duly licensed attorney for and in the State of Nevada, County of Clark, and he is the attorney of record of the above Defendant:

2. That he has read the foregoing motion and knows the contents therein and believes the allegations to be true and

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

1 correct and as to those matters based on information and
2 belief he believes them to be true.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT

4
5 
6 JOSEPH S. SCISCENTO, ESQ.

7 Subscribed and Sworn to
8 before me this ____ day of July, 1999

9
10
11 MEMORANDUM OF POINTS AND AUTHORITIES

12 Mr. Nasby respectfully submits that the State should not
13 be permitted to suggest in any manner that Mr. Nasby has
14 intimidated any potential witnesses against him or that anyone
15 else has done so on his behalf.

16 A prosecutors intimations of witness intimidation by a
17 defendant are reversible error unless the prosecutor also
18 presents substantial credible evidence that the defendant was
19 the source of the intimidation. Lay v. State, 110 Nev. 1189,
20 1193, 886 P.2d 448, 450-451 (1994) (citing United State v.
21 Rios, 611 F.2d 1335, 1343 (10th Cir.1979); United State v.
22 Peak, 498 F.2d 1337, 1339 (6th Cir.1974); United State v.
23 Hayward, 420 F.2d 142, 147 (D.C.Cir.1969); Hall v. United
24 States, 419 F.2d 582, 585 (5th Cir.1969). See also Meek v.
25 State, 112 Nev. 1288, 930 P.2d 1104 (1996). ("The
26 prosecutor's reference to witness intimidation was improper,
27 and the district court erred in failing to advise the jury to

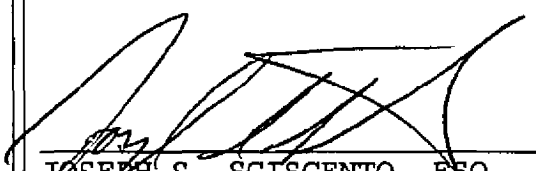
JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

1 disregard it."). Likewise, the prosecutor may not imply "the
2 existence of threats that 'in the context of the whole record'
3 specifically 'hint[ed] of violence.' Lay, 886 P.2d at 451
4 (citing United States v. Muscarella, 585 F.2d 242, 248-49 (7th
5 Cir.1978), United States v. Love, 534 F.2d 87 (6th Cir.1976);
6 Peak, 498 F.2d at 1337)).

7 Mr. Nasby respectfully submits that if the State wishes
8 to introduce evidence suggesting witness intimidation, it must
9 first notify Mr. Nasby and his counsel and request that this
10 court hold a hearing outside the presence of the jury to
11 determine whether Mr. Nasby is actually the source of the
12 alleged threat and to determine whether the State has met its
13 burden of proof. If the State does not request such a
14 hearing, and if the State does not meet its burden, then all
15 reference of any sort, through argument or testimony, must be
16 excluded from the trial.

17 Dated this 8 day of July, 1999.

18
19 Respectfully Submitted:

20
21
22 
23 JOSEPH S. SCISCENTO, ESQ.
24 Nevada Bar No. 4380
25 330 S. Third Street #860
26 Las Vegas, Nevada 89101
27 (702) 382-2664
28

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

RECEIPT OF COPY

The Undersigned hereby acknowledges receipt of copy of
the foregoing Motion in limine, this ____ day of July, 1999

STEWART BELL, ESQ.
DISTRICT ATTORNEY

BY:

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

NOTC
JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
330 S. Third Street #860
Las Vegas, NV. 89101
(702) 382-2664

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

JUL 12 12 00 PM '00

Shirley Smith
CLERK

THE STATE OF NEVADA,)
)
Plaintiff,) CASE NO: C154293
) DEPT NO: III
v.) DOCK NO: W
)
BRENDAN JAMES NASBY,)
)
Defendant.)

NOTICE OF ALIBI WITNESSES

TO: STEWART BELL, ESQ., District Attorney
TO: FRANK COUMOU, ESQ., Deputy District Attorney;

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
Defendant BRENDAN JAMES NASBY, by and through his Attorney
JOSEPH S. SCISCENTO, ESQ., intends to call the following
witnesses as alibi witnesses.

<u>NAME</u>	<u>ADDRESS</u>
SOBRIAN, CRYSTAL	225 W. 6TH STREET #208 LONG BEACH, CA 90802

Ms. Sobrian will testify as to the whereabouts of Mr.
Nasby on the date of the crime.

NASBY, BRENDA	4509 SWITCHBACK STREET N. LAS VEGAS, NV. 89031
---------------	---

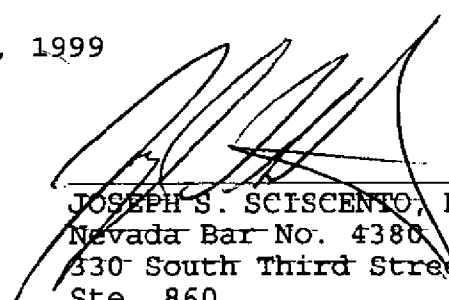
Ms. Nasby will testify as to the whereabouts of Mr.
Nasby on the date of the crime.

WARNER, COLLEEN	4509 SWITCHBACK STREET N. LAS VEGAS, NV. 89031
-----------------	---

// //

1 Ms. Warner will testify as to the whereabouts of Mr.
2 Nasby on the date of the crime.

3 DATED this 9th day of July, 1999

4
5 
6 JOSEPH S. SCISCENTO, ESQ.
7 Nevada Bar No. 4380
8 330 South Third Street
9 Ste. 860
10 Las Vegas, NV. 89101
11 (702) 382-2664

12 CERTIFICATE OF SERVICE

13 The undersigned hereby certifies that a true and correct
14 copy of the above and foregoing Notice of Alibi Witnesses,
15 was on this 9th day of July, 1999, served, via facsimile, to
16 the following attorneys of record herein:

17 Frank Coumou, Esq., 702-383-8465

18 
19 KIMBERLY L. BANTUM

20
21
22
23
24
25
26
27
28
JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

18
FILED

JUL 13 1 5 PM '99

Shirley S. Hargis
CLERK

1 NOTC
2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No. 4380
4 330 S. Third Street #860
5 Las Vegas, NV. 89101
6 (702) 382-2664

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,) CASE NO: C154293
10) DEPT NO: III
11 v.) DOCK NO: W
12)
13 BRENDAN JAMES NASBY,)
14)
15 Defendant.)

NOTICE OF WITNESSES

16 TO: STEWART BELL, ESQ., District Attorney

17 TO: FRANK COUMOU, ESQ., Deputy District Attorney;

18 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
19 Defendant BRENDAN JAMES NASBY, by and through his Attorney
20 JOSEPH S. SCISCENTO, ESQ., intends to call the following
21 witnesses as alibi witnesses.

<u>NAME</u>	<u>ADDRESS</u>
THOWSEN, THOMAS	LVMPD P#1467
CABRALES, ALLEN	LVMPD P#2045
HEFNER, KENNETH	LVMPD P#2185
MEGHIE, GORDON	LVMPD P#2883
NORMAN, SHEREE	LVMPD P#3110
FALVEY, DARLENE	LVMPD P#3176
MCPHAIL, RANDALL	LVMPD P#3326
CARROLL, JAMES	LVMPD P#3656
BUCZEK, JAME	LVMPD P#3702

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

CE31

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

1	SMITH, JAMES	LVMPD- P#4124
2	GIERSDORF, DANIEL	LVMPD P#4521
3	SAMS, JESSIE-	LVMPD- P#4793
4	JOHNSON, TORREY	LVMPD P#4820
5	NEIL, KELLY	LVMPD- P#4510
6	CRAIT, JEFFREY	4409 TWIN PEAKS DR. N. LAS VEGAS, NV 89030
7		
8	GILMORE, ROBERT	5910 FANNINE WAY LAS- VEGAS, NV 89130
9	BEAVERS, JOMEKA	3327 OUTLOOK POINT ST. N. LAS VEGAS, NV 89030
10		
11	BANKS, TANESHA	2651 NAPA DRIVE LAS- VEGAS, NV 89115
12	BRADLEY, CRYSTAL	3506 N. FREESTONE ST. N. LAS- VEGAS, NV 89030
13		
14	BEASLEY, VELMA	8519 S. MAIN ST. #2 LOS- ANGELES, CA 90003
15	JORDAN, ROBERT	CORONER- 1704 PINTO LN. LAS- VEGAS, NEVADA 89107
16		
17	DESKIN, JERIMIAH	18344 TALOGA #6 APPLE VALLEY, CA 92307
18	ADAMS, BRITTANY	1390 HONEY LAKE ST. LAS VEGAS, NV 89110
19		
20	VON LEWIS, DAMION	UNKNOWN
21	GARLAND, MARK	UNKNOWN
22	WAHL, THOMAS	LVMPD P#5019
23	DEBRUTZ,	LVMPD P#
24	HOLMES, JOHN	1901 ARPA WAY #A LAS VEGAS, NV 89108

25 These witnesses are in addition to those witnesses
26 endorsed on the Information and any other witnesses for which
27 // //

28

1 a separate Notice has been filed.

2 DATED this 12th day of July, 1999

3
4
5 JOSEPH S. SCISCENTO, ESQ.
6 330 S. Third Street #860
7 Las Vegas, Nevada 89101
8 (702) 382-2664

9 RECEIPT OF COPY

10 RECEIPT OF COPY of the foregoing Notice of Witnesses is
11 hereby acknowledged this 13 day of July, 1999.

12 STEWART BELL, ESQ.
13 DISTRICT ATTORNEY

14 By: 
15 Deputy District Attorney

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17
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27
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JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

NOTC
JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
330 S. Third Street #860
Las Vegas, NV. 89101
(702) 382-2664

JUL 13 4 56 PM '99

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK

THE STATE OF NEVADA,)
)
Plaintiff,) CASE NO: C154293
) DEPT NO: III
v.) DOCK NO: W
)
BRENDAN JAMES NASBY,)
)
Defendant.)

SUPPLEMENTAL NOTICE OF ALIBI WITNESSES

TO: STEWART BELL, ESQ., District Attorney

TO: FRANK COUMOU, ESQ., Deputy District Attorney;

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
Defendant BRENDAN JAMES NASBY, by and through his Attorney
JOSEPH S. SCISCENTO, ESQ., intends to call the following
witnesses as alibi witnesses.

NAME

ADDRESS

HOQUE, NINA

225 W. 6TH STREET #208
LONG BEACH, CA 90802

Ms. Hoque will testify as to the whereabouts of Mr.
Nasby on the date of the crime.

DATED this 13th day of July, 1999

JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
330 South Third Street
Ste. 860
Las Vegas, NV. 89101
(702) 382-2664

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STEWART BELL, ESQ.
DISTRICT ATTORNEY

By: Karen Miller
Deputy District Attorney

Page 304

ORIGINAL

1 **RESP**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

JUL 14 11 57 AM '99

Shirley S. Pugh
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293
Dept. No. III
Docket E

15 **RESPONSE TO MOTION IN LIMINE TO PRECLUDE**
16 **EVIDENCE OF WITNESS INTIMIDATION**

17 **DATE OF HEARING: 7-15-99**
18 **TIME OF HEARING: 8:30 AM**

18 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
19 FRANK JOHAN COUMOU, Deputy District Attorney, and files this Response to Motion in
20 Limine to Preclude Evidence of Witness Intimidation.

21 This response is made and based upon all the papers and pleadings on file herein, the
22 attached points and authorities in support hereof, and oral argument at the time of hearing, if
23 deemed necessary by this Honorable Court.

24 **POINTS AND AUTHORITIES**

25 Defendant has intimidated or attempted to intimidate material witnesses in the
26 State's case-in-chief. The Defendant contacted, among others, an individual named John
27 Holmes, who was a fellow inmate at the Clark County Detention Center. Defendant provided
28 a list of names and phone numbers, social security numbers, and addresses of the State's

6891

1 witnesses who needed to be killed or scared.

2 The Nevada Supreme Court has consistently held that:

3 "(a) prosecutor intimations of witness intimidation
4 by a defendant are reversible error unless the
5 prosecutor also presents substantial credible
6 evidence that the defendant was the source of the
7 intimidation.

8 Lay v. State, 110 Nev. 1189, 1193, 886 P.2d 448 (1994).

9 The above evidence is relevant because it shows the Defendant's consciousness of guilt.

10 The State filed a motion relating to this matter on January 8, 1999. The State attached to its

11 motion the police reports, letter, and list of names. The Defense did not oppose the State's

12 motion. The State intends to present this evidence during its case-in-chief. The State will, in

13 accordance with the Lay decision, request that a brief hearing be held outside the presence of

14 the jury and establish that the foregoing is substantial credible evidence.

15 DATED this 14 day of July, 1999.

16 Respectfully submitted,

17 STEWART L. BELL
18 DISTRICT ATTORNEY
19 Nevada Bar #000477


20 BY 
21 FRANK JOHAN COUMOU
22 Deputy District Attorney
23 Nevada Bar #004577

24 RECEIPT OF COPY

25 RECEIPT OF COPY of the above and foregoing Response is hereby acknowledged this

26 14th Day of July, 1999.

27 JOSEPH S. SCISCENTO, Esq.
28 ATTORNEY FOR DEFENDANT

BY 
330 S Third Street #860
Las Vegas, Nevada 89101

msr

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

FILED

JUL 20 3 35 PM '99

Shirley L. Ruggina
CLERK

MTN

JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No 4380
330 S. Third Street
#860
Las Vegas, Nevada 89101
(702) 382-2664

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) CASE NO: C154293
) DEPT NO: III
)
BRENDAN JAMES NASBY)
ID# 1517690) Time of Hearing:
) Date of Hearing:
Defendant.)

MOTION AND NOTICE OF MOTION FOR DISCOVERY

COMES NOW, the Defendant. by and through his Attorney, JOSEPH S. SCISCENTO, ESQ., who moves this Court to order the Clark County District Attorney's Office, by and through Deputy District Attorney, to provide the defense with the information requested below, or in the alternative, with a reasonable opportunity to inspect and copy that information.

Said Defendant also moves the Court to cause said Clark County District Attorney's Office, to use reasonable diligence in order to ascertain the information requested below.

Said Defendant moves the Court to issue a continuing discovery order pursuant to NRS 174.295.

Defendant requests discovery for the following matters:

1. Any and all reports of TORREY JOHNSON, fire-arm expert, in connection with this case.

CF11

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

2. All notes of TORREY JOHNSON, in conjunction with the ballistic testing in this case.

3. All testing results of TORREY JOHNSON, in conjunction with the ballistic testing in this case.

4. All notes, memos, and transcriptions of statements of TORREY JOHNSON, in conjunction with the ballistic testing in this case.

5. Copies of all photographs and negatives taken in connection with the above tests and examination.

6. The names and addresses of all persons who in any way participated in the testing of the ballistics in the above case.

7. A list and present location of all physical and intangible evidence that is, or may be, favorable to the above-entitled defendant at trial.

8. The defense requests that the Court order that the Clark County District Attorney's Office shall promptly notify the defense and the Court of the existence of additional material which is subject to the discovery order of the Court.

DATED this 20 day of July, 1999.

SUBMITTED BY:

JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
330 S. Third Street #860
Las Vegas, Nevada 89101

// //

// //

1
2
3 NOTICE OF MOTION

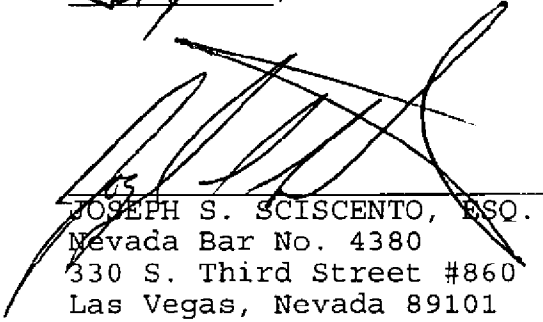
4 TO: The State of Nevada, Plaintiff and;

5 TO: STEWART BELL, Clark County Deputy District Attorney, its
6 attorney:

7 TO: FRANK J. COUMOU, ESQ. Deputy District Attorney

8 YOU WILL PLEASE TAKE NOTICE that the above motion will be
9 heard on the 29 day of July, 1999 at the hour of
10 8:30 a.m., or as soon thereafter as counsel may be heard, in
11 Eighth Judicial District Court, Clark County, Nevada.

12 DATED this 20 day of July, 1999.

13
14
15 
16 JOSEPH S. SCISCENTO, ESQ.
17 Nevada Bar No. 4380
18 330 S. Third Street #860
19 Las Vegas, Nevada 89101
20 Attorney for Defendant

21 POINTS AND AUTHORITIES
22 IN SUPPORT OF MOTION FOR DISCOVERY

23 Discovery allows the defendant to be provided with
24 results, and reports of physical and mental examinations, and
25 of scientific tests or experiments made in connection with the
26 particular case, or copies thereof, within the possession,
27 custody or control of the state, the existence of which is
28 known, or by the exercise of due diligence may be come known
to the District Attorney (N.R.S. 174.235{2}0. Discovery
allows the Defendant to be provided with photograph books,
papers, documents, tangible objects, buildings or place, or
copies or portions thereof, which are within the possession,

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1
2
3 custody or control of the State, upon a showing of materiality
4 to the preparation of his defense and that his request is
5 reasonable (N.R.S. 174.245).

6 The good faith or bad faith failure of the District
7 Attorney's Office to produce evidence favorable to the accused
8 upon request of the accused results in a deprivation of the
9 right to a fair hearing as guaranteed by due process of law
10 under the Fourteenth Amendment to the United States
11 Constitution if the material evidence is favorable to the
12 accused on the issue of guilt or punishment Brady v. Maryland
13 373 U.S. 83, 83 S.Ct. 1194, 10L.Ed.2d 215 (1963); Moore v.
14 Illinois 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed.2d 706 (1972),
15 rehearing denied, Oct. 10, 1972, 93 S.Ct.87. This
16 pronouncement of the scope of discovery has been reiterated by
17 the United States Supreme Court with reference to the evidence
18 that goes to the innocence or guilt of the defendant in
19 situations wherein the credibility of a witness is in issue.
20 Gaglio v. U.S., 495 U.S. 92 S.Ct. 763 150, 31 L.Ed.2d 104,
21 (1972).

22 It is the state that tries a man, and it is the state
23 that must insure that the trial is fair. A citizen has the
24 right to expect fair dealing from his government Vitarelli v.
25 Seaton, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959).
26 The right to fair dealing entails treating the government as
27 a unit rather than as an amalgam of separate entities S & E.
28 Contractors, Inc. v. U.S., 406 U.S. 1 at 10, 92 S.Ct. 1411 31
L.Ed.2d 658, (1972). The prosecutor's office is a government

1
2
3 entity wherein the prosecution has the duty to communicate all
4 relevant information of each case to each of its attorneys; a
5 promise or act of one attorney is attributed to the State,
6 Giglio v. U.S., supra. The United States Supreme Court has
7 noted that prosecutors can be responsible for actions of the
8 police officers enlisted to aid the prosecution Kastigar v.
9 U.S., 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972),
10 rehearing denied 408 U.S. 932.

11 The defendant's right to confrontation under the Sixth
12 Amendment to the United States Constitution includes the right
13 to cross-examination. This Sixth Amendment protection extends
14 to the States, pursuant to the Fourteenth Amendment to the
15 United States Constitution Pointer v. Texas, 380 U.S. 400 85
16 S.Ct. 1065, 13L.Ed.2d (1965). A deprivation of the right to
17 cross-examination constitutes a denial of due process of law
18 Pointer v. Texas, supra at 405. The value of cross-
19 examinations is to expose false hood and to bring out the
20 truth Pointer v. Texas, supra 404. The Court is zealous to
21 protect the right of confrontation from erosion, Pointer v.
22 Texas, supra at 405-406. The major reason for confrontation
23 is to allow the defendant the right of cross-examination,
24 Pointer v. Texas, supra, 405-406.

25 A full cross-examination of the witness upon the subjects
26 of his examination in chief is the absolute right of the party
27 against whom he is called Quiles v. U.S. Ninth Circuit, 344
28 Fed.2d. 490, 494, (1965). The rights to cross-examination and
confrontation are essential to due process Chambers v.

1
2 Mississippi, 410 U.S. 284, 93 S.Ct., 1038, 35 L.Ed.2d 347
3 (1974).

4 The Nevada Supreme Court has repeatedly recognized that
5 on accused of a crime has the right to cross-examination
6 pursuant to the United States Constitution, State v. Merrit,
7 66 Nev. 380, 212 P. 2d. 706, (1949); Serrano v. State, 83,
8 Nev. 324, 429 P. 2d 831, (1967). Summit v. State, 101 Nev.
9 159, 697 P.2d 1374 (1985).

10 The denial of the rights to confrontation and cross-
11 examination results in constitutional error of the first
12 magnitude and no amount of lack of prejudice will cure it
13 Brookhard v. Janis, 384 U.S. 1, 234, U.S. 1245, 16 L.Ed.2d 314
14 (1966).

15 The United States Supreme Court has held that proper
16 cross-examination includes testing the perception and memory
17 of the witness; it encompasses impeaching the witness by
18 showing bias, prejudice, motive, and under appropriate
19 circumstances, the criminal record of the defendant. It went
20 on to conclude that cross-examination is the principal means
21 by which the believability and truth of a witness' testimony
22 are tested; that the witness motivation in testifying is
23 important and it may be discerned by the instrument of cross-
24 examination. David v. Alaska 415 U.S. 945 S.Ct. 1105, 392
25 Ed.2d. 347 (1974); Greene v. McElroy, 360 U.S. 474, 496, 79
26 St. 1400, 3 L.Ed. 137 (1950). The Nevada Supreme Court is
27 consistent and holds that a wide latitude of cross-examination
28 is allowed in order to test the motives, interest, animus,

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1
2 accuracy, veracity and credibility of a witness Lloyd v State,
3 85 Nev. 576, 460 P.2d. 111 (1969).

4 Certainly, the right to a fair trial, as established in
5 the aforementioned cases, includes the fundamental right to
6 cross-examination by the impeachment of the witness'
7 testimony. Impeachment may take the form of motive to
8 fabricate, prior inconsistent statements, or bias. In order
9 to properly prepare for trial, the defense should be entitled
10 to this material even if it was given to state officers. The
11 purpose is to counteract the quality of evidence presented by
12 the state from a witness who may deny the truth unless he is
13 presented with tangible or intangible items that come within
14 the scope of cross-examination. The arrests and disposition
15 of a witness criminal cases allow development of the motive to
16 fabricate depending on the nature of the disposition. Felony
17 convictions come within the character evidence allowed to
18 impeach a witness (N.R.S. 50.095). The defense should be
19 provided with all convictions so he can make a determination,
20 independent of the prosecution, as to whether N.R.S 50.095
21 applies. The matters pending or which could be filed are
22 within the scope of examination pertaining to motive to
23 fabricate if the witness is hedging in hopes of a suggestion
24 of leniency or immunity. The names and addresses of witnesses
25 enables the defendant to prepare his case and to present
26 favorable evidence. The legislature has not evinced an intent
27 to deprive the defendant of this opportunity (N.R.S. 173.045;
28 N.R.S. 172.265).

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1
2 The Nevada Supreme Court has appreciated the
3 constitutional necessity of causing the defense to be provided
4 with a copy of a police officer's written report so the
5 defendant can effectively utilize the right to impeach by
6 cross-examination Walker v. Fogliani, 83 Nev. 154, 425 P.2d
7 794 (1967).

8
9 The portion of N.R.S. 174.245 that, ostensibly, precludes
10 the authorization of discovery of reports, memoranda, or other
11 internal state documents made by state agents in connection
12 with the investigation of the case and statements made by
13 prospective state witnesses to agents of the state in
14 unconstitutional because it deprives the defendant of his
15 right to a fair hearing involution of the Fourteenth Amendment
16 to the United States Constitution because he cannot
17 effectively investigate his case, he cannot effectively
18 confront and cross-examine the evidence presented against him.
19 However when read together with N.R.S. 174.245. The statute
20 may not forbid as much.

21 The Nevada legislature has see fit to allow the defendant
22 to place his character in issue. In order to prepare its
23 defense, the defendant must know what evidence of bad acts the
24 state has in its possession to establish these facts.

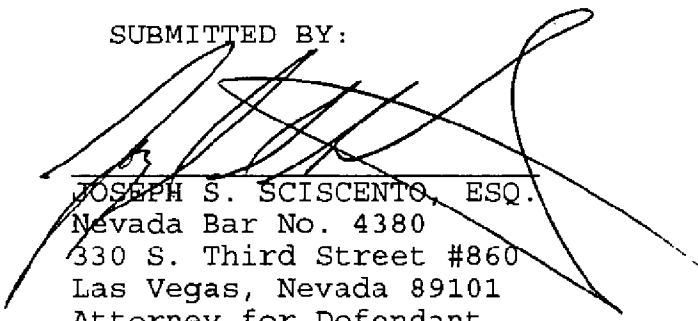
25 The Clark County District Attorney's Office shall
26 promptly notify the defense, the existence of additional
27 material which is the subject of the discovery order (N.R.S.
28 174.295). The failure of the Clark County District Attorney's
Office to comply with his continuing duty to provide discovery

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1
2
3 pursuant to a discovery order allows the court discretion to
4 prohibit the Clark County District Attorney's Office from
5 introducing evidence of material that has not been disclosed
6 (N.R.S. 174.295).

7 Therefore, it is respectfully requested that the
8 Defendant's Motion for Discovery be granted.

9 SUBMITTED BY:

10
11 
12 JOSEPH S. SCISCENTO, ESQ.
13 Nevada Bar No. 4380
14 330 S. Third Street #860
15 Las Vegas, Nevada 89101
16 Attorney for Defendant

17 RECEIPT OF COPY

18 THE UNDERSIGNED hereby acknowledges receipt of copy of
19 the foregoing, Motion for Discovery this _____ day of July,
20 1999.

21 STEWART BELL
22 CLARK COUNTY DISTRICT ATTORNEY

23 _____
24 by: _____
25
26
27
28

FILED 24

JUL 27 3 19 PM '99

Cheryl E. Higgins
CLERK

1 MTN
2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No. 4380
4 330 S. Third Street #860
5 Las Vegas, Nevada 89101
6 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,) CASE NO: C154293
10) DEPT NO: III
11 v.) DOCK NO: W
12)
13 BRENDAN JAMES NASBY,)
14)
15 Defendant.)

MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE
OF OTHER GUNS NOT USED IN THE CRIME

16 COMES NOW, the Defendant Brendan Nasby, by and through
17 his counsel of record JOSEPH S. SCISCENTO, ESQ., and moves
18 this Court for an order precluding the prosecution from
19 presenting any evidence of guns not used in the crime. This
20 motion is based upon the attached Memorandum of Points and
21 Authorities, the file herein, and any argument that this court
22 may hear is support of this motion

23 Dated this 27 day of July, 1999.

[Signature]
JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380

24 // //

25 // //

26 // //

27 // //

28 // //

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670



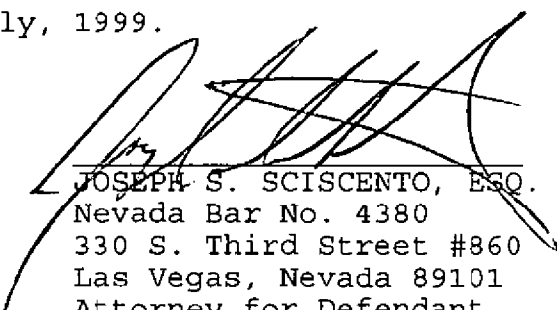
1 NOTICE OF MOTION

2 TO: STEWART BELL, ESQ., District Attorney Attorney for State;

3 TO: FRANK J. COUMOU, ESQ., Deputy District Attorney

4 YOU AND EACH OF YOU PLEASE TAKE NOTICE that counsel for
5 Defendant will bring the above and foregoing Motion on for
6 hearing before the above-entitled Court on the 29 day of
7 July, 1999 at the hour of 8:30 a.m., or as soon
8 thereafter as counsel may be heard.

9 DATED this 27 day of July, 1999.

10
11 
12 JOSEPH S. SCISCENTO, ESQ.
13 Nevada Bar No. 4380
14 330 S. Third Street #860
15 Las Vegas, Nevada 89101
16 Attorney for Defendant

17 AFFIDAVIT OF JOSEPH S. SCISCENTO, ESQ.

18 STATE OF NEVADA)
19 : ss
20 COUNTY OF CLARK)

21 COMES NOW, JOSEPH S. SCISCENTO, ESQ., and being duly
22 sworn deposes and states as follows:

23 1. That he is a duly licensed attorney for and in the
24 State of Nevada, County of Clark, and he is the attorney of
25 record of the above Defendant;


26 2. That he has read the foregoing motion and knows the
27 contents therein and believes the allegations to be true and
28 correct and as to those matters based on information and

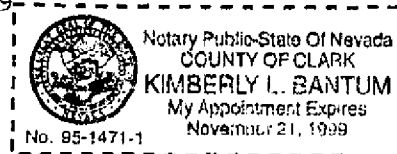
1 belief he believes them to be true.

2 FURTHER YOUR AFFIANT SAYETH NAUGHT

3
4 
5 JOSEPH S. SCISCENTO, Esq.

6 Subscribed and Sworn to
7 before me this 27 day of July, 1999

8 
9



10
11 MEMORANDUM OF POINTS AND AUTHORITIES

12 Mr. Nasby respectfully requests that the State should not
13 be permitted to use or mention in any manner that Mr. Nasby
14 has been found in possession of any weapons, which were not
15 alleged to be used in the crime.
16

17 A prosecutors may use only evidence that is relevant to
18 the crime being charged. NRS 48.015 states as follows:

19 **RELEVANT EVIDENCE defined** As used in this Chapter,
20 "relevant evidence" means evidence having a
21 tendency to make the existence of any fact that is
22 of consequence to the determination of the action
23 more or less probable than it would be without the
24 evidence.

25 "Murder" is the Unlawful killing of a human being, with
26 malice aforethought, either expressed or implied. SEE
27 generally NRS 200.010 The introduction of the above guns does
28 not prove any element of the crime. The guns are not alleged
to be used in the murder, nor is the possession of the guns a
crime of itself. The guns do not show motive of the crime,
intent, absence of mistake, modis operandi, or any legitimate

1 reason which would allow the guns being introduced.

2 The Police, pursuant to a search warrant, found three
3 guns located in the defendants residence. Two of the guns
4 located were a SKS 7.62 X39 rifle with folding stock and a
5 Winchester 12 gauge shotgun, serial number L3173410.
6 (hereinafter referred to jointly as "two guns"). SEE Exhibit
7 "1" attached hereto and incorporated by reference.

8 Neither of these two guns are alleged to be the murder
9 weapon, and they have no evidentiary value as to the
10 determination of guilt or innocence of the Defendant.
11 Further the State has alleged that the 9mm, found in the
12 residence, was in fact the murder weapon.

13 The victim was alleged to be shot by a 9mm gun and
14 neither of the above mentioned two guns are of that caliber.
15 Therefor the evidentiary value of theses guns are non
16 existing. There is not reason for their introduction.

17 EVEN IF THE EVIDENCE IS RELEVANT IT IS INADMISSABLE
18 AS BEING PREJUDICIAL, A CONFUSION OR A WASTE OF TIME

19 NRS 48.035, states in relevant part as follows:

20 "1. Although relevant evidence is not admissible
21 if its probative value is substantially outweighed
22 by the danger of unfair prejudice, of confusion of
the issues or of misleading the jury"

22 * * *

23 // //

24 The Defendant does not concede the issue that the
25 two guns are relevant evidence, in the alternative the
26 defendant argues that the evidence is prejudicial, a confusion
27 to the jury or a waste of time.

28 There is no need for the evidence of the two guns, and

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Attorney at Law
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Las Vegas, Nevada 89101
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1 the introduction of those guns into the trial, will be highly
2 prejudicial to the Defendant. The defense can assume that the
3 State will try to show that the defendant is a criminal
4 because he is in possession of these two guns, or that he is
5 a bad guy because he owns these guns, or that he is a murderer
6 because he is in possession of these two guns.

7 Further the jury's will be confused as to the issue of
8 the guilt of the defendant, the jury may assume that the guns
9 were used in the murder or that possession of the two guns is
10 a crime or that the defendant committed this crime because he
11 was in possession of the two guns.

12 In addition the introduction of the two guns, not used in
13 the murder, will be a waste of time in that the defense will
14 be forced to bring up second amendment arguments, bring in
15 evidence that the guns will legal, were not stolen and not
16 used in any crime. This will cause undue delay as to the
17 cross-examination of the States witnesses and force the
18 defendant to bring in proof of the legal purchase of the guns.

19
20 CONCLUSION

21 Based on the above argument the Defendant hereby requests
22 that this Court issue an Order In Limine preventing the State
23 from bringing into evidence other guns not used in the murder,

24 // //

25 // //

26 // //

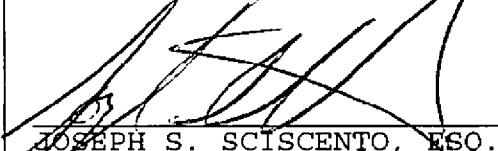
27 // //

28 // //

1 further that the State be prohibited from making any statement
2 that there were any additional guns found at the defendants
3 residence.

4 Dated this 27 day of July, 1999.

5
6 Respectfully Submitted:

7 
8
9 JOSEPH S. SCISCENTO, ESQ.
10 Nevada Bar No. 4380
330 S. Third Street #860
Las Vegas, Nevada 89101
(702) 382-2664

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RECEIPT OF COPY

The Undersigned hereby acknowledges receipt of copy of
the foregoing Motion in limine, this ____ day of July, 1999

STEWART BELL, ESQ.
DISTRICT ATTORNEY

BY: _____

ERRA
 JOSEPH S. SCISCENTO, ESQ.
 Nevada Bar No. 4380
 330 S. Third Street #860
 Las Vegas, Nevada 89101
 (702) 382-2664

FILED

Jul 28 10 59 AM '99

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
 Plaintiff,) CASE NO: C154293
) DEPT NO: III
 v.) DOCK NO: W
)
 BRENDAN JAMES NASBY,)
)
 Defendant.)

ERRATA TO MOTION AND NOTICE OF MOTION
IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS
NOT USED IN THE CRIME

COMES NOW, JOSEPH S. SCISCENTO, ESQ., submitting the
 ERRATA TO MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE
 EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME, wherein a
 Clerical mistake was made and the following information was
 inadvertently left out: a copy of Exhibit "1".

SUBMITTED BY:

JOSEPH S. SCISCENTO, ESQ.
 Nevada Bar No 4380
 330 S. Third Street #860
 Las Vegas, NV, 89101
 (702) 382-2664

JOSEPH S. SCISCENTO

Attorney at Law

330 South Third Street, Suite 860
 Las Vegas, Nevada 89101
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CMC

6581

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
IMPOUNDED FIREARM INFORMATION SHEET

Case Information

Incident: HOMICIDE FOLLOW-UP (SEARCH WARRANT) Date: 08-04-98 Event #: 980717-0541
 Location of Incident (Number & Street): 4509 SWITCHBACK Bldg. # Apt. # City: NORTH LAS VEGAS State: NV Zip Code:

Firearm Information

Weapon Type: ☐ Semi-Auto ☒ Revolver ☒ Other SHOTGUN Firearm Manufacturer: WINCHESTER Model Name/Number: 300 Serial #: L 3173410
 Caliber: 2 GA Barrel: BLK/WOOD Finish (frames & grips): BLK/WOOD Action System: ☒ Single ☐ Double Hammer Position: ☒ Up ☐ Down Safety Position: ☐ On ☒ Off ☐ N/A Fingerprint Developed? ☒ NO ☐ ATTEMPT MA.
 Gun ☐ Yes ☒ No Ammo ☐ Yes ☒ No

Semi-Automatic Information: (Magazine Contents: Refer to Caliber & Headstamp)

Magazine in Firearm? ☒ Yes ☐ No INTERNAL MAGAZINE CONTENTS:
 Chamber Contents: ☐ Empty ☒ Live ☒ Expended
 Caliber: 12 GAUGE
 Headstamp: 12 GA MADE IN USA

1	FEDERAL 12 GA	6	CHARLES DALY 12	11
2	FEDERAL 12 GA	7		12
3	FEDERAL 12 GA	8		13
4	FEDERAL 12 GA	9		14
5	FEDERAL 12 GA	10		15

Cylinder Information: Refer to Caliber & Headstamp - Indicate Live, Expended, or Empty & Rotation of Cylinder

CYLINDER CONTENTS	1	<input type="checkbox"/> 5 shot revolver 	<input type="checkbox"/> 6 shot revolver 	
	2			
	3			
	4			
	5			
	6			
	7	<input type="checkbox"/> 7 shot revolver 	<input type="checkbox"/> 8 shot revolver 	<input type="checkbox"/> 9 shot revolver
	8			
	9			

Miscellaneous

Pawn Shop Detail Check - (Include Name & P # of Clerk)
NO WANTS, COLLEEN IN PAWN DETAIL #1965

ADDITIONAL REMARKS

Supervisor's Signature: K. Adkins #900 P #
 I.D. Specialist's Signature: [Signature] P # 3326
 /MPO TSD 7 (7-92)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
IMPROVED FIREARM INFORMATION SHEET

Case Information

Incident: HOMICIDE FOLLOW-UP (SEARCH WARRANT) Date: 08-04-98 Event #: 980717-0541
 Location of Incident (Number & Street): 4509 SWITCHBACK Bldg. # Apt. # City: NORTH LAS VEGAS NV State: NV Zip Code:

Firearm Information

Weapon Type: ☐ Semi-Auto ☒ Revolver ☒ Other RIFLE Firearm Manufacturer: UNKNOWN - MADE IN CHINA Model Name/Number: ASSAULT STYLE Serial #: 11260593
 Caliber: 2X 39mm Barrel: Finish (frames & grips): BLACK Action System: ☐ Single ☒ Double Hammer Position: ☐ Up ☒ Down Safety Position: ☒ On ☐ Off ☐ N/A Fingerprints Developed? ☒ No ☐ ATTEMPT ☐ M Gun: ☐ Yes ☐ No Ammo: ☐ Yes ☐ No

Semi-Automatic Information: (Magazine Contents: Refer to Caliber & Headstamp)

Magazine in Firearm?	MAGAZINE CONTENTS	1	6	11
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		2	7	12
Chamber Contents: <input checked="" type="checkbox"/> Empty		3	8	13
<input type="checkbox"/> Live <input type="checkbox"/> Expended		4	9	14
Caliber: <u> </u>		5	10	15
Headstamp: <u> </u>				

Cylinder Information: Refer to Caliber & Headstamp - Indicate Live, Expended, or Empty & Rotation of Cylinder

CYLINDER COCKING POSITIONS	1	<input type="checkbox"/> 5 shot revolver 	<input type="checkbox"/> 6 shot revolver 		
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
<input type="checkbox"/> 7 shot revolver 		<input type="checkbox"/> 8 shot revolver 		<input type="checkbox"/> 9 shot revolver 	

Miscellaneous

Pawn Shop Detail Check - (Include Name & P # of Clerk)
NO WANTS, COLLEEN IN PAWN DETAIL #1565

ADDITIONAL REMARKS

* 10 INCH MAGAZINE WAS RECOVERED NEAR THE RIFLE WITH (29) CARTRIDGES INSIDE (7.62X39mm).

Supervisor's Signature: K. Adkins #900 P# I.D. Specialist's Signature: Pandy McPhail P# 3326
 LVMPD TSD 7 (7-92)

18

FILED

JUL 28 12 02 PM '99

Stacy R. Higgins
CLERK

ROC
JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
330 S. Third Street #860
Las Vegas, Nevada 89101
(702) 382-2664
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
) CASE NO: C154293
Plaintiff,) DEPT NO: III
) DOCK NO: W
v.)
)
BRENDAN JAMES NASBY,)
)
Defendant.)

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing ERRATA TO MOTION AND
NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS
NOT USED IN THE CRIME is hereby acknowledged this 28 day of
July, 1999.

STEWART BELL, ESQ.
DISTRICT ATTORNEY

By: *T. J. Schmitt*
Deputy District Attorney

CE31

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

JOSEPH S. SCISCENTO
Attorney at Law
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1 MTN
2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No 4380
4 330 S. Third Street
5 #860
6 Las Vegas, Nevada 89101
7 (702) 382-2664

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,)
13)
14 vs.) CASE NO: C154293
15) DEPT NO: III
16)
17 BRENDAN JAMES NASBY)
18 ID# 1517690) Time of Hearing:
19) Date of Hearing:
20 Defendant.)

21 ORDER GRANTING MOTION FOR DISCOVERY

22 This Matter having come on before this Court of the 29th
23 day of July, 1999, by way of Motion filed by the Defendant
24 BRENDAN NASBY by and through his attorney JOSEPH S. SCISCENTO,
25 ESQ., the State being represented by FRANK COUMOU, Esq.
26 Deputy District Attorney. This court having heard argument by
27 counsel.

28 GOOD CAUSE APPEARING, THEREFORE;

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the State
shall provide to the Defense Counsel, at Defendants expense
copies of

1. Any and all reports of TORREY JOHNSON, fire-arm
expert, in connection with this case.

2. All notes of TORREY JOHNSON, in conjunction with the
ballistic testing in this case.

3. All testing results of TORREY JOHNSON, in conjunction
with the ballistic testing in this case.

FILED

JUL 29 2 15 PM '99

Shirley B. Ruggins
CLERK

JOSEPH S. SCISCENTO

Attorney at Law

330 South Third Street, Suite 860
Las Vegas, Nevada 89101

(702)382-2664 • Fax (702)382-2670

1 4. All notes, memos, and transcriptions of statements of
2 TORREY JOHNSON, in conjunction with the ballistic testing in
3 this case.

4 5. Copies of all photographs and negatives taken in
5 connection with the above tests and examination.

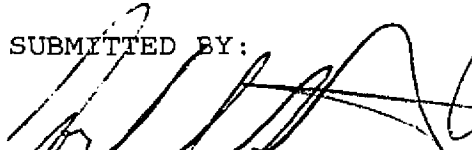
6 6. The names and addresses of all persons who in any way
7 participated in the testing of the ballistics in the above
8 case.

9 7. A list and present location of all physical and
10 intangible evidence that is, or may be, favorable to the
11 above-entitled defendant at trial.

12 DATED this 29 day of July, 1999.

13
14 
15 DISTRICT COURT JUDGE

16 SUBMITTED BY:

17 
18 JOSEPH S. SCISCENTO, ESQ.
19 Nevada Bar No. 4380
20 330 S. Third Street #860
21 Las Vegas, Nevada 89101
22
23
24
25
26
27
28

1 **RESP**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

AUG 16 4 17 PM '99

Phillip Brown
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,

12 Defendant.
13
14

Case No. C154293
Dept. No. III
Docket E

15 **RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE**
16 **EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME**

17 **DATE OF HEARING: 10-7-99**
18 **TIME OF HEARING: 9:00 A.M.**

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 PHILLIP BROWN, Deputy District Attorney, and files this Response to Defendant's Motion
21 in Limine to Preclude Evidence of Other Guns not used in the Crime.

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 **POINTS AND AUTHORITIES**

26 **STATEMENT OF FACTS**

27 The body of Michael Beasley was discovered in a desert area, having received two
28 gunshot wounds on July 17, 1998. During the crime scene investigation three new .9mm cases

1 were found in close proximity to the body. Detectives also found numerous other size and type
2 shell casings and ammunition located in close proximity to the victim's body. A subsequent
3 autopsy and firearm comparison performed on the bullets recovered from the body confirmed
4 that a .9mm handgun was used to kill Michael Lamont Beasley. Defendant was subsequently
5 arrested for the murder of Michael Lamont Beasley at the time of his arrest Nasby said that the
6 gun used to kill Beasley was a .25 caliber handgun and was located at the residence of Tommy
7 Burnside.

8 As Nasby was transported to jail he told Detective Buczek that he would direct him to
9 where the .9mm gun was. Nasby then directed Buczek to his bedroom and stated that the gun
10 was in the bag under his bed. Buczek subsequently opened the bag and discovered a Browning
11 .9mm handgun along with an SKS rifle and a Winchester shotgun. Nasby further stated that he
12 purchased the .9mm handgun after the murder from "Sugarbear".

13 Defendant now brings the instant motion to preclude the State from introducing evidence
14 of the SKS rifle and the Winchester shotgun on the grounds that introduction of these weapons
15 would be irrelevant and/or unduly prejudicial.

16 STATEMENT OF THE LAW

17 NRS 48.015 provides that :


18 "Relevant evidence" means evidence having a
19 tendency to make the existence of any fact that is of
20 consequence to the determination of the action
more or less probable than it would be without the
evidence.

21 In this case, it is clear that the discovery of the SKS and the shotgun in the Defendant's
22 room in close proximity to the murder weapon in this case is relevant in that it tends to show that
23 the Defendant's ownership and control of the same as well as his knowledge of the presence of
24 the above described firearms. Additionally, such testimony is necessary to explain the course
25 of the investigation of the Detectives and refute any contentions that the other ammunition
26 discovered near Michael Beasley could have originated from these other firearms. Additionally,
27 it is clear that introduction of testimony concerning the discovery of the SKS and the shotgun
28 does not constitute an "other bad act" but rather is part of one continuous transaction related to

1 the discovery of the .9mm used to kill Michael Beasley. See, NRS 48.035 (3). The probative
2 value of this evidence is not substantially outweighed by the danger of unfair prejudice or
3 confusion of the issues or misleading the jury for the reasons explained above. Defendant's
4 possession of two rifles is not an other bad act and is necessary to refute Defendant's claim that
5 he obtained the .9mm after the murder. A reasonable inference from the evidence in this case
6 is that the Defendant was in possession prior to the murder of a .9mm as well as the SKS and
7 the shotgun. DATED this 16 day of August, 1999.

8 Respectfully submitted,

9 STEWART L. BELL
10 DISTRICT ATTORNEY
11 Nevada Bar #000477

12 BY 
13 PHILLIP BROWN
14 Deputy District Attorney
15 Nevada Bar #006240

16 CERTIFICATE OF FACSIMILE TRANSMISSION

17 I hereby certify that service of Response, was made this 16th day of August, 1999, by
18 facsimilie transmission to:

19 JOSEPH SCISCENTO, ESQ.
20 382-2670

21 BY 
22 Employee of the District Attorney's Office
23
24
25
26
27

28 msr

Confirmation Report-Memory Send

Time : Aug-16-99 03:14pm
Tel line 1 : +7023838455
Name : DISTRICT ATTY OFFICE

Job number : 728
Date : Aug-16 03:12pm
To : 3822670
Document Pages : 03
Start time : Aug-16 03:12pm
End time : Aug-16 03:14pm
Pages sent : 03

Job number : 728

*** SEND SUCCESSFUL ***

1 RESP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

-vs-

11 BRENDAN JAMES NASBY,

12 Defendant.

Case No. C154293
Dept. No. III
Docket E

15 RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE
16 EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME

17 DATE OF HEARING: 10-7-99
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 PHILLIP BROWN, Deputy District Attorney, and files this Response to Defendant's Motion
21 in Limine to Preclude Evidence of Other Guns not used in the Crime.

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 POINTS AND AUTHORITIES

26 STATEMENT OF FACTS

27 The body of Michael Beasley was discovered in a desert area, having received two
28 gunshot wounds on July 17, 1998. During the crime scene investigation three new .9mm cases

FILED

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Shirley B. Ruggione
CLERK

RPLY
JOSEPH S. SCISCENTO, ESQ
330 South Third Street
Ste. 860
Las Vegas, NV. 89101
(702) 382-2664
Attorney for Defendant
NASBY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA)	
	)	CASE NO: C154293
Plaintiff,	)	DEPT NO: III
	)	DKT NO: E
V.)	
)	
BRENDAN NASBY,)	
Id# 1517690	)	TIME OF HEARING: 9:00 A.M.
	)	DATE OF HEARING: 10-7-99
Defendant.)	

DEFENDANTS REPLY TO STATE'S OPPOSITION TO MOTION IN LIMINE
TO PRECLUDE EVIDENCE OF OTHER GUNS NOT USED IN THE CRIME

COMES NOW, BRENDAN NASBY, by and through his Attorney
JOSEPH S. SCISCENTO, ESQ., and submits this Reply to State's
Opposition.

POINTS AND AUTHORITY

The State in their opposition has admitted that the gun
used to kill Michael Beasley was a 9MM. SEE States
Opposition Page 2 lines 8-9. The guns that were found, which
the Defendant is attempting to suppress are a 12 gauge
shotgun and a SKS 7.62x39 rifle. Neither of these guns are
alleged to be the murder weapon and further neither are of

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

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AUG 19 1999
COUNTY CLERK

FILED

1
2
3 the same caliber that was used in the murder. The guns have
4 no evidentiary value other than to show that Brendan Nasby
5 was in possession of the guns. It is not illegal to own
6 these guns and they were not stolen nor used in any crime.

7 The State, in their Opposition, state;

8 "[T]hat the discovery of the SKS and the shotgun
9 in the Defendant's room in close proximity to the
10 murder weapon in this case is relevant in that it
11 tends to show that the defendant's ownership and
12 control of the same as well as his knowledge of
13 the presence of the above described firearms."
14 SEE States Opposition Page 2 Lines 21-24.

15 The close proximity to other guns neither tends to prove
16 that Mr. Nasby owned the murder weapon or not, the fact that
17 it was found in his bedroom should be fact enough to allege
18 control. Mr. Nasby had control over his bedroom and no other
19 person shared his room.

20 The State goes on further to state that the evidence is
21 needed to "refute any contentions that the other ammunition
22 discovered near Michael Beasley could have originated from
23 these other firearms." SEE States opposition page 2 lines 25-
24 26. This simply is not the case. There is no allegation
25 that the other ammunition found at the murder scene was the
26 same or matched the ammunition found in Nasby's bedroom. The
27 defendant has never alleged that the ammunition was the same.
28 Further the State has not preserved any other ammunition
found at the murder site, except three 9mm shells, and a
winchester 45 colt cartridge case. SEE Exhibit "1" attached
hereto and incorporated by reference.

1
2 NRS 48.015 states:

3 "Relevant evidence" means evidence having a
4 tendency to make the existence of any fact that is
5 of consequences to the determination of the action
6 more or less probable than it would be without the
7 evidence"

8 What is the purpose of bringing in other guns which are
9 not alleged to be the murder weapon? There is no reason and
10 the evidence is not relevant. It is not for motivation,
11 plan, scheme, lack of identity, modis operandi, or mistake.

12 The State is not alleging that knowledge of guns or
13 ownership is an element of the crime nor does it prove that
14 the Defendant commit the crime. Possession of guns, not used
15 in the murder, will not aid the jury in determining the guilt
16 or innocence of the accused.

17 The reality of the situation is this. The State has not
18 preserved any shell casing from the murder scene that match
19 the two other guns found in Nasby's bedroom. So the
20 introduction of the guns is not being used to show that the
21 other shells belonged to the Defendant. The two guns found
22 do not match, in any way, the caliber of the alleged murder
23 weapon. The two guns found were a 12 gauge shot gun and
24 another rifle, that does not fit the caliber of the bullets
25 located in Michael Beasley's body, that was alleged to be the
26 murder weapon. The coroners report states that a 9MM was use
27 to murder Michael Beasley, and neither of the two guns found
28 were of that caliber. The possession of the other guns do
not tend to show that the Defendant committed the crime

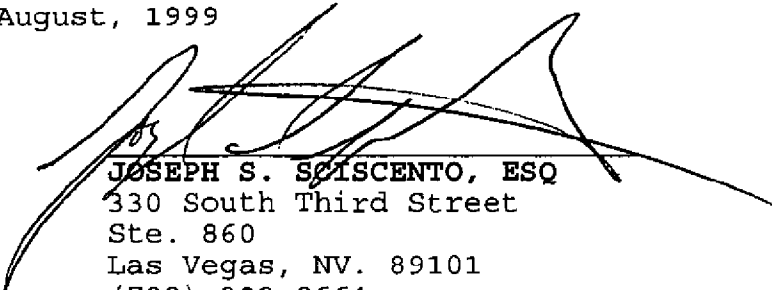
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3 alleged. The only reason that the State wants to bring in
4 the other guns is to allege that the Defendant is a bad guy
5 because he has guns. This clearly is inadmissible character
6 evidence.

7
8 CONCLUSION

9 The introduction of the two weapons have no bearing on
10 the issue of guilt or innocence of the accused. The evidence
11 is merely being used to show a character of the defendant,
12 which is inadmissible. The guns were not used in the murder,
13 and any corroborating evidence of similar shells found at the
14 murder site was not preserved by the State. Therefore the
15 evidence is lost.

16 There is no reason for the introduction of the evidence,
17 it is not relevant and the Defendant is requesting an order
18 from this Court which would prevent the State from
19 introducing any evidence, of the other guns found.

20 DATED this 18 day of August, 1999

21
22 
23 JOSEPH S. SCISCENTO, ESQ
24 330 South Third Street
25 Ste. 860
26 Las Vegas, NV. 89101
27 (702) 382-2664
28 Attorney for Defendant
NASBY

RECEIPT OF COPYRECEIPT OF COPY

The undersigned hereby acknowledges receipt of copy of the foregoing Reply to States Opposition to Motion in Limine, this 19 day of August, 1999

STEWART BELL, ESQ
Clark County District Attorney

Tane Schindell

BY: _____

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

EVIDENCE IMPOUND REPORT

EVIDENCE	X	FOUND PROPERTY		SAFEKEEPING	
----------	---	----------------	--	-------------	--

EVENT # 980717-0541
 DATE 7-17-98
 INCIDENT HOMICIDE
 LOCATION 2.1 MILES NW OF ALEXANDER & JENSEN
 VICTIM #1 JOHN POWERPOLE X403 DOE VICTIM #2
 2.1 MILES NW OF ALEXANDER & JENSEN

EVIDENCE	LOCATION RECOVERED
PACKAGE #5410-1	
ITEM#1: Winston cigarette butt	From the dirt 12' 2" north of the above victim's head at the above location.
ITEM#4: Winston cigarette butt	From the dirt 2' 6" north of the above victim's head at the above location.
ITEM#7: Winston cigarette butt	From the dirt beneath the victim's left leg at the above location.
PACKAGE #5410-2	
ITEM#2: Cartridge case, HS "Win 9mm luger"	From the dirt 7' 7" north of the above victim's head at the above location.
ITEM#3: Cartridge case, HS "Win 9mm luger"	From the dirt 5' 2" north of the above victim's head at the above location.
ITEM#5: Cartridge case, HS "Win 9mm luger"	From the dirt 4' west of the above victim's head at the above location.
ITEM#6: Cartridge case, HS "Winchester 45 Colt"	From the dirt 12' south of the head of the above victim at the above location.

APPROVED	<i>K. Adkins</i>	PW	900	ID OFFICER	Kelly R. Neil	PW	5410
----------	------------------	----	-----	------------	---------------	----	------

CAWPDCCS\WORKAREA\NEILAEVI

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

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AUG 25 1999
COUNTY CLERK

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MTN
JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No: 4380
330 South Third Street
Ste. 860
Las Vegas, NV. 89101
Attorney for Defendant NASBY

FILED

AUG 25 3 54 PM '99

Shirley A. Hargrave
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA)
)
Plaintiff,)
)
vs.)
)
BRENDAN JAMES NASBY,)
)
Defendant.)

CASE NO: C154293
DEPT NO: III
DKT NO: E

9/7/99
8:30

MOTION FOR ORDER TO TAKE VIDEO DEPOSITION OF WITNESS
AND TO USE VIDEO DEPOSITION AT TRIAL

COMES NOW, BRENDAN JAMES NASBY, defendant, by and through his attorney JOSEPH S. SCISCENTO, ESQ., and submits this Motion to take Video Deposition of Witness and to use the Video Deposition at trial.

Said Motion is based on the following Points and Authorities, and all papers attached hereto and oral argument.

DATED THIS 25 DAY OF Aug, 1999
[Signature]
JOSEPH S. SCISCENTO, ESQ.

CE42

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

NOTICE OF MOTION

TO: STATE OF NEVADA; and

TO: STEWART BELL, ESQ., District Attorney

TO: FRANK COUMOU ESQ., Deputy District Attorney

PLEASE TAKE NOTICE that Defendant, BRENDAN NASBY will bring the foregoing MOTION on for hearing of the ~~8~~7 day of Sept, 1999, at the hour of 8:30 a.m, in Department III of the District Court, or as soon thereafter as the matter can be heard before the Court.

DATED this 25 day of Aug, 1999.


JOSEPH S. SCISCENTO, ESQ.
Counsel for Defendant NASBY

AFFIDAVIT OF JOSEPH S. SCISCENTO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JOSEPH S. SCISCENTO, being first duly sworn, upon his oath, deposes and says:

1. That he is a duly licensed attorney in the State of Nevada;

2. That Affiant is the attorney of record for Defendant, BRENDAN JAMES NASBY;

3. That Affiant has read the contents of the Motion to Take the Video Deposition of NINA HOQUE and for the use of the Video Deposition at the time of trial, filed in the instant matter, and that, based upon information and belief, all of

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

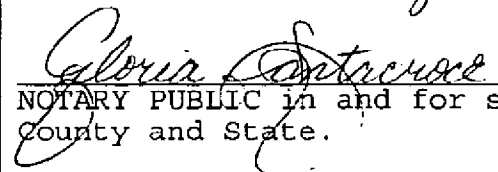
1 the factual allegations contained therein are true and
2 correct.

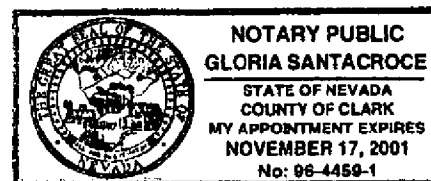
3 4. That he has spoken with the witness NINA HOQUE and
4 he has personal knowledge of the facts as to Ms. HOQUE;

5 FURTHER YOUR AFFIANT SAYETH NAUGHT.

6
7 
JOSEPH S. SCISCENTO, ESQ.

8 SUBSCRIBED and SWORN to before
me this 25 day of August, 1999

9 
10 NOTARY PUBLIC in and for said
11 County and State.



12 MEMORANDUM OF POINTS AND AUTHORITIES

13 STATEMENT OF FACTS

14 The Defendant NASBY has filed with this Court, and sent a
15 copy to the District Attorney, a Notice of Alibi Witness. The
16 notice contained the name of NINA HOQUE. Ms. HOQUE will provide
17 testimony as to the whereabouts of Brendan Nasby on the night of
18 the murder. Ms. HOQUE is a essential witness to the defense.

19 Ms. HOQUE is scheduled to leave the United States in October,
20 1999, and relocate to Bangladesh, Thailand. Ms. HOQUE is a hindu
21 who has been arranged to be married and to move to Bangladesh.
22 Calendar Call has been set for October 7th, 1999.

23 Ms. HOQUE will not be present in the State of Nevada on the
24 date set for the trial.

25 LEGAL ARGUMENT

26 Pursuant to NRS 174.175;

27 1. If it appears that a prospective witness
28 may be unable to attend or prevented from
attending a trial or hearing, that his

1 testimony is material and that it is
2 necessary to take his deposition in order to
3 prevent a failure of justice, the court at
4 any time after the filing of an indictment,
5 information or complaint may upon motion of a
6 defendant or of the state and notice to the
7 parties order that his testimony be taken by
8 deposition * * *

9 * * *

10 Since NINA HOQUE will be out of the Country on the date of
11 trial and she will not be coming back for a few years, she is
12 unavailable for trial. Further since NINA HOQUE is an essential
13 witness as to the alibi evidence of the Defendant, it would be a
14 miscarriage of justice for the Defendant not to be allowed to take
15 her deposition.

16 USE OF THE DEPOSITION AT TRIAL

17 Pursuant to NRS 174.215;

18 1. At the time of trial or upon any
19 hearing, a part or all of a deposition, so
20 far as otherwise admissible under the rules
21 of evidence, may be used if it appears:

22 * * *

23 (b) That the witness is out of the State of
24 Nevada, unless it appears that the absence of
25 the witness was procured by the party
26 offering the deposition.

27 * * *

28 (e) That the party offering the deposition
could not procure the attendance of the
witness by subpoena.

Since NINA HOQUE will be out of the country at the time of
trial and she will not be able to respond to the subpoena. The
reason that she is leaving is no the cause of the defendant.

CONCLUSION

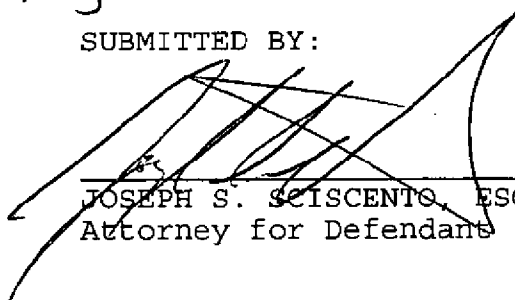
The Defendant Brendan Nasby, hereby requests that this Court
issue an Order directing that the Video Deposition of NINA HOQUE,

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 800
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

1 be taken, and further that the Video Deposition be used at the
2 time of trial, in leu of live testimony.

3 DATED this 25 day of Aug 1999.

4 SUBMITTED BY:

5 
6 JOSEPH S. SCISCENTO, ESQ.
7 Attorney for Defendants
8

9 RECEIPT OF COPY

10 The undersigned hereby acknowledges receipt of the foregoing
11 motion to take a video deposition and to use the video deposition
12 at trial, this _____ day of August, 1999.
13

14 STEWART BELL, ESQ.
15 CLARK COUNTY DISTRICT ATTORNEY
16

17 BY: _____
18
19
20
21
22
23
24
25
26
27
28

1 NOTC
2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No. 4380
4 330 S. Third Street #860
5 Las Vegas, NV. 89101
6 (702) 382-2664

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,) CASE NO: C154293
10) DEPT NO: III
11 v.) DOCK NO: W
12)
13 BRENDAN JAMES NASBY,)
14)
15 Defendant.)
16)

NOTICE OF WITNESSES

17 TO: STEWART BELL, ESQ., District Attorney

18 TO: FRANK COUMOU, ESQ., Deputy District Attorney;

19 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
20 Defendant BRENDAN JAMES NASBY, by and through his Attorney
21 JOSEPH S. SCISCENTO, ESQ., intends to call the following
22 witnesses as alibi witnesses.

NAME

ADDRESS

23 ADAMS, THERESA
24 LIEUTENANT

CLARK COUNTY DETENTION
CENTER

25 These witnesses are in addition to those witnesses
26 endorsed on the Information and any other witnesses for which
a separate Notice has been filed.

DATED this 30 day of August, 1999.

JOSEPH S. SCISCENTO, ESQ.
330 S. Third Street #860
Las Vegas, Nevada 89101
(702) 382-2664

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

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By: Karen Miller
Deputy District Attorney

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2654 • Fax (702)382-2670

1 FREDERICK A. SANTACROCE, ESQ
2 Nevada Bar No. 5121
3 330 S. Third Street #860
4 Las Vegas, Nevada 89101
5 (702) 598-1666

AUG 31 1 56 PM '99

Shirley S. Dominguez
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)
7 Plaintiff,)
8 v.)
9 BRENDAN JAMES NASBY,)
10 Defendant.)

CASE NO: C154293
DEPT NO: III
DOCK NO: W

RECEIPT OF COPY

12 RECEIPT OF COPY of the foregoing Notice of Association of
13 Counsel is hereby acknowledged this 31 day of August, 1999.

15 STEWART BELL, ESQ.
16 DISTRICT ATTORNEY

17 By: *Karen Miller*
18 Deputy District Attorney

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1 **RESP**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

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Shirley L. Ruggins
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DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.
14

C154293

Case No. -C143293
Dept. No. III
Docket E

15 **RESPONSE TO DEFENDANT'S MOTION FOR ORDER TO TAKE VIDEO**
16 **DEPOSITION OF WITNESS AND TO USE VIDEO DEPOSITION AT TRIAL**

17 **DATE OF HEARING: 9-7-99**
18 **TIME OF HEARING: 8:30 A.M.**

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 FRANK JOHAN COUMOU, Deputy District Attorney, and files this Response to Defendant's
21 Motion for Order to Take Video Deposition of Witness and to Use Video Deposition at Trial.

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 **POINTS AND AUTHORITIES**

26 In July 1999, this case was set for trial. The Defendant suddenly filed a Notice of Alibi
27 listing the names of alibi witnesses. The State moved to continue the trial on other grounds, and
28 now the trial is set for October 11, 1999.

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1 Since July, the State has made countless efforts to contact the Defendant's alibi
2 witnesses. The State even obtained telephone numbers through the aide of Defendant's attorney,
3 but this information has received no positive results. Every attempt to contact these witnesses
4 has failed.

5 ARGUMENT

6 The Defendant requests in his motion that alibi witness Nina Hogue be video deposed and
7 played before the jury. The State strongly objects.

8 As an initial matter, the Defendant in his attempt to video depose Nina Hogue cites to the
9 Court the wrong applicable statutes. Defendant cites NRS 174.175 and 174.215 as the
10 controlling statutes. Although these statutes do in fact discuss the topic of traditional
11 depositions and the use of them at trial, they are not to be confused with "video depositions".
12 More importantly, the Nevada Legislature has mandated that these two forms of depositions be
13 interpreted differently by enacting NRS 174.171, which states that "[T]he provisions of NRS
14 174.175 to 174.225, inclusive, do not apply to a deposition taken pursuant to NRS 174.227 or
15 pursuant to NRS 174.228 (video deposition uses), or both."

16 Only two types of individuals may be video deposed in criminal cases, and they are
17 listed in NRS 174.227(1), which states as follows:

- 18 1. A Court on its own motion or on the motion of
19 the District Attorney may, for good cause showing,
20 order the taking of a video taped deposition of:
21 (a) A victim of sexual abuse as that term is
22 defined in NRS 432B.100; or
(b) A perspective witness in any
criminal prosecution if he is less than
fourteen years of age.

23 Ms. Nina Hogue does not qualify. Ms. Hogue is not a fourteen year old victim. Ms.
24 Hogue is also not a sexual assault victim as defined under NRS 432B.100. Ms. Hogue is an
25 "alibi witness". She is clearly excluded from the instant statute. Accordingly, the State does
26 not need to further argue NRS 174.228 (use of videotaped depositions), since Ms. Hogue does
27 not fall under the requirements of the instant videotaped deposition statute.

28 Furthermore, the State objects even to a regular deposition of Ms. Hogue and that her

1 deposition be used at the time of the Defendant's trial.

2 NRS 174.175(1) states in pertinent part as follows:

3 If it appears that a perspective witness may be
4 unable to attend or prevented from attending a trial
5 or hearing, that his testimony is material and that it
6 is necessary to take his deposition in order to
7 prevent a failure of justice, the court at any time
8 after the filing of an indictment, information or
9 complaint may upon motion of a Defendant or of
the State and notice to the parties or that his
testimony may be taken by deposition and that any
designated books, papers, documents or tangible
objects, not privileged, be produced at the time and
place.

10 In order for a regular deposition to be used at trial, NRS 174.215 states as follows:

11 1. At the trial or upon any hearing, a part or all of
12 a deposition, so far as otherwise admissible under
13 the rules of evidence, may be used if it appears:

14 (a) that the witnesses is dead;

15 (b) that the witness is out of the State of Nevada,
16 unless it appears that the absence of the witness
17 was procured by the party offering the deposition;

18 (c) that the witness cannot attend or testify because
19 of sickness or infirmity;

20 (d) that the witness has become of unsound mind;
21 or

22 (e) that the party offering the deposition could not
23 procure the attendance of the witness by subpoena.

24 The facts provided by the Defendant in his motion fall short in providing sufficient facts
25 to have this Court apply these latter two statutes. Primarily, the Defendant fails to give any
26 specific information; the State and the Court have no specific dates as to when the arranged
27 marriage is to occur, where this arranged marriage will be conducted, when Ms. Hogue is
28 scheduled to leave for Bangladesh, etc. Unfortunately, there is no attached affidavit provided
by this alibi witness.

Secondly, Ms. Hogue, among the other listed alibi witnesses, have not been cooperative
in discussing their testimony with the State. (See attached Exhibit A). The State has only a
vague understanding as to the content of Ms. Hogue's anticipated alibi testimony, but this
witness has not provided the State with a recorded statement or anything that the State can use
in properly preparing for cross-examination of her testimony. In addition, her deposed statement

1 can be reprinted, copied or reproduced and eventually shared among all the other listed alibi
2 witnesses well before the trial date. Such danger can clearly violate the possibility that proper
3 justice be rendered in the instant case.

4 Third, the jury will lose the benefit of evaluating the credibility and believability of Ms.
5 Hogue. By being deposed, she will never take the witness stand, be sworn under oath in front
6 of a jury, be cross-examined in front of a jury and judge; thus, the prospective jurors will never
7 be able to evaluate Ms. Hogue's statement, mannerism, body language, etc.

8 Finally, the State on behalf of the victim, Michael Beasley, seeks that justice be served
9 in this instant case. The improper use of depositions in lieu of live testimony can create a
10 mockery of the judicial system. Plus, the use of depositions should never be allowed simply
11 because it's "convenient" for a particular witness. Just as the Defendant is entitled to cross-
12 examine and confront his accusers, the State should be afforded equally the right to confront
13 those who claim that the Defendant was with him or her when the purported crime was said to
14 have occurred.

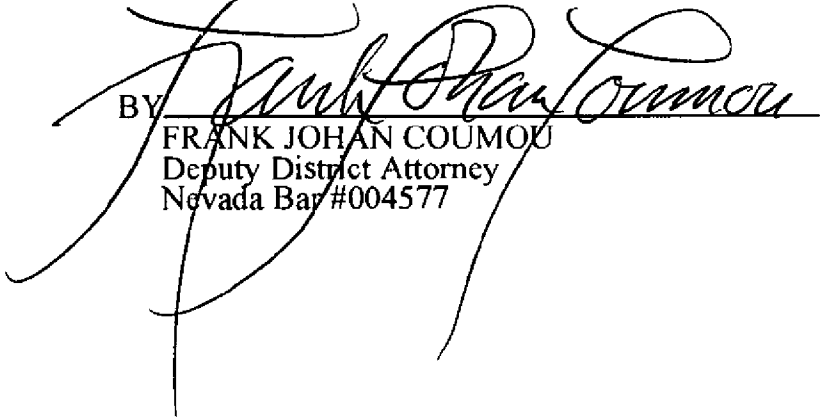
15 CONCLUSION

16 Based on the above, the State requests that the Defendant's motion be denied.

17 DATED this 2 day of September, 1999.

18 Respectfully submitted,

19 STEWART L. BELL
20 DISTRICT ATTORNEY
21 Nevada Bar #000477

22 BY 
23 FRANK JOHAN COUMOU
24 Deputy District Attorney
25 Nevada Bar #004577
26
27
28

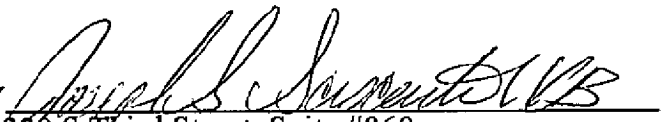
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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Response to Defendant's Motion to
Take Video Deposition of Witness and to Use Video Deposition at Trial is hereby acknowledged
this 2nd Day of September, 1999.

JOSEPH SCISCENTO, Esq.
ATTORNEY FOR DEFENDANT

BY


330 S Third Street, Suite #860
Las Vegas, Nevada 89101

1 **AFF**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 THE STATE OF NEVADA,

14 Plaintiff,

15 -vs-

16 BRENDAN JAMES NASBY,
17 #1517690

18 Defendant.

Case No. C154293
Dept. No. III
Docket E

19 AFFIDAVIT

20 STATE OF NEVADA }
21 COUNTY OF CLARK } ss:
22

23 RAY STEFAN, being first duly sworn, deposes and says:

24 1. That I am an Investigator for the District Attorney's Office. I have worked as an
25 Investigator for 8 1/2 years;

26 2. That on or about July 29, 1999, I was given a "Notice of Alibi Witnesses" by Deputy
27 District Attorney Frank Coumou of the Major Violators Unit concerning the case of State v.
28 BRENDAN JAMES NASBY;

3. On July 30, 1999, I called a phone number of 562-1148 for Crystal Sobrian of 225 W
6th Street, #2098 in Long Beach, California, 90802, a phone recorder answered with a voice
answering "Crystal". I left a message for Ms. Sobrian to return my call - no response was
received;

4. Again, on August 2, 1999, I left a message, "still no response";

1 5. Again, on August 3, 1999, I called and a recording stated the "Number was no longer
2 in service";

3 6. On August 4, 1999, I mailed my business card to noted Long Beach address asking
4 Ms. Sobrian to contact me. No response received;

5 7. On August 7, 1999, I contacted Detective David Ternello of the Long Beach,
6 California Police Department at (562) 570-7250 who provided me with a new phone number for
7 Ms. Sobrian. I called (323) 752-5089 and a recorded voice stated this number was "not in
8 service";

9 8. As of August 31, 1999, I have not heard from this alibi witness.

10 9. Also listed as alibi witnesses were Brenda Nasby and Colleen Warner, both of 4509
11 Switchback Street, N Las Vegas, Clark County, Nevada; 89031, phone #631-4858;

12 10. After several phone attempts on July 30, 1999, August 2, 1999, and August 3, 1999,
13 I contacted Ms. Colleen Warner regarding an interview. Ms. Warner stated she would call back
14 to set up an appointment;

15 11. Receiving no return call, I again called 631-4858 and this time I left a message on a
16 phone recorder. As of August 31, 1999, I have not received a return call from the 4509
17 Switchback address;

18 12. I received a "Supplemental Notice of Alibi Witnesses" from Mr. Coumou listing Nina
19 Hoque as the witness with the same address as Crystal Sobrian. I was unable to contact this
20 witness with the information provided.

21
22 
23 RAY STEFAN

24 SUBSCRIBED AND SWORN to before me
25 this _____ day of August, 1999.

26 _____
27 NOTARY PUBLIC in and for said
28 County and State

1 MTN
2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No: 4380
4 330 South Third Street
5 Ste. 860
6 Las Vegas, NV. 89101
7 Attorney for Defendant NASBY

FILED

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Shirley B. Ruggies
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA)
10)
11 Plaintiff,)
12 vs.)
13 BRENDAN JAMES NASBY,)
14 Defendant.)

CASE NO: C154293
DEPT NO: III
DKT NO: E

Time: 8:30
Date 9-7-99

15 REPLY TO STATE'S OPPOSITION TO DEFENDANT'S
16 MOTION FOR ORDER TO TAKE VIDEO DEPOSITION OF WITNESS
17 AND TO USE VIDEO DEPOSITION AT TRIAL

18 COMES NOW, BRENDAN JAMES NASBY, defendant, by and through
19 his attorney JOSEPH S. SCISCENTO, ESQ., and submits this Reply
20 to State's Motion to take Video Deposition of Witness and to
21 use the Video Deposition at trial.

22 Said Reply is based on the following Points and
23 Authorities, and all papers attached hereto and oral argument.

24 DATED THIS 3 DAY OF Sep, 1999

25
26 *[Signature]*
27 JOSEPH S. SCISCENTO, ESQ.
28

JOSEPH S. SCISCENTO
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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The Defendant NASBY has filed with this Court, and sent a copy to the District Attorney, a Notice of Alibi Witness. The notice contained the name of NINA HOQUE. Ms. HOQUE will provide testimony as to the whereabouts of Brendan Nasby on the night of the murder. Ms. HOQUE is a essential witness to the defense, Ms. HOQUE may not be available for the trial.

Ms. HOQUE is scheduled to leave the United States in early October, 1999, and relocate to Bangladesh, Thailand. Ms. HOQUE is a Hindu who has been arranged to be married and to move to Bangladesh. Calendar Call has been set for October 7th, 1999.

Ms. HOQUE may not be present in the State of Nevada on the date set for the trial. The Defense wishes to preserve her testimony for the trial, if in fact the witness becomes unavailable.

LEGAL ARGUMENT

1. The Defendant may take a deposition of a witness if the testimony may be lost

Pursuant to NRS 174.175;

1. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information or complaint may upon motion of a defendant or of the state and notice to the parties order that his testimony be taken by deposition * * *

* * *

1 As stated above HOQUE may be out of the Country on the
2 date of trial and she will not be coming back for a few years,
3 she is unavailable for trial. The Statute is not a mandatory
4 statute and requires that if the witness may be unavailable,
5 and the testimony is material and it is necessary for the
6 deposition to prevent a failure of justice, the deposition
7 should be allowed.

8 The date that Ms. HOQUE may be out of the country is
9 earlier October, 1999. Ms. HOQUE was available for an earlier
10 trial. If Ms. HOQUE is available for trial in October, 1999,
11 then she will have to be present for trial and will have to
12 testify at trial. That is what the defense wants, the
13 Defendant wants NINA HOQUE to be present at the trial, they
14 want the jury to see her, she is a great witness.

15 2. A Video deposition is proper under NRS 174.205

16 The State, in their Opposition, state that the deposition
17 can not be granted because NRS 174.227 allows for only certain
18 depositions to be video This is not completely correct. A
19 video deposition can be granted, in criminal cases, pursuant
20 to NRS 174.205 and NRCP Rule 30 (4). Further the Defendant is
21 making this request under 174.175 through 174.225, exclusive.
22 NRS 174.171 states in full as follows: "The provisions of NRS
23 174.175 to 174.225, inclusive, do not apply to a deposition
24 taken pursuant to NRS 174.227 or pursuant to NRS 174.228, or
25 both"

26 NRS 174.205, states as follows:

27 A deposition shall be taken in the manner
28 provided in civil actions. The Court at
the request of a defendant may direct

1 that a deposition be taken on written
2 interrogatories in the manner provided in
civil actions.

3 Under Nevada Rules of Civil Procedure, Rule 30 (4), a
4 video deposition may be taken. N.R.C.P. Rule 30 (4) states in
5 pertinent parts as follows:

6 (4) The parties may stipulate in writing
7 or the court may upon motion order that
8 the deposition be recorded by other than
9 stenographic means. The stipulation or
10 order shall designate the person before
11 whom the deposition shall be taken, the
manner or recording, preserving, and
filing the deposition, and may include
other provisions to assure that the
recorded testimony be accurate and
trustworthy.

12 * * *

13 What this means is that the Court can order that the
14 deposition be taken by video. Further the Court can require
15 that the deposition be done in front of the Court and that the
16 video be stored until the time of trial and that if the
17 witness is not available then the deposition can be offered as
18 testimony.

19 The Defendant would rather have MS. HOQUE testify at the
20 trial in person. The reality is that she may not be present
21 in the country and her testimony will be lost. The State can
22 cross-examine MS. HOQUE during the deposition and all
23 objections can be heard at the time of the taking of the
24 deposition.

25 If the deposition is not allowed than the testimony might
26 be lost. If Ms. HOQUE is available at the time of the trial
27 she will be required to come to court and testify in front of
28 the jury. If she is not available then the video should be

1 allowed to come in. If the State is concerned that the
2 testimony will be distributed among the other witness's than
3 the Court can order that the video be sealed until the time of
4 trial. If the witness's are going to talk about their
5 testimony prior to trial, they will do it regardless of
6 whether a video deposition is taken or not.

7 3. The deposition my be taken by way of Video.

8 Pursuant to NRS 174.215;

9 1. At the time of trial or upon any
10 hearing, a part or all of a deposition,
11 so far as otherwise admissible under the
rules of evidence, amy be used if it
appears:

12 * * *

13 (b) That the witness is out of the State
14 of Nevada, unless it appears that the
absence of the witness was procured by
the party offering the deposition.

15 * * *

16 (e) That the party offering the
17 deposition could not procure the
attendance of the witness by subpoena.

18 Since NINA HOQUE will be out of the country at the time
19 of trail and she will not be able to respond to the subpoena.
20 The reason that she is leaving is no the cause of the
21 defendant.

22 4. The State is not entitled to interview the witnesses
23 prior to trial

24 The State in their Motion state that the witness's are
25 not cooperating with the State's investigator. SEE Affidavit
26 attached to State's Opposition. The witnesses in a criminal
27 matter are not required to cooperate with the attorney's.
28 Many times the witness's refuse to talk to the Defendant.

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Attorney at Law
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1 allowed to come in. If the State is concerned that the
2 testimony will be distributed among the other witness's than
3 the Court can order that the video be sealed until the time of
4 trial. If the witness's are going to talk about their
5 testimony prior to trial, they will do it regardless of
6 whether a video deposition is taken or not.

7 3. The deposition my be taken by way of Video.

8 Pursuant to NRS 174.215;

9 1. At the time of trial or upon any
10 hearing, a part or all of a deposition,
11 so far as otherwise admissible under the
rules of evidence, any be used if it
appears:

12 * * *

13 (b) That the witness is out of the State
14 of Nevada, unless it appears that the
absence of the witness was procured by
the party offering the deposition.

15 * * *

16 (e) That the party offering the
17 deposition could not procure the
attendance of the witness by subpoena.

18 Since NINA HOQUE will be out of the country at the time
19 of trail and she will not be able to respond to the subpoena.
20 The reason that she is leaving is no the cause of the
21 defendant.

22 4. The State is not entitled to interview the witnesses
23 prior to trial

24 The State in their Motion state that the witness's are
25 not cooperating with the State's investigator. SEE Affidavit
26 attached to State's Opposition. The witnesses in a criminal
27 matter are not required to cooperate with the attorney's.
28 Many times the witness's refuse to talk to the Defendant.

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Attorney at Law
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(702)382-2664 • Fax (702)382-2670

1 Further the investigator for the State, RAY STEFAN, contacted
2 JOSEPH S. SCISCENTO, ESQ., and requested the phones number of
3 Crystal Sobrian and Nina Hoque. Ms. SCISCENTO agreed to
4 provide the number to Mr. STEFAN if he would provide the notes
5 of Torry Johnson to Mr. SCISCENTO. After the phone number was
6 given to Mr. STEFAN, he then informed Mr. SCISCENTO a few days
7 later that Torry Johnson did not have any notes. Mr.
8 SCISCENTO had to file a Motion to get the notes, from Mr.
9 JOHNSON that in fact did exist. Further after the telephone
10 number was given to Mr. STEFAN, Crystal Sobrian received
11 threatening phone calls regarding her testimony. Crystal
12 Sobrian contacted the Long Beach Police department; To-wit
13 Detective David Ternello, and informed him of these threats.
14 The witnesses now are afraid for their life.

15 This Court could allow for the interview of Ms. HOQUE
16 prior to taking the deposition. The Defendant does not
17 disagree with this position, and has made this offer to the
18 District Attorney's office. The only concern is the safety of
19 the witness'. The Defense proposes that the State examine the
20 witness' at the District Attorney's office, prior to the
21 deposition. The Defense will make these witnesses available
22 prior to the proposed deposition.

23 CONCLUSION

24 The Defendant Brendan Nasby, hereby requests that this
25 Court issue an Order directing that the Video Deposition of
26 NINA HOQUE, be taken, and further that the Video Deposition be
27 used at the time of trial, in leu of live testimony.

28 If the testimony of Ms. HOQUE is not preserved then the

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702)382-2664 • Fax (702)382-2670

1 Defendant has an appeal issue for ineffective assistance of
2 counsel. The Defense Counsel is attempting to avoid this
3 appeal issue by preserving the testimony by way of deposition.

4 DATED this 3rd day of Sep 1999.

5 SUBMITTED BY:

6
7
8 JOSEPH S. SCISCENTO, ESQ.
Attorney for Defendant

9
10 RECEIPT OF COPY

11 The undersigned hereby acknowledges receipt of the
12 foregoing Reply to State's Opposition to Motion to take a
13 Video Deposition and to use the Video Deposition at trial,
14 this 3 day of September, 1999.

15
16 STEWART BELL, ESQ.
17 CLARK COUNTY DISTRICT
ATTORNEY

18
19
20 BY: Karen Miller
21
22
23
24
25
26
27
28

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 BRENDAN JAMES NASBY,
12 #1517690

Defendant.

Case No. C154293
Dept. No. III
Docket E

NOTICE OF EXPERT WITNESSES
[NRS 174.234 (2)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call expert witnesses in its case in chief as follows:

21 JOHNSON, TORREY - LVMPD P#4820 - FIREARMS EXPERT - He will testify
22 regarding the firearms and bullet trajectory comparison of certain evidence collected from the various
23 crime scenes.

24 JORDAN, ROBERT - CCME - MEDICAL EXAMINER - He will articulate the cause and
25 manner of death of the decedent and will testify that the manner of death was homicide.

26 SEAMAN-KELLY, JAN - LVMPD P#5666 - FORENSIC DOCUMENT EXAMINER -
27 She will testify regarding the identification, comparison of handwriting documents, identification and
28 the like.

FILED

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Shirley R. Longoria
CLERK

COUNTY CLERK

SEP 07 1999

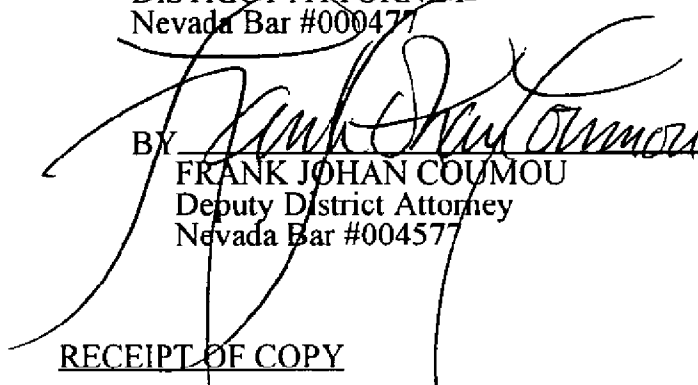
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1 The substance of each expert witness' testimony and a copy of all reports made by or at
2 the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

4 STEWART L. BELL
5 DISTRICT ATTORNEY
6 Nevada Bar #000477

7 BY 
8 FRANK JOHAN COUMOU
9 Deputy District Attorney
10 Nevada Bar #004577

11 RECEIPT OF COPY

12 RECEIPT OF COPY of the above and foregoing Notice of Expert Witnesses is hereby
13 acknowledged this _____ Day of September, 1999.

14 JOSEPH SCISCENTO, Esq.
15 ATTORNEY FOR DEFENDANT

16 BY _____
17 330 S Third Street #860
18 Las Vegas, Nevada 89101

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28 msr

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Name: Torrey D. Johnson P#: 4820 Classification: Criminalist II Date: August 15, 1997

Current Discipline of Assignment: Firearms

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks	X	Breath Alcohol	X
Trace Evidence	X	Arson Analysis	X
Toxicology	X	Firearms	X
Latent Prints		Crime Scene Investigations	X
Serology	X	Clandestine Laboratory Response Team	X
Document Examination		DNA Analysis	

EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
Antelope Valley College, Lancaster, CA	9/64 - 6/66	Chemistry	AA
CA State University at San Diego	9/66 - 1/69	Chemistry/Math Minor	BS
CA State University at San Diego	1/69 - 1/72	Chemistry	MS
Riverside City College / AJ Prog Riverside, CA	1/75 - 6/75		

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Firearm and Toolmark Classes/Seminars:		
Advanced Firearm and Toolmark Examination	CA Dept. of Justice, Sacramento, CA	1/76
Basic Firearms and Toolmark Examination (correspondence)	CA Dept. of Justice, Sacramento, CA	3/76
Body Wound and Crime Scene Reconstruction	CA Dept. of Justice, Sacramento, CA	11/76
Firearms Qualification	CA Dept. of Consumer Affairs, Sacramento, CA	9/77
Firearms and Explosives Seminar	Dept. of Treasury / BATF , Riverside, CA	4/78
AFTE Annual Training Seminar	Orlando, Florida	5/82
Ruger Armour's Course	Sturm, Ruger & Co., Inc. Southport, NH	5/82

Statement of Qualifications

Name: Torrey D. Johnson

Page: 2

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Ordinance Expo '83 Range (Shooting) Development	LA Police Rev. & Athletic Club	1/83
AFTE Annual Training Seminar	San Mateo, CA	5/83
AFTE Annual Training Seminar	New Orleans, Louisiana	6/84
AFTE Annual Training Seminar	Baltimore, Maryland	5/86
Specialized Techniques in Firearms Identification School	FBI Academy, Quantico, VA	4/87
AFTE Annual Training Seminar	Seattle, Washington	6/87
Glock 17 Armour's Course	Glock, Inc., San Jose, CA	2/88
AFTE Annual Training Seminar	Dupage County, Illinois	6/88
Shot Show (firearms Industry Trade Show)	Las Vegas, NV	1/89
Heckler and Koch Armour's Course	CA Dept. of Justice, Sacramento, CA	11/90
Shot Show (firearms Industry Trade Show)	Las Vegas, NV	1/91
AFTE 22nd Annual Training Seminar	Houston, Texas	6/91
Sigarms Sig Sauer P-226 Armorer School	Sigarms, Inc.	6/91
Forensic Ballistics Workshop	Yuma Proving Grounds, Yuma, AZ	11/92
Shot Show (firearms Industry Trade Show)	Houston, Texas	1/93
Forensic Ballistics Workshop	Yuma Proving Grounds, Yuma, AZ	11/93
Shot Show (Firearms Industry Trade Show)	Dallas, Texas	1/94
Ammunition Testing	Las Vegas, NV	3/1/95
Exterior Ballistics Workshop	San Diego, CA	6/95
AFTE 26th Annual Training Seminar	San Diego, CA	6/95
Savage Arm, Inc. "Basic Tactical Rifle Armorers Course"	San Diego, CA	6/95
Drugfire Training	Las Vegas, NV	8/95
Investigation of Death	Las Vegas, NV	10/95
Drugfire Training	Reno, NV / Las Vegas, NV	11/95
Drugfire Training	Las Vegas, NV	1/96
Forensic Ballistics Workshop	Yuma, AZ	11/96
Civilian Use of Force and Firearm Training	Las Vegas, NV	6/97
AFTE 28th Annual Training Seminar	Annapolis, MD	7/97

Statement of Qualifications

Name: Torrey D. Johnson

Page: 3

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Other Related Training Classes/Seminars:		
Controlled Substance Analysis	CA Dept. of Justice, Sacramento, CA	9/73
Legal Aspects of Evidence	Riverside City College, Riverside, CA	9/74
Energy Dispersive X-ray Spectrometry	CA Dept. of Justice, Riverside, CA	4/75
Advanced Drug Analysis	CA Dept. of Justice, Sacramento, CA	12/77
CA Association of Criminalist Training Seminar	Palm Springs, CA	1/80
Congress of Criminalists on Drugs	CA Dept. of Justice, Sacramento, CA	4/84
Scott Air Pack II-A Initial Indoctrination	Bullard Safety Co, Sacramento, CA	5/85
Mass Spectrometry - Techniques & Interpretation	Hewlett-Packard Analytical Gp , Asilomar, CA	1/88
Mass Spectral Interpretation	Hewlett-Packard, Atlanta, GA	5/89
Clandestine Laboratory Recertification	Las Vegas, NV	3/95
Forensic Microscopy	CA Dept. of Justice, Sacramento, CA	3/74
Explosives and Public Safety	Riverside City College, Riverside, CA	9/74
Conference on Polymers	FBI Academy, Quantico, VA	10/74
Introduction to Scanning Electron Microscopy	CA Criminalistics Institute, Sacramento, CA	5/92
COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Superior, Municipal and Justice Courts in numerous California Counties including: Amador, Butte, Colusa, Eldorado, Fresno, Glenn, Imperial, Los Angeles, Mono, Marin, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Santa Ana, Sierra, Solano, Sutter, Tuolumne, Yolo and Yuba. Federal court in Fresno, Los Angeles and Sacramento.	Qualified in various areas including crime scene processing, firearms, toolmarks & impression evidence, chemical analysis, trace evidence and driving under the influence.	
Clark County District Court	Firearms and toolmarks	
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
City of San Diego - Utilities Dept.	Chemist	10/71 - 6/73

EMPLOYMENT HISTORY		
Employer	Job Title	Date
CA Dept. of Justice - Crime Lab - Riverside, CA	Senior Criminalist	9/73 - 5/79
CA Dept. of Justice - Crime Lab - Sacramento, CA	Senior Criminalist	5/79 - 3/89
CA Criminalistics Institute	Senior Criminalist	3/89 - 11/91
CA Criminalistics Institute	Supervising Criminalist	11/91 - 12/94
Las Vegas Metropolitan Police Dept.	Criminalist II	12/94 - present

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
Association of Firearm and Toolmark Examiners (AFTE) - Distinguished Member	
International Wound Ballistics Association - charter member (invited)	
International Ammunition Association (formerly the International Cartridge Collectors Association)	

PUBLICATIONS / PRESENTATIONS:
<i>Metal Detectors: Notes on Their Operating Principles, Things to Consider When Buying One and Their Use at a Crime Scene.</i> (Presented at the CA Association of Criminalists Semi-annual Seminar, Nov., 1980; published in Tieline, Vol. 5, No. 2, Winter 1979).
<i>A One-Man Sifting Screen for Crime Scene Use,</i> (Tieline, Vol. 5, No. 3, 1979).
<i>Poongsan Metal Manufacturing Company - Ammunition from the Republic of Korea,</i> (AFTE Journal, Vol. 13, Nol. 3, July 1981; also published in The International Cartridge Collector, Issue 310, May-June 1982 and in Tieline, Vol. 7, No. 1, Spring 1981) co-authored with Paul Dougherty, then the Director of the San Mateo County Crime Laboratory.
<i>Electronic Metal Detectors for Recovering Firearms Evidence,</i> (Presented a the AFTE Training Seminar, Orlando, Florida, 1982).
<i>Unusual Toolmark Confirms Candle Manufacturer in Arson / Homicide Case,</i> (Presented at the AFTE Training Seminar, 1982).
<i>The Persistence of Toolmarks in R-P .25 Auto Cartridge Case Extractor Grooves,</i> (Presented at the AFTE Training Seminar, 1982).

Statement of Qualifications

Name: Torrey D. Johnson

Page: 5

PUBLICATIONS / PRESENTATIONS:

Eclipse All Plastic Shotshells, (AFTE Journal, Vol. 15, No. 4, Oct. 1983), co-authored with William Matty, Riverside Department of Justice Laboratory.

A Comparison of Manufacturing Marks on Smith and Wesson Firing Pins, (AFTE Journal, Vol. 16, No. 3, July 1984), co-authored with William Matty, Riverside Department of Justice Laboratory.

The Accumulation, Use and Storage of Firearms Reference Material or The Care and Feeding of Gun and Ammo Collections, (Presented at the AFTE Training Seminar, New Orleans, LA 1984).

Starline Brass, (AFTE Journal, Vol. 16, No. 4, Oct. 1984; also published in *The International Cartridge Collector*, Issue 329, July-August 1985 and in *Tieline*, Vol. 10, No. 1, 1985), co-authored with William Matty, Riverside Department of Justice Laboratory.

Arcadia Machine and Tool (Notes on AMT Firearms), (AFTE Journal, Vol. 18, No. 3, July 1986; also published in *Tieline*, Vol. 11, No. 2, 1986), co-authored with William Matty, Riverside Department of Justice Laboratory.

The Use of Polarized Light in Forensic Photography (presented at the annual AFTE Training Seminar, Houston, Texas, 1991).

A Novel Method for the Restoration of Obliterated Serial Numbers in Magnetic Materials (presented at the annual AFTE Training Seminar, Houston, Texas, 1991)

California Assault Weapon Identification Guide (took all photographs and assisted in booklet layout, design and writing text).

Firearms Evidence and the Emergency Medical Team, (lecture presented at the University of California, Davis Medical Center, Emergency Medicine/Trauma Conference, December 10, 1991).

Science and Technology vs. Crime (lecture presented at the 8th Annual American River College, Science and Technology Week, April 25-May 1, 1992).

A Survey and Evaluation of Variables in the Preparation of Ballistic Gelatin (supervised and co-authored this project with student intern Sherrie Post. Presented by Sherrie Post at the International Wound Ballistics Association, 1st International Conference, Sacramento, CA, March 1994).

The following technical notes have also been published:

- "Imported .22 Cartridge", *Tieline* Vol. 5, No. 1, 1978.
- "Winchester-Western Luballoy Cartridge Discontinued". *Tieline*, Vol. 5, No. 4, 1979
- "Smith and Wesson Plus Colt Equals SMOLT - The Hybrid Handgun", *Tieline*, Vol. 6, No. 1, 1980

Solubility Properties of Organic Compounds as Applied to Drug Identification and Purification, (*Tieline*, Vol. 2, No. 3, 1976).

Forensic Chemistry (presented at the 99th Two-Year College Chemistry Conference, American River College, Mar. 11, 1988).

Forensic Chemistry (invited dinner speaker at the Oct. 11, 1988 meeting of the Sacramento Committee for Advancing the Teaching of Science - SCATS).

Anabolic Steroids in "Cross-Tops", (co-authored with John P. Bowden) *Micrograms*, Vol. XXII, No. 10, October 1990.

PUBLICATIONS / PRESENTATIONS:
The following technical notes have also been published: <ul style="list-style-type: none">• "PCP, TCP Analysis", Tieline, Vol. 1, No. 1, 1975• "Card File System for Drug Inventory" (co-authored with Ronald Ralston), Tieline, Vol. 5, No. 4, 1979.
OTHER QUALIFICATIONS:
CA Department of Justice / Bureau of Forensic Services - Firearm Technical Advisory Group (F-TAG) - Chairperson
Served on the <i>Tricorder Committee</i> (to evaluate and specify laboratory instrumentation) which received a Division of Law Enforcement Unit Citation on December 10, 1985
Served on the Attorney General's Assault Weapon Advisory Committee, the California Body Armor Selection Committee and the California Ammunition Selection Committee.

CURRICULUM VITAE

ROBERT A. JORDAN

Birthplace: Rochester, New York
Date: July 10, 1926

Premedical Education: B.S., Defiance College,
Defiance, Ohio, 1949
M.S., Bowling Green State University
Bowling Green, Ohio, 1950
Ph.D., Tulane University of Louisiana
New Orleans, Louisiana, 1954

Medical Education: M.D., Tulane University of Louisiana
New Orleans, Louisiana, 1958

Internship: General rotating, U.S.P.H.S., Hospital
Norfolk, Virginia, July, 1958 to July, 1959

Residency: Pathology: U.S.P.H.S. Hospital,
Baltimore, Maryland, July, 1959 to July,
1963

Military Service: U.S.A.F., Pacific Theatre of Operations
1945-1947

U.S.P.H.S., Division of Hospitals, 1958-
1966

Experience in Pathology: Chief Pathologist, U.S.P.H.S. Hospital,
Boston, Mass. (300 bed General Hospital),
1963-1965

Chief Pathologist, U.S.P.H.S. Hospital,
Staten Island, N.Y. (800 bed General
Hospital),
1965-1966

Assistant Medical Examiner of Harris
County, Texas, 1966-1968

Laboratory Director, Kelsey-Seybold
Clinic, Houston, Texas, 1968-1984

Medical Director: Smith-Kline
Bioscience Laboratories, Houston,
Texas, 1983-1990

Assistant Medical Examiner of Harris
County, Texas, 1984-1990

Deputy Medical Examiner of Clark County,
Nevada, 1991-1996. Retired.

Contract pathologist to Office of Coroner
Medical Examiner of Clark County, Nevada
January 1998 to present.

Teaching Appointments:

Assistant Professor of Pathology, Tufts
University School of Medicine, Boston,
Mass. 1963-1965

Assistant Professor of Pathology, New
Jersey State College of Medicine,
Jersey City, New Jersey, 1965-1966

Clinical Assistant Professor of Pathology,
Baylor College of Medicine, Houston,
Texas, 1968 to present

Consultant to Tumor Registry, The
University of Texas M.D. Anderson
Hospital and Tumor Institute at Houston,
1968 to present

Active staff in Pathology, The Methodist
Hospital, Houston, Texas, 1968-1970

Courtesy Staff, St. Luke's Episcopal
Hospital, Houston, Texas, 1968-1990

Medical Licensure:

Nevada, 1991 to present

Curriculum Vitae
Robert A. Jordan
Page 3

Certification:

American Board of Pathology
Pathologic Anatomy, 1966
Clinical Pathology, 1966
Forensic Pathology, 1986

Societies:

Fellow, emeritus College of American
Pathologists
Fellow, emeritus American Society of
Clinical Pathologists
Member, American Society of Tropical
Medicine
Member, Harris County Medical Society
Member, Texas Medical Association
Member, Texas Society of Pathologists
Member, Houston Society of Clinical
Pathologists

Publications:

Intestinal nematodes in well-cared-for
Dogs. American Journal of Tropical
Medicine and Hygiene. 9:1, pp. 29-31.
January, 1960

The laboratory diagnosis of amebiasis.
Maryland Society of Medical
Technologists News Letter. May 1962

Eastern Equine Encephalitis: report of
Case with autopsy. American Journal
of Tropical Medicine and Hygiene. 14:3,
pp. 470-474. April 1965

March 1973

Primary Melanoma of the lung, chest.
62:3, pp. 629-631. November, 1972

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293
Dept. No. III
Docket E

15 NOTICE OF WITNESSES
16 [NRS 174.234 (1)(b)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21	<u>NAME</u>	<u>ADDRESS</u>
22	THOWSEN, THOMAS	LVMPD P#1467
23	CABRALES, ALLEN	LVMPD P#2045
24	HEFNER, KENNETH	LVMPD P#2185
25	MCGHIE, GORDON	LVMPD P#2883
26	NORMAN, SHEREE	LVMPD P#3110
27	FALVEY, DARLENE	LVMPD P#3176
28	MCPHAIL, RANDALL	LVMPD P#3326

FILED

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Elizabeth S. Pangina
CLERK

COUNTY CLERK

SEP 7 1999

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	<u>NAME</u>	<u>ADDRESS</u>
1		
2	CARROLL, JAMES	LVMPD P#3656
3	BUCZEK, JAMES	LVMPD P#3702
4	SMITH, DAVID	LVMPD P#4124
5	GIERSDORF, DANIEL	LVMPD P#4521
6	SAMS, JESSIE	LVMPD P#4793
7	JOHNSON, TORREY	LVMPD P#4820
8	WAHL, THOMAS	LVMPD P#5019
9	NEIL, KELLY	LVMPD P#5410
10	DUBRUTZ, EDWARD	NLVPD P#279
11	CRAIT, JEFFREY	4409 TWIN PEAKS DR N LAS VEGAS, NV 89030
12		
13	GILMORE, ROBERT LEE	5910 FANNIE WAY LAS VEGAS, NV 89130
14	BEAVERS, JOMEKA	11623 ATKINSON AVE HAWTHORNE, CA 90250
15		
16	BANKS, TANESHA	2651 NAPA DR. LAS VEGAS, NV 89115
17	BRADLEY, CRYSTAL	3506 N FREESTONE ST. N LAS VEGAS, NV 89030
18		
19	JONES, HELEN BEAVERS	3327 OUTLOOK POINT ST. N LAS VEGAS, NV 89030
20	BEASLEY, VELMA	8519 S MAIN ST. #2 N LAS VEGAS, NV 89030
21		
22	JORDAN, ROBERT	CCME 1704 PINTO LANE LAS VEGAS, NV 89106
23	DESKIN, JERIMIAH	C/O 6205 BURNT HILLS AVE LAS VEGAS, NV 89130
24		
25	ADAMS, BRITTANY	1390 HONEY LAKE STREET LAS VEGAS, NV 89110
26	VON LEWIS, DAMION	5370 E CRAID ROAD #2259 LAS VEGAS, NV 89115
27		
28	GARLAND, MARK	4313 TIARA BLANCA COURT N LAS VEGAS, NV 89031

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NAME

ADDRESS

HOLMES, JOHN ROBERT

1901 ARPA WAY #A
LAS VEGAS, NV 89108

SEAMAN-KELLY, JAN

LVMPD P#5666

BURNSIDE, JOTEE

C/O NSP

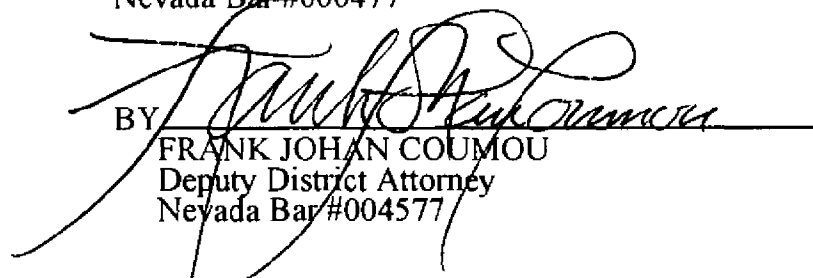
BURNSIDE, TOMMIE

C/O NSP

These witnesses are in addition to those witnesses endorsed on the Information and any other witness for which a separate Notice has been filed.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY


FRANK JOHAN COUMOU
Deputy District Attorney
Nevada Bar #004577

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice of Witnesses is hereby acknowledged this _____ Day of September, 1999.

Joseph Sciscento, Esq.
ATTORNEY FOR DEFENDANT

BY

330 S Third St. #860
Las Vegas, NV, 89101

msr

OPI
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

FILED

SEP 16 10 14 AM '99

Shirley E. Langmuir
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,
ID#1517690

Defendant.

Case No. C154293
Dept. No. III
Docket E

ORDER FOR PRODUCTION OF INMATE
JOTEE BURNSIDE, BAC #60729

DATE OF HEARING: 10-11-99
TIME OF HEARING: 12:00 P.M.

TO: GEORGE GRIGAS, Warden, Northern Nevada Correctional Center;

TO: JERRY KELLER, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART L. BELL, District Attorney, through FRANK JOHAN COUMOU, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that GEORGE GRIGAS, Warden of Northern Nevada Correctional Center shall be, and is, hereby directed to produce JOTEE BURNSIDE, witness in Case No. C154293, on a charge of Conspiracy to Commit Murder With Use of a Deadly Weapon and Murder With Use of a Deadly Weapon wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said witness is currently incarcerated in the Northern Nevada Correctional Center located in Carson City, Nevada and his presence will be required in Las

COUNTY CLERK

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COUNTY CLERK

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1 Vegas, Nevada commencing on Monday, October 11, 1999, at the hour of 12:00 o'clock P.M.
2 and continuing until completion of the prosecution's case against the said Defendant.

3 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada,
4 shall accept and retain custody of the said witness in the Clark County Detention Center, Las
5 Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order
6 of this Court; or in the alternative shall make all arrangements for the transportation of the said
7 witness to and from the Nevada State Prison facility which are necessary to insure the witness's
8 appearance in Clark County pending completion of said matter, or until further Order of this
9 Court.

10 DATED this 16th day of September, 1999.

11
12 
13 DISTRICT JUDGE

14 STEWART L. BELL
15 DISTRICT ATTORNEY
16 Nevada Bar #000477

17 BY 
18 FRANK JOHAN COUMOU
19 Deputy District Attorney
20 Nevada Bar #004577

21
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28 msr

1 OPI
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

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Shirley D. Kung'u
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293
Dept. No. III
Docket E

15 ORDER FOR PRODUCTION OF INMATE
16 TOMMIE BURNSIDE, BAC #60772

17 DATE OF HEARING: 10-11-99
18 TIME OF HEARING: 12:00 P.M.

18 TO: SHERMAN HATCHER, Warden of the Southern Desert Correctional Center;

19 TO: JERRY KELLER, Sheriff of Clark County, Nevada

20 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART
21 L. BELL, District Attorney, through FRANK JOHAN COUMOU, Deputy District Attorney, and
22 good cause appearing therefor,

23 IT IS HEREBY ORDERED that SHERMAN HATCHER, Warden of the Southern Desert
24 Correctional Center shall be, and is, hereby directed to produce TOMMIE BURNSIDE, witness
25 in Case No. C154293, on a charge of Conspiracy to Commit Murder With Use of a Deadly
26 Weapon and Murder With Use of a Deadly Weapon wherein THE STATE OF NEVADA is the
27 Plaintiff, inasmuch as the said witness is currently incarcerated in the Southern Desert
28 Correctional Center located in Indian Springs, Nevada and his presence will be required in Las

CLERK

SEP 16 1999

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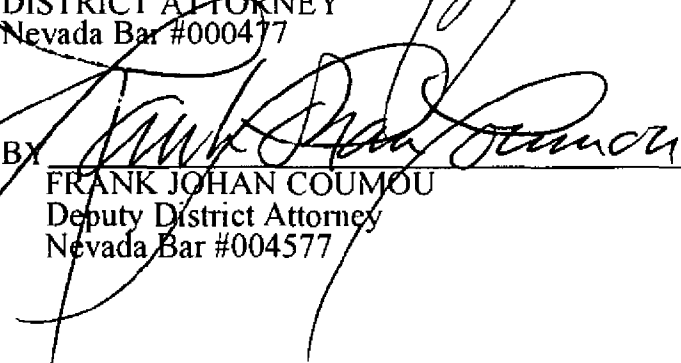
1 Vegas, Nevada commencing on Monday, October 11, 1999, at the hour of 12:00 o'clock P.M.
2 and continuing until completion of the prosecution's case against the said Defendant.

3 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada,
4 shall accept and retain custody of the said witness in the Clark County Detention Center, Las
5 Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order
6 of this Court; or in the alternative shall make all arrangements for the transportation of the said
7 witness to and from the Nevada State Prison facility which are necessary to insure the witness's
8 appearance in Clark County pending completion of said matter, or until further Order of this
9 Court.

10 DATED this 16th day of September, 1999.

11
12 
13 DISTRICT JUDGE

14 STEWART L. BELL
15 DISTRICT ATTORNEY
16 Nevada Bar #000477

17 BY 
18 FRANK JOHAN COUMOU
19 Deputy District Attorney
20 Nevada Bar #004577
21
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28 msr

FILED

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Shirley C. Prosser

CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

SUBT
JOHN L. DUFFY, ESQ
Nevada Bar No. 4252
723 S. Seventh Street
Las Vegas, Nevada 89101
(702) 380-2800

THE STATE OF NEVADA,

Plaintiff,

BRENDAN JAMES NASBY,

Defendant.

CASE NO: C154293
DEPT NO: III
Docket:

SUBSTITUTION OF ATTORNEYS

FREDERICK A. SANTACROCE, ESQ., is hereby substituted as attorney for the Defendant, BRENDAN JAMES NASBY, in the above-entitled action, in place of and instead of JOHN L. DUFFY, ESQ..

DATED this 25 day of September, 1999.

Brendan James Nasby
BRENDAN JAMES NASBY

JOHN L. DUFFY, ESQ., Attorney of Record for the above-named Defendant, BRENDAN JAMES NASBY, does hereby consent to the substitution, for the Defendant, FREDERICK A. SANTA CROCE, ESQ., in the above-entitled matter is his place and stead.

DATED this 23rd day of September, 1999.

John L. Duffy
JOHN L. DUFFY, ESQ.

CE31

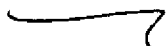
COUNTY CLERK

SEP 28 1999

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28

1 FREDERICK A. SANTACROCE, ESQ., does hereby agree to be
2 substituted in the place of JOHN L. DUFFY, ESQ., as attorney for
3 Defendant BRENDAN JAMES NASBY, in the above-entitled matter.

4 DATED this 24th day of Sept., 1999.
5

6
7 
FREDERICK A. SANTACROCE, ESQ.

1
2
3 CERTIFICATE OF MAILING

4 I hereby certify that I am an employee of JOHN L. DUFFY, ESQ.
5 and that on 27 day of September, 1999, I did deposit in the United
6 Post Office, at Las Vegas, Nevada, in a sealed envelope with postage
7 fully prepaid thereon, a copy of foregoing SUBSTITUTION OF ATTORNEYS
8 addressed to:

9
10 Clark County District Attorney's Office
11 Mr. Frank Coumou
12 200 South Third
13 Las Vegas, Nevada 89115

14 Mr. Brendan Nasby
15 Clark County Detention Center
16 330 South Casino Center
17 Las Vegas, Nevada 89101

18
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Employee of JOHN L. DUFFY, ESQ.

1 **NOTC**

2 JOSEPH S. SCISCENTO, ESQ.
3 Nevada Bar No. 4380
4 330 S. Third Street #860
5 Las Vegas, NV. 89101
6 (702) 382-2664

OCT 1 3 40 PM '99

Shirley S. Higgins
CLERK

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,) CASE NO: C154293
10) DEPT NO: III
11 v.) DOCK NO: W
12)
13 BRENDAN JAMES NASBY,)
14)
15 Defendant.)

16 SUPPLEMENTAL NOTICE OF ALIBI WITNESSES

17 TO: STEWART BELL, ESQ., District Attorney

18 TO: FRANK COUMOU, ESQ., Deputy District Attorney;

19 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
20 Defendant BRENDAN JAMES NASBY, by and through his Attorney
21 JOSEPH S. SCISCENTO, ESQ., intends to call the following
22 witnesses as alibi witnesses.

23 NAME

ADDRESS

24 LAFRAMBROISE, CHRIS

6666 W. WASHINGTON #207
LAS VEGAS, NEVADA

25 Mr. LaFrambroise will testify as to the whereabouts of
26 Mr. Nasby on the date of the crime.

27 DATED this 1st day of October, 1999.

Joseph S. Sciscento
JOSEPH S. SCISCENTO, ESQ.
Nevada Bar No. 4380
330 South Third Street
Ste. 860
Las Vegas, NV. 89101
(702) 382-2664

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2664 • Fax (702) 382-2670

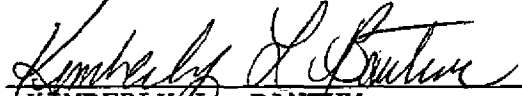
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Supplemental Notice of Alibi Witnesses, was on this 1st day of October, 1999, served, via facsimile, to the following attorneys of record herein:

Frank Coumou, Esq., 702-383-8465


KIMBERLY L. BANTUM

JOSEPH S. SCISCENTO
Attorney at Law
330 South Third Street, Suite 860
Las Vegas, Nevada 89101
(702) 382-2684 • Fax (702) 382-2670

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STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690

Defendant.

Case No. C154293
Dept. No. VII
Docket P

SUPPLEMENTAL
NOTICE OF EXPERT WITNESSES
[NRS 174.234 (2)]

TO: BRENDAN JAMES NASBY, Defendant; and
TO: JOSEPH SCISCENTO, Deputy Special Public Defender, Counsel of Record:
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call expert witnesses in its case in chief as follows:

BOYD, FRED - LVMPD P#5216 - He will testify regarding the identification, location,
and preservation of certain evidence collected from the various crime scenes.

WAHL, THOMAS - LVMPD P#5019 - He will testify regarding the hair comparison,
serology and DNA of certain evidence collected from the various crime scenes.

///

///

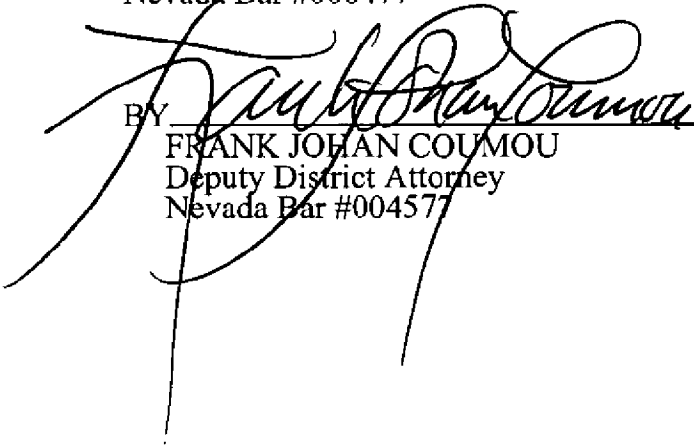
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1 The substance of each expert witness' testimony and a copy of all reports made by or at
2 the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

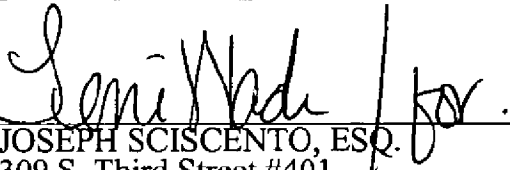
4 STEWART L. BELL
5 DISTRICT ATTORNEY
6 Nevada Bar #000477

7 BY 
8 FRANK JOHAN COUMOU
9 Deputy District Attorney
10 Nevada Bar #004577
11
12
13
14
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16

17 RECEIPT OF COPY

18 RECEIPT OF COPY of the above and foregoing SUPPLEMENTAL NOTICE OF
19 EXPERT WITNESSES is hereby acknowledged this 4th Day of October, 1999.

20 SPECIAL PUBLIC DEFENDER'S OFFICE
21 ATTORNEY FOR DEFENDANT

22 BY 
23 JOSEPH SCISCENTO, ESQ.
24 309 S. Third Street #401
25 Las Vegas, Nevada 89101
26
27
28

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: August 19, 1997

Name: Fred M. Boyd P#: 5216 Classification: Latent Fingerprint Examiner

Current Discipline of Assignment: Latent Fingerprints

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints	X	Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Mt. San Antonio College	2/88	Police Science	A.A.
University of Maryland	1971	Business Law Class	
Central Texas College	1973 - 1974	Police Science Classes	
Los Angeles City College	1975	Police Science Classes	

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
U.S. Army Military Police Course	Ft. Gordon, GA	7/68
Georgia State Police Academy	Atlanta, GA	1969
U.S. Army Criminal Investigation Course	Ft. Gordon, GA	11/69
U.S. Army Criminal Investigation Logistic Course	Ft. Lee, VA	2/74
U.S. Army Criminal Investigation Latent Print Examiners Course	Ft. Gordon, GA	9/78 - 5/80
IAS - Scientific Crime Detection Course	Syracuse, NY	1/79
FBI Fingerprint Classification	Augusta, GA	3/79
FBI - Advanced Fingerprint Technique	Augusta, GA	4/79

Statement of Qualifications

Name: Fred M. Boyd

Page: 2

ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
FBI - Administrative Advanced Latent Fingerprint	Quantico, VA	12/79
FBI - International Symposium on Latent Prints	Quantico, VA	7/87
FBI - International Symposium on the Forensic Aspects of Footwear and Tire Impression Evidence	Quantico, VA	6/94
Northwestern University Traffic Institute, Crime Scene Technology II Course	Las Vegas, NV	9/96
IAI - "Advanced Ridgeology Comparison Techniques Course"	Mesa, AZ	4/97
FBI - "Digital Imaging Seminar For Law Enforcement"	Las Vegas, NV	5/97

COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Military Courts - Department of Defense	Fingerprints	15
Military Courts - Department of Defense	Footwear	3
State Courts of Florida	Fingerprints	75
State Courts of Florida	Footwear	4
State Court of North Carolina	Fingerprints	1
State Court of New York	Fingerprints	1
State Court of Nevada	Fingerprints	1

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Fingerprint Examiner	7/96 - present
Broward County Sheriff's Office, Florida	Fingerprint Examiner	2/88 - 7/96
U.S. Army - Criminal Investigation Command	Special Agent Fingerprint Examiner	2/68 - 2/88
Nova University Law School, Ft. Lauderdale, FL	Guest lecturer on latent print identification	90 - 92
Barry University Law School, Miami, FL	Guest lecturer on latent print identification	90 - 92

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
Fingerprint Society of Great Britain	1969 - present
International Association for Identification (IAI), National Chapter	1968 - present
International Association for Identification (IAI), Florida Division	1988 - present
Member and former Vice President of the South Florida Forensic Association (SFFA)	1988 - present
Former member of the Florida State Sub Committee for Footwear and Tire Track Identification (IAI)	1991
PUBLICATIONS / PRESENTATIONS:	
"How Plaster of Paris Affects Latent Impressions," published in Identification News, by the International Association for Identification, April 1980.	
"Chemical Enhancement of Bloody Footwear Impressions," presented at the Florida Division IAI, Ft. Myers, Florida, 1990 Annual Conference. Published in the Florida Division IAI Identification News, January 1990.	
"Shoe box and Side Labeling . . . A Most Valuable Piece of Evidence When Shoes are Missing," presented at the International Symposium on the Forensic Aspect of Footwear and Tire Impression Evidence, FBI Academy, 1994. Published in Symposium Handbook, 1994.	
Numerous lectures to various law enforcement groups and associations on latent print identification and footwear and tire print identification, 1980 to present.	
OTHER QUALIFICATIONS:	
Certified by U.S. Army as Latent Print Examiner 4/80	
Completed Automated Fingerprint Identification System (AFIS) Eligibility Test, State of Florida and FCIC requirements. (9/88)	

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 8-15-97

Name: Thomas A. Wahl P#: 5019 Classification: Criminalist II

Current Discipline of Assignment: Serology / DNA Analysis

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence (Hairs)	X	Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University of Wisconsin - La Crosse La Crosse, Wisconsin	1972 - 1977	Medical Technology	BS

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Advanced Serology Workshop	Illinois Dept. Of Law Enforcement Training Academy / Springfield, IL	8/82
GM-KM Immunoglobulin Allotyping Workshop	Louisiana State Police Academy / Baton Rouge, Louisiana	3/87
Statistics Course	Florida Dept. of Law Enforcement Academy / Orlando, FL	5/87
Isoelectric Focusing Workshop	Florida Dept. Of Law Enforcement Academy / Tallahassee, FL	3/88
Techniques in Gene Manipulation	Graduate School Course (3 credits)	May-June 1988
Semen Analysis Workshop	Florida Dept. Of Law Enforcement Academy, Tampa, FL	8/88
Non-Isotopic Detection of DNA Polymorphisms	Allotype Genetic Testing, Inc. Atlanta, GA	8/88

Statement of Qualifications

Name: Thomas A. Wahl

Page: 2

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Advanced Serology Workshop	Allotype Genetic Testing, Inc. Atlanta, GA	9/88
Non-Isotopic Detection of DNA Polymorphisms with Applications to Forensic & Paternity Testing, Bone Marrow Transplantation	Allotype Genetic Testing, Inc. Atlanta, GA	12/88
Instructor for Basic/Advanced Serology and PCR Workshops	Analytical Genetic Testing Center Denver, CO	1990 - 1993
Non-Isotopic Analysis of Polymorphic Short Tandem Repeats (STR) Loci Workshop	Promega Corp. Madison, WI	10/93
DNA Typing with STRs Workshop	Promega Corp. Madison, WI	5/95
A Workshop in Statistics for Forensic Scientists	National Forensic Science Technology Center / St. Petersburg, FL	1/96
Statistics Workshop; Seventh International Symposium on Human Identification	Promega Corp. Scottsdale, AZ	9/96
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
19 U.S. Jurisdictions 1 Canadian Jurisdiction	Hairs, Serology, DNA Analysis	>200
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department / Las Vegas, NV	Criminalist II	9/95 - present
Genelex Corp. / Seattle, WA	Forensic Supervisor	6/93 - 8/95
Analytical Genetic Testing Center / Denver, CO	Senior Forensic Geneticist	9/88 - 6/93
Florida Dept. Of Law Enforcement Tampa Regional; Crime Laboratory	Crime Lab Analyst - Serology	11/86 - 9/88
Wisconsin Dept. Of Justice Milwaukee Regional Crime Lab	Crime Lab Analyst - Micro/Serology	1/80 - 2/85

Statement of Qualifications

Name: Thomas A. Wahl

Page: 3

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
American Academy of Forensic Sciences	1993 - 1997
Midwestern Association of Forensic Scientists	1982-1984 1992-1997
Southwest Association of Forensic Scientists	1991 - 1997
Southern Association of Forensic Scientists	1987 - 1997
PUBLICATIONS / PRESENTATIONS:	
<i>Casework Presentation APOB Amplified Fragment Length Polymorphism</i> Southwest Association of Forensic Scientists Estes Park, Colorado / October 1992	
<i>Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism</i> American Academy of Forensic Science / Boston, MA February 1993, Dr. Moses Schanfield Presenter, Thomas A. Wahl Co-Author.	
<i>HLA DQA1 Testing of Non-Human DNA,</i> Northwest Association of Forensic Scientists Bend, Oregon / April 1993	
<i>Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism</i> Northwest Association of Forensic Scientists Bend, Oregon / April 1993	
<i>Qualitative and Quantitative Assessment of DNA Using Alpha Satellite DNA</i> Midwest Association of Forensic Scientists Madison, Wisconsin / October 1993	
<i>Species Specificity Studies using the Amplitype™ Polymarker PCR System</i> Fifth International Symposium on Human Identification Promega Corporation, Scottsdale, Arizona / October 1994	
<i>PCR on Trial</i> Joint Meeting of the Canadian Society of Forensic Science and the Northwest Association of Forensic Scientists Forensic Use of PCR Analysis Workshop Vancouver, B.C. / November 1994	
<i>To Chelex or Not to Chelex, That is the Question</i> American Academy of Forensic Sciences Seattle, Washington / February 1995	
<i>Implementation Studies on the Analysis of the Amplitype Polymarker PCR System</i> American Academy of Forensic Sciences Seattle, Washington / February 1995	

Statement of Qualifications

Name: Thomas A. Wahl

Page: 4

PUBLICATIONS / PRESENTATIONS:

Interpretation of DQA1 and Polymarker Dot Blot Data In Mixed and Partially Degraded Specimens

California Association of Criminalists, DNA User's Group Seminar

Walnut Creek, California / May 1995

Presentation of DNA Evidence - A View from the Expert's Eyes

National College of District Attorneys Forensic Evidence Course

San Francisco, CA / December 1995

Demonstration: Cross-Examination of DNA Expert--Issue: Quality Control of Lab/Contamination

National College of District Attorneys Forensic Evidence Course

San Francisco, California / December 1995

Co-Presenter: George Clarke, Deputy District Attorney, Office of the District Attorney, County of San Diego

Resource Session: Serological Evidence in Sexual Assault Cases (When DNA Evidence is Not Available)

National College of District Attorneys Forensic Evidence Course

San Francisco, California / December 1995

Resource Session: Direct Examination: Introduction of Serological Evidence to Prove Criminal Participation

National College of District Attorneys Forensic Evidence Course

San Francisco, California / December 1995

Co-Presenter: George Clarke, Deputy District Attorney, Office of the District Attorney, County of San Diego

Schanfield, M.S., Wahl, T.A., Latorra, David and Verret, J.H. (1993)

Amplified Fragment Length Polymorphisms (AFLPs) and DQA1 for Forensic Identification, Fourth International Symposium on Human Identification, Promega Corporation, pp. 127-142

Latorra, David, Wahl, Thomas A., Humphreys, Kevin, Schanfield, Moses S. (1993) *Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism*, Fourth International Symposium on Human Identification, Promega Corporation, pp. 223-224

Charles S. Baker, MS, Moses S. Schanfield, PhD, Thomas A. Wahl, BS, Robin W. Cotton, PhD, Jullie A. Cooper, MFS, and Cozette Wheeler, PhD, "Proving Death Without A Body-A Case Using Electrophoresis, DNA RFLP, Gm/Km Allotyping, DNA PCR and Histology", American Academy of Forensic Science, San Antonio, Texas, February 1994

Moses S. Schanfield, PhD, David Latorra, MS, Joey Verrett, MS and Thomas A. Wahl, BS, "Amplified Fragment Length Polymorphisms (AFLP) Inexpensive Environmentally Safe DNA Technology for Forensic Identification", American Academy of Forensic Science, San Antonio, Texas, February 1994

OTHER QUALIFICATIONS:

American Board of Criminalistics - Diplomate and Fellow (1994 - 1997) in specialty areas of Forensic Biology, Biochemistry, and Molecular Biology.

Certified Medical Technologist by the American Society of Clinical Pathologists (A.S.C.P.) (1977 - 1997)

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DISTRICT COURT
CLARK COUNTY, NEVADA

1999 OCT 12 P 4:51

Billy B. [unclear]

STATE OF NEVADA,)
)
Plaintiff,)
)
vs)
)
Brendan J Nasby)
)
)
)
)
)
Defendant.)

Case No: 98-C-154293-C
Dept No: VII

JURY

- | | |
|---------------------------|-------------------------------|
| 01. MELISSA MARIE PETER | 07. JAMES LEWIS CORWIN |
| 02. LINN S. SMITH | 08. RODNEY MARTIN HAYNES |
| 03. JANET LUTY VETTER | 09. CAROLE JEANETTE MANSHRECK |
| 04. ELOISE DOMINGUEZ | 10. TONY DOMENIC SCAGGIARI |
| 05. SHIRLEY ROARK FLIPPIN | 11. WILLIAM LINDSAY KING |
| 06. KENNETH MOULTRAY | 12. DANIEL EDWARD HUERBIN |

ALTERNATES

- | | |
|-------------------------|-----------------------|
| 1. JAYLYN GLENN BARBEAU | 2. RAWLIN JAMES BLAKE |
|-------------------------|-----------------------|

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OCT 12 1999

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SHIRLEY B. PARRAGUIRRE, CLERK

BY

JOSEPHINE BOHN DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA.

Plaintiff,

vs.

BRENDAN JAMES NASBY,

Defendant.

Case No. C154293

Dept. No. VII

Docket No. P

VOLUME I

Before the Honorable Mark Gibbons

Monday, October 11, 1999, 1:30 p.m.

Reporter's Transcript of Proceedings

JURY TRIAL

CONDENSED TRANSCRIPT

APPEARANCES:

(See separate page)

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

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COUNTY CLERK

ACCUSCRIPTS (702) 391-0379

APPEARANCES

For the Plaintiff: FRANK COUNOU, ESO.
Deputy District Attorney
200 South Third Street
Las Vegas, Nevada 89155

For the Defendant: JOSEPH SCISCENTO, ESO.
Attorney at Law
330 South Third St. #850
Las Vegas, Nevada 89101
and
SANTACROCE LAW OFFICE
Attorneys at Law
611 FREDERICK SANTACROCE, ESO.
330 South Third St. #850
Las Vegas, Nevada 89101

ACQUISCRIPTS (702) 391-0379

defense to exclude references to any guns not used in the murder.

THE COURT: Right.

MR. SCISCENTO: I think, on Mr. Torrey Johnson's statement -- or his report, he may refer to that. I think these three -- items 12, 13 --

MR. COUNOU: Uh-huh.

MR. SCISCENTO: -- and 14, and I think 15, needs to be taken out on that.

MR. COUNOU: I already spoke to him about that, Torrey Johnson; and I also told him that the crime scene analyst who impounded the weapon -- the problem is the way that it's impounded, he also includes the SKS assault rifle within the -- within the evidence in the bag.

So my feeling was to have him bring it in, surrender it before and outside the presence of the jury, and we will just remove the nine millimeter --

THE COURT: Okay.

MR. COUNOU: -- it's got two clips -- and maybe the nylon bag that it was located in.

THE COURT: Okay. That seems like it would be a good suggestion, like that.

MR. COUNOU: Yeah.

THE COURT: Okay. Mr. Sciscento, what else?

ACQUISCRIPTS (702) 391-0379

Las Vegas, Nevada, Monday, October 11, 1999, 1:30 p.m.

(The following proceedings were had in open court outside the presence of the prospective jury panel:)

THE COURT: Case Number C154293, State of Nevada versus Nasby.

Let the record reflect the presence of the defendant together with his attorney, Joseph Sciscento; and Mr. --

MR. SANTACROCE: Yes, Frederick Santacroce.

THE COURT: So you're going to be appearing in this trial?

MR. SANTACROCE: Yes, Your Honor.

THE COURT: -- and Mr. Santacroce as well, appearing for the defendant; Frank Counou representing the State of Nevada.

The prospective jury panel is not present.

Which matters do we need to deal with before I bring the panel in?

MR. SCISCENTO: One is: I think we had a motion on the other day, which the Court granted, for the

ACQUISCRIPTS (702) 391-0379

MR. SCISCENTO: The other matter: I was contacted by Mr. Counou on Friday about four o'clock. He indicated that, pursuant to a subpoena, he intercepted a letter sent out by my client to Miss Crystal Sobrien.

In it, it indicated some -- some evidence of whether or not he was trying to coerce some witnesses.

And, two, there was an audio tape, which had inadvertently been left --

THE COURT: Well, I got a copy of the letter -- I guess Mr. Counou must have furnished it to me -- but I have read the letter.

But as far as the audio tape, I haven't had time to review the audio tape.

MR. SCISCENTO: My understanding is -- I have reviewed the -- I don't think there's anything. There was only telephone calls.

And there may have been initially. We reviewed it for evidentiary value a few months back. I don't believe there was any evidence -- I don't know if Mr. Counou has found any.

THE COURT: Okay. Mr. Counou.

MR. COUNOU: Nothing perked on my ear as to what was on this tape --

ACQUISCRIPTS (702) 391-0379

THE COURT: Okay.

MR. COUMOU: -- of evidentiary value.

What I do have concern about is -- is the letter, where it's making reference to notes being passed and shared with all the alibi witnesses. That's -- and we've discussed that with Mr. -- I've discussed that with Mr. Sciscento.

MR. SCISCENTO: Based on that Your Honor, I think they're alleging my client committed a crime, that being coercion of a witness. It seems that would be a prior bad act or bad act in itself.

I would move to exclude that pursuant to Petrocelli or pursuant to MRS 48.045, to use the correct citation.

THE COURT: 48.045.

MR. SCISCENTO: Furthermore, Your Honor, I have not been able to review the subpoena, which the -- we received a letter on that -- I received a letter.

Based on that, I would, one, ask for its exclusion; or, two, ask for a continuance of this trial so that I can review the subpoena to see if I can make an opposition to the subpoena itself.

I don't know how they subpoenaed it. I don't know if they have legal ground to

ACCUSCRIPTS (702) 391-0379

MR. COUMOU: Judge, if you look at the -- Judge, this is a feeling that, obviously, the State has had now for quite some time, but if you look at -- you look at it in toto, as he's talking about, first of all, he hopes that his attorney gets Tea Pot under his alibi witnesses --

THE COURT: Right --

MR. COUMOU: -- because there's a -- there is a -- there is a deadline. Then there is reference to "make sure you con-" -- well, that's on page three towards the end.

Then he's excited on page four: "I spoke with Joe today. He got Tea Pot on my alibi list finally," underscored.

Then, page five, the second paragraph: "Well, Coleen came to see me last night. She took the notes that need to be shared with all of you. If she hasn't given them to you yet, call her and get them from her, please, any ways," exclamation point.

THE COURT: So we don't know what those notes are?

MR. COUMOU: No, but I -- I've -- I've received information -- information I'm not using in -- in court -- that there is a fabrication of -- of an alibi defense set by the defendant; and that there is a story that

ACCUSCRIPTS (702) 391-0379

get in the letter or the tape itself.

THE COURT: Okay. Well, let's find out what the State has in mind, Mr. Sciscento, and then we'll go from there.

MR. COUMOU, do you want to use the letter or the cassette tape in your case in chief?

MR. COUMOU: Um, the cassette tape, Judge, as I pointed out, I can't find anything of evidentiary value unless it's decoded in some form or another. I have no idea what really is on there, other than just conversation pieces.

The letter was obtained by a search warrant. I received -- I issued -- or got a search warrant issued for the letter itself and the tape, in order so I can get that legally in my hands.

The jail thought it was contraband, and they have their policies, and they certainly are entitled to open that. So that's the basis.

Now, the letter does suggest that there are -- that there is a fabrication of witnesses for -- and to present perjured testimony as to an alibi defense for the defendant; and that is a concern of mine.

THE COURT: Where does it say that in the letter? I read it --

ACCUSCRIPTS (702) 391-0379

was written out and that needs to be shared with all the listed alibi witnesses for his defense.

And there's reasons why I then used that information to explore it a little bit further.

But when I see this letter and I see reference to that, that certainly causes no concern, and I don't want to have a situation where witnesses just can freely come in, take a -- take a stand on -- the witness stand, raise their arm and not intend to tell the truth.

THE COURT: Well, I think wouldn't the appropriate thing -- this letter seems, at least as to those matters, somewhat innocuous to me. It's really -- what the notes say is really the crux of it.

So, perhaps, do you want to serve a search warrant on this Coleen and then, Mr. Sciscento, you and I can see what these notes say?

Then we could probably make some sort of determination, because this issue came up last week.

MR. COUMOU: By this point, my guess is the notes are long gone, disappeared, so --

THE COURT: Do you want to question Coleen outside the presence of the jury about this incident, about these notes, what they said?

ACCUSCRIPTS (702) 391-0379

1 MR. COUNOU: The problem is these witnesses,
2 these alibi witnesses, have not been cooperative with us by
3 any means.

4 THE COURT: Well, aren't they under subpoena
5 by somebody, the defense or --

6 MR. COUNOU: I don't know if the defense has
7 subpoenaed them, but we've tried to contact them, and they
8 just don't want to cooperate with us.

9 THE COURT: Well, I would think this Coleen
10 would be -- offer some relevant testimony as to what these
11 notes were and did she share them with anybody, what did
12 they say.

13 Mr. Sciscento, I mean, it's not
14 privileged. I mean, he's publishing --

15 MR. SCISCENTO: Oh, no, I understand it's
16 not privileged.

17 THE COURT: What?

18 MR. SCISCENTO: I understand it's not
19 privileged. This just became aware to me about Friday night
20 on --

21 THE COURT: Well, I would think that's what
22 we would want to do is get Coleen here and find out what was
23 given to her, because -- Mr. Counou may be right, but I
24 don't know what it is.

ACCUSCRIPTS (702) 391-0379

1 MR. COUNOU: -- that I think that I want to
2 use it.

3 But one thing I do want to ask
4 the Court is that there will be some portions that I would
5 like to have -- on page three that I would like to have
6 blacked out.

7 THE COURT: Well, some of it has to be
8 redacted. I mean, I think the comments about his
9 ex-girlfriend and all and what he intends to do to her is
10 certainly a concern to me, at least in the guilt phase of
11 the case then.

12 MR. COUNOU: Well, you know, I would like to
13 present that information to his girlfriend and see how she
14 feels about him at this point.

15 THE COURT: Well --

16 MR. COUNOU: But what I would like to make
17 sure --

18 THE COURT: I don't know about that.

19 MR. COUNOU: What I would like to make sure
20 that we redact is that: I hope Joe put -- not that part.

21 "I think I told you already but, oh, well, I
22 told you again, smiley face, you might want to call
23 Joe and ask him about everything that you need to
24 know just in order that the jury doesn't -- doesn't

ACCUSCRIPTS (702) 391-0379

1 But, right now, I'm concerned
2 we're just speculating here on what could be down there and
3 I -- I am concerned about Petrocelli issues, as you said,
4 but unless we have something more specific on that -- but,
5 that -- I'll invite both of you to think about how we deal
6 with that issue here.

7 MR. COUNOU: Well, I was led to believe that
8 counsel decided not to make an alibi defense on this case.
9 That was this morning. Now, I don't know if that has
10 changed.

11 MR. SCISCENTO: That -- no. I believe we're
12 not going to go forward on that, based on the fact that he
13 would then try to bring in this letter.

14 THE COURT: Well, it may become relevant --

15 MR. SCISCENTO: If I bring it in, I think he
16 brings in the letter as rebuttal.

17 THE COURT: Well, again, I don't know what
18 I'm going to do on that, but I guess it depends -- rebuttal
19 is a whole different game, as we discussed previously.

20 MR. COUNOU: Yeah. In order to prevent --
21 you know, if -- if we do -- if I do end up using this
22 letter, Judge, with the Court's permission, I think it would
23 be on rebuttal --

24 THE COURT: Okay.

ACCUSCRIPTS (702) 391-0379

1 get any disparaging views, however they read it."

2 THE COURT: Okay. Well, why don't we do
3 this: If it's -- if it looks like it's going to be a
4 rebuttal issue, we can say -- we don't have to deal with it
5 right now.

6 And then -- Mr. Sciscento,
7 then, we'll cross that bridge when we come to it.

8 MR. SCISCENTO: So my understanding is that
9 it only can be used for rebuttal?

10 THE COURT: Well, Mr. Counou says he's not
11 going to offer it in his case in chief.

12 MR. SCISCENTO: Okay.

13 THE COURT: But are you -- are you going to
14 raise an alibi defense?

15 (Whereupon, a sotto voce at this time.)

16 THE COURT: Okay. Mr. Counou.

17 MR. COUNOU: One more thing, Judge -- and I
18 think counsel wanted to add something, but on the
19 information, it was brought to my attention by the court
20 clerk, this information originally listed the co-defendants.

21 And so, Court I reads:

22 "The defendants did then and there,

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1 willfully, meet, with each other and -- or unknown
2 individuals," so on.

3 It doesn't refer to who, and so
4 I wanted to just interject "the defendants," and a comma,
5 "Brendan James Nasby, Jottee Burnside, Tormie Burnside, and
6 Jeremiah Deskin, comma, did then and there willfully," just
7 to address the other co-defendants.

8 THE COURT: Okay. Did you want to amend the
9 information?

10 MR. SCISCENTO: Yeah, I have no objection to
11 that.

12 THE COURT: Okay. I guess, Jo, we could do
13 that by interlineation or do you need -- is that with those
14 names here? Do you have those names?

15 THE CLERK: No. I'll get them.

16 MR. COUNOU: Yeah, I can file an amended
17 information --

18 THE COURT: Could you?

19 MR. COUNOU: -- by tomorrow. I -- I can't
20 do it right now.

21 THE COURT: Why don't we do this: Why don't
22 we then just pick the jury today and then we won't give them
23 their charge until tomorrow, and then --

24 MR. COUNOU: Okay.

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1 THE COURT: That answers that.

2 Okay. Let's see how far we can
3 get on jury selection today and get that handled.

4 MR. SCISCENTO: Your Honor, I guess on the
5 record, I want to say I've spoken to my client regarding
6 these alibi witnesses, in light of what's come out.

7 May we approach for a moment?

8 THE COURT: Sure.

9 (Unreported discussion at the bench.)

10 THE BAILIFF: Do you want me to bring them
11 in or wait?

12 THE COURT: Okay. Lisa, bring in the jury.

13 (The following proceedings were had in open
14 court in the presence of the prospective
15 jury panel:)

16 THE COURT: Okay. Good afternoon, ladies
17 and gentlemen.

18 This is the time set for the
19 trial in the case of the State of Nevada versus Brendan
20 Nasby. This is Case Number C154293.

21 Let the record reflect the
22 presence of the defendant, together with his attorneys, Joe
23
24

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1 THE COURT: -- that will give you a chance
2 to do the amended information.

3 MR. SCISCENTO: My understanding, it was --
4 we were also going to have a Petrocelli hearing as to the
5 letter written to Mr. John Holmes?

6 THE COURT: Yeah. I mean -- well, we'll
7 want to --

8 MR. SCISCENTO: Do you want to do that today
9 or do you want to pick the jury --

10 THE COURT: Well, I want to get started with
11 the jury here.

12 MR. SCISCENTO: Okay.

13 THE COURT: But I need to do that, Mr.
14 Sciscento. Probably that will be the next order of business
15 after we are done picking the jury.

16 MR. SCISCENTO: So we wouldn't be doing that
17 today?

18 THE COURT: Well, unless the jury gets
19 picked real rapidly here, I -- it's 20 minutes to two, so I
20 doubt it.

21 MR. COUNOU: I don't have these witnesses
22 ready today.

23 THE COURT: Fine. We won't do it today.

24 MR. COUNOU: Yeah.

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1 Sciscento and Frederick Santacroce; the State of Nevada
2 represented by Frank COUNOU, deputy District Attorney. Also
3 present are the officers of the court.

4 Are the parties ready to
5 proceed, Mr. COUNOU?

6 MR. COUNOU: The State is.

7 THE COURT: Okay. And Mr. Sciscento?

8 MR. SCISCENTO: Yes, Your Honor, we are.

9 THE COURT: Okay. Ladies and gentlemen, you
10 are in Department VII of the Eighth Judicial District Court
11 of the State of Nevada.

12 My name is Mark Gibbons and I
13 am the presiding judge.

14 Let me take this opportunity to
15 introduce the court staff with whom you may be coming in
16 contact today throughout the course of the jury selection
17 process and, if you are picked as jurors, throughout the
18 course of the trial.

19 Okay. First of all, sitting on
20 my left down here is Miss Renee Silvaggio, who is our court
21 reporter. Renee is responsible for taking everything down
22 which is stated in the courtroom in shorthand on her
23 stenographic machine.

24 Renee is also responsible for

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1 handling any readbacks of testimony which become necessary
2 during the course of the trial or after the jury commences
3 deliberations.

4 Sitting on my right is Miss Jo
5 Bohn, who is our court clerk. Jo is responsible for
6 swearing in all the witnesses, marking all the exhibits and
7 keeping track of all the evidence. Jo is also responsible
8 for taking down brief descriptions of the testimony as it
9 presented throughout the course of the trial.

10 In the back of the room is Miss
11 Lisa Cologna, whom you've already met. Lisa is our bailiff.
12 Lisa is responsible for maintaining courtroom security.

13 Also, if there is any reason
14 you need to communicate with me throughout the course of the
15 trial, in the jury selection process today, whether it's
16 about scheduling, your jobs, anything like that, neither
17 myself nor the attorneys are permitted -- or the parties are
18 permitted to talk to you directly throughout the course of
19 the trial, but if you need to get a message to me, then just
20 go ahead and speak to Lisa and she will pass that
21 information on to me as well.

22 Okay. At this time, do the
23 parties -- do either of the parties desire to present a
24 challenge to the prospective jury panel as a whole?

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1 is frequented by individuals who like to shoot guns and it
2 is a target area.

3 The defendant has taken out
4 there, along with some co-defendants, who are not subject of
5 this particular case. They are Tommie Burnside, Jottee
6 Burnside, and Jeremiah Deskin.

7 In this particular case, we
8 expect that the trial could last up to a week, if not maybe
9 a little bit longer.

10 If you could just listen
11 carefully, I'm going to read out some of the names of these
12 witnesses. You may recognize them, and if you do, please
13 hold off. The Court will ask you at the appropriate time if
14 you know anybody that has been called off.

15 The first list of witnesses are
16 all employees with the Las Vegas Metropolitan Police
17 Department.

18 They are: Detective Tommy
19 Thowson; Ken Hefner; Sherree Norman; Darlene Falvey; Randall
20 McPhail; James Carroll; James Buczek; Jessie Sams; Torrey
21 Johnson; Thomas Wahl; Kelly Nell; Fred Boyd.

22 And that should be -- as far as
23 the employees of Metro.

24 The following witnesses are --

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1 Mr. COUNOU?

2 MR. COUNOU: Not by the State, Judge.

3 THE COURT: Okay. Mr. Sciscento, did you
4 wish to present a challenge to the prospective jury panel
5 has a whole?

6 MR. SCISCENTO: No, Your Honor.

7 THE COURT: Okay. At this time, Mr. COUNOU,
8 would you please introduce yourself and please make a brief
9 statement of the nature of the case and the names of
10 witnesses the State may call to testify in this trial.

11 MR. COUNOU: Certainly, Judge.

12 Good afternoon, ladies and
13 gentlemen of this jury panel.

14 My name is Frank COUNOU. I'm a
15 deputy District Attorney here in Clark County, Nevada.

16 I've been assigned to prosecute
17 this case in which the State of Nevada has charged the
18 defendant, Brendan James Nasby, with two felony counts.
19 They are: Conspiracy to commit murder and murder with use
20 of a deadly weapon.

21 This crime occurred on July the
22 17th or -- excuse me -- the actual killing occurred on July
23 16th, 1998 in the desert area just to the west of Lone
24 Mountain, a very isolated area. It's an area that normally

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1 excuse me -- Jan Soanan-Kelly, also with the Las Vegas
2 Metropolitan Police Department.

3 The following witnesses may
4 also be called in this particular case: Jeffrey Crait;
5 Robert Gilmore; Joneka Beavers; Tanesha Banks; Crystal
6 Bradley; Helen Jones; Velma Beasley.

7 Robert Jordan, he's the Clark
8 County Medical Examiner, who works for the coroner's office.

9 Jeremiah Deskin, who is a
10 co-defendant in this case; Brittany Adams; Charles Damlon
11 Von Lewis; Mark Garland; John Robert Holmes; and Jottee and
12 Tommie Burnside.

13 And, again, if the -- if any of
14 these names ring a bell or you think you may know them, the
15 Judge will ask you at the appropriate time.

16 And, again, the trial should
17 last approximately five days, maybe a little bit longer.

18 We thank you for your
19 attention.

20 THE COURT: Thank you.

21 Mr. Sciscento, at this time,
22 would you please introduce yourself, your co-counsel and
23 your client; briefly identify the nature of the defense of
24 this case, if that determination has been made; any

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1 witnesses you may call to testify, if that determination has
2 been made; and also any other attorneys you work with in
3 your office.

4 MR. SCISCENTO: Thank you, Your Honor.

5 My name is attorney Joseph
6 Sciscento. This is Nick Santacrose. He's assisting me on
7 this case.

8 The attorneys that we will be
9 working with in our office will be Tony Montiseno, Alex
10 Mazzia, and John Duffy, who worked on this case.

11 In addition to the witnesses
12 that Mr. Courou provided to you, I think there is -- one
13 additional witness may be a Teresa Adams from the
14 Metropolitan Police Department. If you know of her, then
15 you need to make that known to the officer -- or to the
16 Court in this case.

17 Your Honor, at this time, I
18 think we will reserve any other additional statements to be
19 made.

20 THE COURT: Okay. Thank you.

21 MR. SCISCENTO: May we approach, Your Honor,
22 for a moment?

23 THE COURT: Yes.

24 (Unreported discussion at the bench.)

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1 loosely translated, to tell the truth.

2 During this process, you will
3 be asked questions bearing on your ability to sit as fair
4 and impartial jurors.

5 To accomplish this result,
6 various questions will be asked of you by myself or counsel
7 for the parties. On occasion, some of the questions will
8 seem somewhat personal.

9 While we do not wish to
10 unnecessarily pry into your personal lives, the questions
11 are necessary so that counsel and the Court can make an
12 intelligent determination as to your capabilities to serve
13 fairly and impartially.

14 I want you to know that myself
15 and the attorneys and all other persons involved in this
16 case are deeply interested in having this matter tried by 14
17 jurors, who are completely open minded, neutral, objective
18 and unbiased in their thinking.

19 Wide discretion is vested in
20 the trial judge as to the method of examination of jurors.
21 As I previously stated, I may personally conduct the voir
22 dire examination, but I will give the attorneys the
23 opportunity to participate in the questioning.

24 The following areas of inquiry

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1 THE COURT: Okay. Ladies and gentlemen, I
2 think we already took the roll here. Lisa gave us the names
3 of everybody that is here today, so I will skip over taking
4 the roll call.

5 But will counsel agree and
6 stipulate that I may have the entire panel sworn at the same
7 time to answer truthfully all questions propounded to them
8 as to their qualifications to serve as jurors, so I might
9 ask questions collectively, and so it won't be necessary to
10 administer the oath to each replacement?

11 MR. CORMOU: The State does, Judge.

12 MR. SCISCENTO: Judge, the defense does too,
13 Your Honor.

14 THE COURT: Okay. Ladies and gentlemen, at
15 this time, I'd ask you all to please stand and raise your
16 right hands.

17 (Prospective jury panel sworn.)

18 THE CLERK: Thank you. Please be seated.

19 THE COURT: Okay. Ladies and gentlemen,
20 we're about to commence what is called the voir dire
21 examination of the prospective jurors in this case.

22 The term "voir dire" means,

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1 are not properly within the scope of your voir dire
2 examination by counsel;

3 Number one: Questions already asked and
4 answered by the Court and other counsel;

5 Number two: Questions touching upon
6 anticipated instructions on the law;

7 Number three: Questions touching upon a
8 verdict a juror would return when based upon hypothetical
9 facts;

10 And, number four: Questions that are, in
11 substance, arguments of the case.

12 Ladies and gentlemen, it is
13 important that you know the significance of full, complete,
14 and honest answers to all of the questions we are about to
15 ask you.

16 I caution you not to try to
17 hide or withhold anything which might indicate bias or
18 prejudice of any sort by any of you.

19 Should you fail to answer
20 truthfully or if you hide or withhold anything touching upon
21 your qualifications, that fact may tend to contaminate your
22 verdict and subject you to further inquiry even after you
23 are discharged as jurors.

24 Your decision should be based

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1 upon all the evidence presented during the trial and not
2 based upon preconceived prejudice or bias.

3 Prejudice is a pre-disposition
4 against something or someone; and bias is a pre-disposition
5 in favor of something or someone.

6 I'm going to conduct a general
7 voir dire examination of all of you while you are seated in
8 the audience.

9 After these general questions,
10 the clerk will call 14 names, using the order provided to us
11 by the jury commissioner, to fill the jury box.

12 At some point during the
13 process of selecting the jury, the attorneys for both sides
14 will have the right to ask that that particular person not
15 serve as a juror. These requests are called challenges.

16 There are two types of
17 challenges: Challenges for cause and peremptory challenges.

18 A challenge for cause means
19 that a juror has been excused because his or her answers to
20 some of the voir dire questions indicate that he or she
21 would have a difficult time in giving a fair and impartial
22 hearing to this case.

23 I will ask the attorneys to
24 pass or waive a juror for cause when -- cause challenge when

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1 sympathy, prejudice or bias relating to age, religion, race,
2 gender or national origin that they feel would affect their
3 ability to be open minded, fair, impartial jurors?
4 (Negative response.)

5 THE COURT: Okay. The record will reflect a
6 uniform no answer.

7 Are any of you acquainted with
8 the defendant in this case, Brandon Nasby or his attorneys,
9 Joseph Sciscento or Frederick Santacroce?

10 (Affirmative response.)

11 THE COURT: Okay. Sir, in the back, would
12 you give me your name and badge number, please.

13 MR. LOMPNEY: Lorne Lompney, Number 162.

14 THE COURT: Mr. Lompney.

15 MR. LOMPNEY: How are you?

16 THE COURT: Good.

17 MR. LOMPNEY: I'm a defense investigator.

18 THE COURT: Did you work on this
19 particular --

20 MR. LOMPNEY: He wants me on the jury.

21 THE COURT: Did you work on this case, Mr.

22 Lompney?

23 MR. LOMPNEY: No, but I know the attorney.

24 THE COURT: Okay. And let me ask you this:

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1 they are done questioning a prospective juror.

2 A peremptory challenge means
3 that a juror can be excused from the jury without counsel
4 having to give a reason for the excusal.

5 Please do not be offended
6 should you be excused by either of the challenge procedures.
7 They're simply a part of the procedures designed to protect
8 the rights of the parties under our system of government.

9 Now, ladies and gentlemen, if
10 you wish to respond to a question individually and in the
11 affirmative, please raise your hand, give your name, and
12 indicate the number which you've been given on your orange
13 badge which you are wearing in front.

14 First of all here: Is there
15 anyone who has ever been convicted of a felony before?

16 (Negative response.)

17 THE COURT: Okay. The record will show a
18 uniform no answer.

19 Is there anyone here who is not
20 a citizen of the United States?

21 (Negative response.)

22 THE COURT: Okay. The record will reflect a
23 uniform no answer.

24 Is there anyone who has such a

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1 Have you done any work for, like, Mr. Sciscento or Mr.
2 Santacroce before?

3 MR. LOMPNEY: I have, I believe, through his
4 office before in the past.

5 THE COURT: Okay. So you've had a financial
6 relationship with his office in the past then?

7 MR. LOMPNEY: Yes.

8 MR. SCISCENTO: Did we pay you? Do we owe
9 you money, sir? I just want to make sure.

10 THE COURT: I will excuse you, Mr. Lompney.
11 Thank you for coming out today.

12 MR. LOMPNEY: Thank you very much.

13 THE COURT: Okay. Anybody else acquainted
14 with either Mr. Nasby, Mr. Sciscento, Mr. Santacroce or any
15 of the attorneys they mentioned that they work with in their
16 office?

17 (Negative response.)

18 THE COURT: Okay. The record will reflect a
19 uniform no answer.

20 Are any of you acquainted with
21 the deputy District Attorney in this case, Frank Courou?

22 (Negative response.)

23 THE COURT: Okay. The record will reflect a
24 uniform no answer.

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1 Now, ladies and gentlemen, the
2 District Attorney's Office employs many deputies and other
3 personnel.

4 Is there anyone who has such a
5 close relationship with either the District Attorney,
6 Stewart Bell, his deputies or other members of the District
7 Attorney's staff that you feel might affect your ability to
8 serve as a fair and impartial juror in this case?

9 (Negative response.)

10 THE COURT: Okay. The record will reflect a
11 uniform no answer.

12 Are any of you acquainted with
13 any of the witnesses who are -- whose names were previously
14 mentioned either by Mr. Council or -- Mr. Sciscento?

15 (Affirmative response.)

16 MR. NEWCOMER: I might.

17 THE COURT: Okay. Sir, would you stand up
18 and give your name and badge number, please.

19 MR. NEWCOMER: David Newcomer, 135.

20 THE COURT: Yes, sir.

21 MR. NEWCOMER: Some of the -- I don't know
22 for sure, but I might have gone to a birthday party with
23 some of the officers.

24 THE COURT: Some of the officers?

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1 THE COURT: Okay. You are excused, sir.
2 Thank you for calling that to my attention.

3 Okay. Sir, if you would go
4 check in downstairs -- you can go ahead and leave now and
5 just go check in downstairs and let them know you've been
6 excused.

7 Thank you for being here this
8 afternoon.

9 Yes, sir, in the first row.
10 Could you stand up, give your name and badge number.

11 MR. SPROUSE: Carl Sprouse, 132.

12 I work for Sprint and I've
13 worked with just about everybody's telephone in the business
14 environment. I'm pretty sure I've been in and out of these
15 guys' areas. So, I don't know if --

16 THE COURT: Well, sir, let me ask you
17 this --

18 MR. SPROUSE: I don't know them personally.

19 THE COURT: Well, that's my question, if you
20 knew them personally.

21 But do you feel that, again, a
22 similar question as I asked this last gentleman: If they --
23 one of those officers gets on the stand and you look at them
24 and you may recognize that officer, as in some way you've

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1 MR. NEWCOMER: Yes.

2 THE COURT: What do you do, sir, for a
3 living?

4 MR. NEWCOMER: I work for the Library
5 District and some of the employees have husbands who are in
6 the police department.

7 THE COURT: Okay. Sir, let me ask you this:
8 Let's say one of those officers testifies and it turns out
9 you have been at a birthday party, so you may have met them
10 there.

11 Could you weigh their testimony
12 and consider it fairly and impartially, just like you would
13 with any other witness who testifies in this case?

14 MR. NEWCOMER: I would think what they said
15 was right.

16 THE COURT: Okay. So you are telling me
17 that maybe --

18 MR. NEWCOMER: Is that fair or impartial?
19 I would think what they said is
20 right.

21 THE COURT: Okay. So you're telling me that
22 before you've even heard anything, that you might give their
23 testimony more weight than the testimony of other witnesses?

24 MR. NEWCOMER: Possibly.

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1 dealt with him in your business with Sprint, do you feel you
2 could weigh their testimony fairly and impartially just like
3 you would of any other witness that testifies in this trial?

4 MR. SPROUSE: Yes, sir. Um, most likely, I
5 would --

6 THE COURT: Is there a reason you are
7 hesitating?

8 MR. SPROUSE: No. No, most likely, I'd take
9 them for what they're worth.

10 THE COURT: Okay. Well, that's -- see, the
11 reason we ask these questions is that, as I'll tell you
12 later on, the jury is the one who decides the case, not me.

13 I'm like a referee in a
14 football game. My job is to make sure everybody gets a fair
15 trial on both sides.

16 But the jury has to listen to
17 the witnesses and evaluate their credibility and determine
18 who they believe or who they may not believe; and then weigh
19 all this in discharging its responsibility in making a
20 decision in this case. And it's important.

21 And when the trial starts, we
22 start -- everybody starts even; we start on a level playing
23 field. We want to make sure nobody has any preconceived
24

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1 prejudices or biases.

2 So, again, sir, do you feel you
3 could be open minded and listen to these witnesses and
4 evaluate them based upon their testimony here on the witness
5 stand?

6 MR. SPROUSE: I think so, most likely.

7 THE COURT: Okay. Thank you for calling
8 that to our attention.

9 Okay. There was someone in the
10 back of the courtroom. Yes, ma'am, in the very back corner.
11 Would you give your name and
12 badge number, please.

13 MS. LEAVITT: Gloria Leavitt, Juror Number
14 147.

15 THE COURT: Go ahead, ma'am.

16 MS. LEAVITT: What was the police officer's
17 name, Carroll? I had a student two years ago, and so --
18 just by name and, you know, by knowing this child of him.

19 THE COURT: You know Officer Carroll, then
20 like that?

21 MS. LEAVITT: Yes.

22 THE COURT: Okay. And, ma'am, let me ask
23 you this: Assuming this officer testifies in this case, do
24 you think you could be fair and impartial and weigh that

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1 blood pressure and diabetes; and I have a kidney problem and
2 there are times, perhaps if I was on the jury, that I would
3 feel more comfortable with my medication and taking my
4 medication at the time where I would not be able to
5 concentrate a hundred percent on the case.

6 THE COURT: Okay. Sir, well, let me ask you
7 this: If you were in the jury box and you had -- and I've
8 taken some of those medications myself, you know like
9 that -- but if you are up in the jury box -- and we will
10 have water up there and cups -- and you need to take a pill
11 or so, I mean, you certainly could do that when you are in
12 the jury box and get that done, if you feel it's that time
13 or some sensation you feel, to get that taken.

14 MR. BARBANELL: I would hope so, but one
15 never knows. I mean --

16 THE COURT: Well, what do you mean?

17 If you need to take it, we will
18 let you take it. There would be no problem.

19 MR. BARBANELL: Well, I would take it, but
20 with my diabetes, if I feel like my blood sugar is low, I
21 need something to eat.

22 THE COURT: Okay. So you are saying that
23 you may not be able to concentrate on the case?

24 MR. BARBANELL: Yes, sir; yes, Your Honor.

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1 officer's testimony just like any other witness who
2 testifies in this trial?

3 MS. LEAVITT: Yes, I can, Your Honor.

4 THE COURT: Okay. Thank you for calling
5 that to our attention.

6 Okay. Yes, ma'am, in the first
7 row.

8 MS. McNEAL: Temorie McNeal, Badge number
9 138.

10 Going back to your first
11 question on bias, prejudice, religious, I would have a
12 difficult time if there was to be a death penalty coming
13 about.

14 THE COURT: Well, that's not an issue in
15 this case, ma'am.

16 MS. LEAVITT: Okay.

17 THE COURT: Okay. But thanks for calling
18 that to our attention, ma'am.

19 Okay. Anybody else?

20 Yes, sir, over here. Would you
21 give your name and badge number.

22 MR. BARBANELL: Stanley Barbanell, Badge
23 Number 173.

24 I have to take medication for

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1 I would rather be honest and
2 tell you that.

3 THE COURT: Okay. Well, so -- and you've
4 had the diabetes for a while? Are you taking medication for
5 that --

6 MR. BARBANELL: Yes, I do. I'm sorry. I
7 don't take medication for diabetes. I have it under control
8 through a diet and exercise.

9 THE COURT: Okay. So you don't take
10 insulin?

11 MR. BARBANELL: No, sir. No, I don't.

12 THE COURT: Okay. So tell me what happens.
13 You feel there are times --

14 MR. BARBANELL: I feel uncomfortable. I
15 feel there is really a need to take something and eat at
16 that particular time.

17 THE COURT: I see. So it's part of your
18 controlling the diabetes with the food and all like that?

19 MR. BARBANELL: Yes, sir.

20 THE COURT: Okay. Sir, I will excuse you
21 here in the case.

22 MR. BARBANELL: Thank you.

23 THE COURT: Okay. Thank you for calling
24 that to our attention.

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1 MR. COUMOU: What was the --
 2 THE COURT: What was your number, sir,
 3 again?
 4 MR. BARBANELL: 173.
 5 THE COURT: 173. Okay.
 6 Okay. Anybody else here?
 7 I think we were talking
 8 about -- I guess my question is: If you know anybody here
 9 and we kind of got off on a different issue, on medicine
 10 here.
 11 But, yes, ma'am, in the second
 12 row.
 13 Would you give your name and
 14 badge number.
 15 MS. REYNOLDS: Peggy Jean Reynolds, 176.
 16 I have allergies and I'm on
 17 medication also, and when I do take some of my medication, I
 18 have to do it with food.
 19 THE COURT: When do you take your
 20 medication, ma'am?
 21 MS. REYNOLDS: I take it, ah, in the morning
 22 and in the evening; not in the late evening, but about five
 23 o'clock.
 24 THE COURT: Okay. Well, generally, in

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1 court -- we're not in court past five o'clock, so that's
 2 taken care of.
 3 Now, what time do you take it
 4 in the morning then?
 5 MS. REYNOLDS: About 8:30 or nine o'clock.
 6 THE COURT: Okay. We're not in court at
 7 8:30 or nine o'clock. I mean, you could take it at those
 8 two times and it wouldn't be a problem then.
 9 MS. REYNOLDS: Okay.
 10 THE COURT: Okay. Thank you for calling
 11 that to our attention.
 12 Yes, ma'am, in the first row.
 13 MS. McNEAL: Terrie McNeal, Number 138,
 14 I too am diabetic and have high
 15 blood pressure controlled by pills.
 16 Right at the moment, I am
 17 stressing with the diabetes because I had to report here at
 18 12 o'clock and didn't have my lunch. And so I'm suffering
 19 from that also.
 20 THE COURT: Okay. Ma'am -- and, again, I
 21 know today is stressful coming in.
 22 MS. McNEAL: Yes.
 23 THE COURT: Let me ask you this: If you --
 24 know -- we will set a schedule -- and, again, I will give

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1 that to you a little bit later -- and we will certainly
 2 accommodate everybody that needs breaks or whatever for
 3 medication or food or whatever. That will happen throughout
 4 the trial, like that -- could you -- could you accommodate
 5 that?
 6 MS. McNEAL: I could accommodate that.
 7 THE COURT: Okay. But I can assure you we
 8 will do that then.
 9 MS. McNEAL: Okay. Thank you.
 10 THE COURT: But thank you for calling that
 11 to our attention.
 12 Okay. Anybody else?
 13 (Negative response.)
 14 THE COURT: Okay. Now, ladies and
 15 gentlemen, Mr. Coumou gave us a time estimate, roughly, on
 16 what the trial will take.
 17 And I'm going to ask you if
 18 that's a problem for anybody in a minute, but before I do
 19 that, let me just tell you a little bit about the jury
 20 selection process and jury trials.
 21 Now, you are all down here
 22 today because you received what we call a jury summons to
 23 come in and report to the jury commissioner's office.
 24 And, generally, what happens,

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1 if you are picked for jury duty, you are not asked to come
 2 back for at least three years in the state court system. So
 3 there are some advantages here to getting picked for -- for
 4 jury trial.
 5 Now, sometimes, you never know
 6 when you come down here for jury duty on what kind of case
 7 you are going to be on, whether it's a civil or criminal
 8 case, and how long it's going to take.
 9 Now, I know I did a case about
 10 a little less than a year ago, and it was a -- it was also a
 11 murder case and it took about a month to do the whole trial.
 12 It was a very complicated case.
 13 And I have a civil case that's
 14 coming up. I've had time estimates it would take up to a
 15 year to do, and that is a jury case.
 16 So you never know, again,
 17 timewise, on how long it's going to take.
 18 Now, for the purposes of jury
 19 trials, this case is probably not real long. I mean,
 20 it's -- the estimates are five to six days here, as far as
 21 getting this trial done, and we're going to try and finish
 22 it -- see if we can get it done this week. If we can't, it
 23 is possible it could go over in to just next Monday or so.
 24 But, again, what I would ask

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1 you to do, if there is any possible way you could do it, is
2 to hang in there. And, again, if, for some reason, you get
3 picked for jury duty within the three years, you can call me
4 up, and as a judge, I have a right to excuse people from
5 jury duty.

6 So if you look at my name in
7 the front as Mark Gibbons and just call me up in the phone
8 book and remind me of what case you were on in the jury, I
9 will excuse you. So that's a guarantee then.

10 So if you are picked for jury
11 duty -- and we do appreciate the sacrifice. And myself and
12 Mr. Coubou and Mr. Sciscento, Mr. Santacroce, Mr. Nesby, all
13 of us realize it's a sacrifice for you to be here today, and
14 I want you to know we all appreciate your participation in
15 the process.

16 Okay. Would serving a period
17 of time of five to six days constitute an undue burden on
18 any of the prospective jurors in this case?

19 (Affirmative response.)

20 THE COURT: Okay. I will go through -- sir,
21 why don't we start with you over here in the second to the
22 last row.

23 Could you give me your name and
24 badge number?

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1 didn't expect to start up that soon. I figured a couple
2 more weeks.

3 THE COURT: Okay. Sir, I will excuse you,
4 but, again, you may get called back again real soon, so next
5 time be prepared, again, to do that.

6 Okay. Thank you.

7 The gentlemen in the last row,
8 please.

9 MR. WATSON: Last name Watson, 160.
10 I have a firm airplane
11 reservation for the 19th.

12 THE COURT: Okay. Sir, the 19th -- let
13 me -- today is the 11th, so that means --

14 MR. WATSON: Next Tuesday.

15 THE COURT: I'd feel comfortable with that,
16 Mr. Watson.

17 MR. WATSON: I feel a little uncomfortable
18 too. I have no objection to serving and I'd like to serve,
19 but it's a commitment I cannot get out of.

20 THE COURT: Okay. I understand. Thank you
21 for calling that to our attention.

22 That's why we give you these
23 time estimates. I feel very comfortable working within that
24 time frame then, so it wouldn't affect your trip.

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1 MR. SMITH: Steve Smith, 154.

2 THE COURT: Yes, sir.

3 MR. SMITH: I'm the project engineer for an
4 \$800,000 manufacturing installation. We got the project
5 ahead of schedule and we started shake down on Friday.

6 THE COURT: What's shake down mean?

7 MR. SMITH: Shake down, start up and testing
8 the machine. And I can handle one day here, but the whole
9 week from the start up period may be very difficult.

10 THE COURT: Sir -- Mr. Smith, let me ask you
11 this -- and I appreciate that: If I excuse you, you may get
12 called back in a couple weeks or so.

13 MR. SMITH: That would be easier.

14 THE COURT: You understand it's a temporary
15 reprieve on this?

16 MR. SMITH: That would be okay.

17 THE COURT: But it's just this particular
18 week is bad for you?

19 MR. SMITH: We got to have a schedule. It
20 is bad.

21 THE COURT: Okay. You had these previous
22 commitments before coming down here, reporting for jury duty
23 today; is that right?

24 MR. SMITH: Friday was a surprise. We

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1 MR. SCISCENTO: Your Honor, may we approach
2 for a moment?

3 THE COURT: Yes.

4 (Unreported discussion at the bench.)

6 THE COURT: Okay. Thank you again.

7 Ladies and gentlemen, the
8 attorneys reminded me of one other question I inadvertently
9 didn't ask here.

10 The victim in this case is a
11 gentleman named Michael Deasley.

12 Is anybody acquainted with that
13 individual or his family?

14 (Negative response.)

15 THE COURT: Okay. The record will reflect a
16 uniform no answer.

17 Okay. Anybody else here about
18 serving this period of time? Any questions with scheduling
19 or anything?

20 (Affirmative response.)

21 THE COURT: Okay. We have -- yes, there is
22 a lady over here on my right. Yes, ma'am.

23 MS. FANKUCHEN: Laura Fankuchen, Badge 171.
24

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I work for Walgreen's Drugstores, and I just got transferred to the biggest store in the company. And we have a major stockholders' meeting coming up -- I think it's next week -- so they're really short-handed at the store and I really need to be there.

THE COURT: So, ma'am, you're just saying, again, this particular week is a bad week for you?

MS. FANKUCHEN: Right, a bad week.

THE COURT: If you get called back in a couple weeks --

MS. FANKUCHEN: Okay. It will be better than this week.

THE COURT: Okay. I'll excuse you. If you get called back again, you might get on one of these one year cases.

MS. FANKUCHEN: This is a bad week.

THE COURT: Okay. Okay. Anybody else? (Negative response.)

THE COURT: Okay. Again, I want to thank the rest of you for staying with us here. We appreciate that.

Okay. Are there any of you who believe that, for any other reason, you would be unable to serve as jurors in this particular case?

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MS. KOVACS: Thank you.

THE COURT: But you may get called, as I say, in a couple weeks on something else.

Yes, sir, here in the first row.

MR. ROLINS: I just wanted --

THE REPORTER: No, no, no.

THE COURT: Name and badge number, please.

MR. ROLINS: 168.

THE COURT: What's your name, sir?

MR. ROLINS: Steve Rolins.

THE COURT: Yes, sir.

MR. ROLINS: I live right in that area and I wonder how fair I can be. I -- you know.

THE COURT: Okay. Mr. Rolins, let me ask you this: Do you know anything about this case --

MR. ROLINS: No, I don't.

THE COURT: -- or this incident here?

MR. ROLINS: Excuse me?

THE COURT: Do you know anything about this incident or this case?

MR. ROLINS: I know nothing about it, but I live right there.

THE COURT: Well, let me ask you this: Do

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(Negative response.)

THE COURT: Okay. The record will reflect a uniform no answer.

Is there anyone here who has ever been engaged in law enforcement work or have a -- I'm sorry. Was there somebody else?

Oh, I'm sorry, ma'am. I didn't see your hand.

In the back, could you give your name and badge number?

MS. KOVACS: Hope Kovacs, Badge Number 156.

THE COURT: Yes, ma'am.

MS. KOVACS: I might have a hard time in a murder. I had a brother killed ten years ago by his wife's girlfriend, and my sister two years ago by her husband. I'm kind of bitter about the whole thing.

THE COURT: Okay. So, ma'am, you feel because of these tragic experiences you've had in your own personal family and all, that it would be difficult to sit in on this case and be fair to both the State and the defendant?

MS. KOVACS: I do.

THE COURT: Okay. I'm going to excuse you, ma'am, because of the subject matter of the case.

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you feel that even though you live there -- and it certainly may have more meaning to you than maybe some other people, but do you feel you could be fair and impartial and listen to all the testimony in this case presented here and decide the case based upon what you hear in this courtroom and make your decision?

MR. ROLINS: I could do my best. That's as fair as I can say.

THE COURT: Well, okay. That's what we want you to do. Thank you for calling that to our attention.

Okay. I'm going to go back to that law enforcement question. I'll repeat that.

Is there anyone on this panel who has ever been engaged in law enforcement work or have a spouse or close relative who has ever been engaged in law enforcement work?

(Affirmative response.)

THE COURT: Okay. Sir, I will start with you in the white shirt, first row.

MR. BURNETT: Donald Burnett, 166.

Yes, sir. I was a deputy sheriff for a year in Tennessee.

THE COURT: Okay. And how long ago was that, Mr. Burnett?

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1 MR. BURNETT: About 12 years ago.
 2 THE COURT: Okay. And, sir, do you feel
 3 that -- officers will probably testify in this case,
 4 Do you think you can be fair
 5 and impartial and listen to their testimony and weigh it the
 6 same way you would weigh the testimony of other witnesses in
 7 this case?
 8 MR. BURNETT: I believe I could, yes, sir.
 9 THE COURT: Okay. Well, thank you for
 10 calling that to our attention then.
 11 Okay. Anybody else here with
 12 law enforcement?
 13 (Affirmative response.)
 14 THE COURT: Yes, ma'am, in the back, in the
 15 first row.
 16 MS. DOMINGUEZ: Eloise Dominguez, Badge 134.
 17 My brother-in-law is a
 18 detective in Anaheim, California.
 19 THE COURT: Okay. And what type of
 20 detective is he?
 21 MS. DOMINGUEZ: He's in a special task
 22 force. They specialize in whatever crime is the most in
 23 that particular month.
 24 THE COURT: Okay. And, ma'am, let me ask

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1 THE REPORTER: No, no.
 2 THE COURT: Would you give me your name and
 3 badge number.
 4 MR. HUERBIN: Dan Huerbin, 157.
 5 THE COURT: 157.
 6 Where did it go? 157.
 7 Yes, sir, go ahead.
 8 MR. HUERBIN: I have a brother who is a
 9 police officer.
 10 THE COURT: Okay. Sir, do you think you
 11 could be fair and impartial to both sides and weigh the
 12 testimony of the witnesses as presented in this courtroom
 13 here?
 14 MR. HUERBIN: Yes, sir. Yes, I do.
 15 THE COURT: Thank you for calling that to
 16 our attention.
 17 Okay. Anybody else have any
 18 immediate family or close -- very close friends that are in
 19 law enforcement?
 20 (Negative response.)
 21 THE COURT: Okay. The record will reflect a
 22 uniform no answer.
 23 Now, ladies and gentlemen,
 24 would any of you have a tendency to give more weight or

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1 you the same question here: Despite having a brother-in-law
 2 who is a detective and all, do you feel you could be fair
 3 and impartial to both sides in this case and weigh the
 4 testimony based upon how these witnesses testify in court?
 5 MS. DOMINGUEZ: Yes, Your Honor.
 6 THE COURT: Thank you for calling that to
 7 our attention.
 8 Okay. Yes, ma'am, in the back
 9 here.
 10 MS. HANSHRECK: Carole Hanshreck, Badge 153.
 11 My brother-in-law is a retired
 12 policeman.
 13 THE COURT: Okay. Ma'am, I guess I will ask
 14 you the same question.
 15 MS. HANSHRECK: It doesn't --
 16 THE COURT: It won't affect you?
 17 MS. HANSHRECK: No.
 18 THE COURT: You could be fair and impartial
 19 to both sides in this case?
 20 MS. HANSHRECK: That's right.
 21 THE COURT: Okay. Thank you for calling
 22 that to our attention.
 23 Yes, sir, in the back.
 24 MR. HUERBIN: I have a brother who is --

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1 credence to the testimony of a law enforcement officer
 2 simply because he or she is a police officer?
 3 (Negative response.)
 4 THE COURT: Okay. The record will reflect a
 5 uniform no answer.
 6 Ladies and gentlemen, Is there
 7 anyone who may not be able to follow all of the instructions
 8 of the Court on the law, if these instructions differ from
 9 your own personal conceptions of what the law ought to be?
 10 (Negative response.)
 11 THE COURT: Okay. The record will reflect a
 12 uniform no answer.
 13 Now, ladies and gentlemen, as a
 14 follow-up to that previous question, I must tell you that in
 15 any criminal trial, there are actually 14 judges. The
 16 members of the jury sitting collectively are the judges of
 17 the questions of fact in the case.
 18 As the presiding judge, I am
 19 the judge of the questions of law and it is my
 20 responsibility to be sure that I give instructions on the
 21 law that applies in a particular case.
 22 It would be a violation of a
 23 juror's duty if he or she tried to render a judgment based
 24 upon what he or she believed the law to be if that differed

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from my instruction.

Now, with that in mind, is there anyone who feels that they cannot be fact finders and follow my instructions on the applicable law in this case?

(Negative response.)

THE COURT: Okay. The record will reflect a uniform no answer.

Now, ladies and gentlemen, under our system, certain principles apply in every criminal trial.

They are: That -- number one, that the information filed in this case is a mere accusation and it is not evidence of guilt;

Number two, that the defendant is presumed innocent; and

Number three, that the State must prove the defendant is guilty beyond a reasonable doubt.

Now, does anyone not understand or believe in these basic precepts of American justice?

(Negative response.)

THE COURT: Okay. The record will reflect a uniform no answer.

THE COURT: Does anyone know anything about

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2:20 right now, so figure about 3:20, we will take about a 15 minute break as well. But, in the meantime, we're just going to go ahead and move forward with the jury selection process and see if we get it finished up today.

Okay. At this time, the court clerk will call the first 14 prospective jurors.

THE CLERK: Number 131, Martha Ibe;

Number 132, Carl Sprouse;

Number 133, Janet Vetter;

Number 134, Eloise Dominguez;

Number 136, Shirley Flippin;

Number 137, John Kostusak;

Number 138, Temorie McNeal;

Number 139, Rodney Haynes;

Number 140, Bertha Hernandez;

Number 142, Barbara Thomas;

Number 143, William King;

Number 144, Joyce Foisel;

Number 145, Jaylyn Barbeau.

Number 146, James Schlieman.

THE COURT: Okay. Ladies and gentlemen, the other thing that we do as well is in the -- if you are picked to serve as jurors in this case, you will be sitting in the exact same chair you are sitting in right now

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this case other than what has been stated in the courtroom today?

(Negative response.)

THE COURT: Okay. The record will reflect a uniform no answer.

Okay, ladies and gentlemen, we've completed phase one of the jury selection process. We're going to go to phase two.

What's going to happen here is Jo is going to call 14 names of prospective jurors, and we're going to have you go up in the jury box here, and I'll ask you some individual questions, and then I'll give the attorneys a chance to ask you some questions.

And, again, for those of you seated in the audience, if you need to use the restrooms or whatever, while we're going through this jury selection process, please, you can go ahead and leave and -- just turn to your right. It's down at the end of the hallway -- and do that.

And if you are on the jury -- if you are up in the panel box and you need to do that, just raise your hand. We will do the same thing.

And, also, we will be taking a break probably in about an hour as well. So -- it's about

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throughout the course of the trial. So that is the process we go through.

And what we do is refer to jurors by chair numbers as well, once you get up in the particular jury box.

So, you know, like, Miss Ibe, you would be considered Juror Number 1 because you are sitting in the first chair. And how we do the numbers, we do one through seven across the back row and number eight through 14 across the front row.

So, again, we do that just to keep track of everybody and make sure everybody is here and keep our court record here of the proceedings.

Okay, Miss Ibe, I will start with you.

Do you know of any reason why you couldn't be a completely fair and impartial juror if selected to serve in this case?

MS. IBE: No.

THE COURT: Can you wait in forming your opinion, as to the guilt or innocence of the defendant, until all the evidence has been heard?

MS. IBE: (Nods head affirmatively.)

THE COURT: Okay. We need to have you

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1 answer out loud so Renee can take it down.

2 MS. IBE: Yes.

3 THE COURT: Have you or anyone close to you,
4 such as a family member or friend, ever been arrested for a
5 crime?

6 MS. IBE: No.

7 THE COURT: Have you or anyone close to you,
8 such as a family member or friend, ever been the victim of a
9 crime?

10 MS. IBE: Yes.

11 THE COURT: Could you tell me about that,
12 please.

13 MS. IBE: Myself, my nephew.

14 THE COURT: Well, tell me about yourself.
15 What crime were you a victim
16 of?

17 MS. IBE: Um, rape.

18 THE COURT: Okay. And that's tragic. I'm
19 sorry -- sorry to hear that.

20 Was that some time ago when
21 that --

22 MS. IBE: Oh, yeah, about 20 years ago.

23 THE COURT: Okay. And was the person
24 responsible caught and prosecuted?

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1 MS. IBE: Uh-huh; yes.

2 THE COURT: Okay. Again, is there anything
3 about that experience, being the victim of a crime, that you
4 feel would affect your ability to be fair and impartial to
5 both sides in this case?

6 MS. IBE: No.

7 THE COURT: Okay. And now you mentioned
8 your nephew had been the victim of a crime?

9 MS. IBE: He was struck by a shooting and
10 was murdered.

11 THE COURT: And was he killed in that?

12 MS. IBE: Yes.

13 THE COURT: Okay. Did they catch the person
14 responsible?

15 MS. IBE: Yes.

16 THE COURT: Okay. Again, is there anything
17 about that tragic experience that your nephew was involved
18 with which you feel could affect your ability to be fair and
19 impartial to both the State and the defendant in this case?

20 MS. IBE: No.

21 THE COURT: Can you base your verdict solely
22 on the evidence brought out at the trial and the law that
23 applies as stated in my instructions to you without fear of
24 criticism or popular opinion?

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1 MS. IBE: Yes.

2 THE COURT: Okay. Have you ever served as a
3 juror before?

4 MS. IBE: No.

5 THE COURT: Okay. If you were a party to
6 this case, meaning if you were either representing the State
7 of Nevada or you were sitting where Mr. Masby is sitting,
8 would you be comfortable with 14 jurors just like yourself?

9 MS. IBE: Yes.

10 THE COURT: Thank you.

11 Mr. COUNOU.

12 MR. COUNOU: Thank you, Judge.

13 Good afternoon, Miss Ibe.

14 Do you have any children?

15 MS. IBE: No.

16 MR. COUNOU: Okay. And you are married,
17 correct?

18 MS. IBE: Yes.

19 MR. COUNOU: How long have you been married?

20 MS. IBE: Five years.

21 MR. COUNOU: And what does your husband do?

22 MS. IBE: He works at DI, in the kitchen,
23 cook.

24 MR. COUNOU: How long has he been

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1 employed --

2 MS. IBE: Six years.

3 MR. COUNOU: Okay. Is he still employed
4 currently?

5 MS. IBE: Yes.

6 MR. COUNOU: Okay. And you, what line of
7 work are you in?

8 MS. IBE: Nothing.

9 MR. COUNOU: Nothing?

10 Where did you come from prior
11 to moving to Las Vegas?

12 MS. IBE: San Antonio, Texas.

13 MR. COUNOU: And are you from San Antonio,
14 Texas?

15 MS. IBE: Yes.

16 MR. COUNOU: This incident that you talked
17 about, that happened to you personally, to your nephew, did
18 that happen back in San Antonio?

19 MS. IBE: Yes.

20 MR. COUNOU: Do you have any family here in
21 Las Vegas?

22 MS. IBE: No.

23 MR. COUNOU: Okay. What brought you out
24 here to Las Vegas?

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1 MS. IBE: The mountains.
 2 MR. COUNDE: The mountains?
 3 MS. IBE: Mountains. Sorry.
 4 MR. COUNDE: Thank you very much.
 5 Judge, I will pass for cause.
 6 THE COURT: Thank you.
 7 Mr. Sciscento.
 8 MR. SCISCENTO: Thank you, Your Honor.
 9 Miss Ibe.
 10 MS. IBE: Yes.
 11 MR. SCISCENTO: Can you hear me all right?
 12 MS. IBE: Uh-huh.
 13 MR. SCISCENTO: I'm sorry. I don't think I
 14 introduced, first, Mr. Brendan Nasby, who is over here as
 15 the defendant on trial.
 16 You don't know Mr. Nasby?
 17 MS. IBE: No.
 18 MR. SCISCENTO: Let me ask you really
 19 briefly -- I don't want to get too far into it: This drive
 20 by shooting that happened to your nephew, that was in Texas?
 21 MS. IBE: Yes.
 22 MR. SCISCENTO: Was there a trial in this
 23 case?
 24 MS. IBE: Yes.

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1 any trials?
 2 MS. IBE: Un, no.
 3 MR. SCISCENTO: How long did you work for
 4 this attorney?
 5 MS. IBE: Three years.
 6 MR. SCISCENTO: Did you learn anything about
 7 the law?
 8 MS. IBE: Texas law, yes.
 9 MR. SCISCENTO: Texas law.
 10 You know the judge asked you
 11 about the burden of proof.
 12 Do you understand that?
 13 MS. IBE: Yes; uh-huh.
 14 MR. SCISCENTO: Okay. And that being the
 15 burden that Mr. Nasby is innocent until proven guilty.
 16 MS. IBE: Yes.
 17 MR. SCISCENTO: And I'm sure in your
 18 working, in your employment, you've probably heard those
 19 statements before?
 20 MS. IBE: Yes.
 21 MR. SCISCENTO: Okay. Do you think that Mr.
 22 Nasby, as he sits here, in the eyes of the law and in the
 23 eyes of this Court, in the eyes of you, is innocent?
 24 MS. IBE: Yes, sir.

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1 MR. SCISCENTO: Okay. And there was an
 2 outcome on the trial?
 3 MS. IBE: Yes.
 4 MR. SCISCENTO: Okay. You were a prior
 5 juror; is that correct?
 6 MS. IBE: No.
 7 MR. SCISCENTO: You've been a jury member
 8 before?
 9 MS. IBE: No, sir.
 10 MR. SCISCENTO: It says yes here in this
 11 little handout --
 12 MS. IBE: Well, I've been -- I've always
 13 been turned down because I used to work with an attorney and
 14 then because of my family background.
 15 MR. SCISCENTO: Okay. What kind of attorney
 16 was he, criminal defense, civil?
 17 MS. IBE: Civil.
 18 MR. SCISCENTO: Okay. Did he do civil
 19 personal injuries?
 20 MS. IBE: Yeah, personal injuries.
 21 MR. SCISCENTO: Okay. What did you do as an
 22 assistant for him?
 23 MS. IBE: File clerk.
 24 MR. SCISCENTO: Did you ever assist him in

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1 MR. SCISCENTO: If you are chosen as a jury
 2 member, do you have the fortitude to stand up against the
 3 rest of these people -- if, in your heart, you believe --
 4 and your conviction -- that Mr. Nasby is innocent, do you
 5 have the fortitude to stand up against the rest of them?
 6 MS. IBE: Yes, sir.
 7 MR. SCISCENTO: If there was a heve of 11
 8 people who are challenging you, do you promise to stand up
 9 against them; if you believe, either way, innocent or
 10 guilty, do you have the fortitude to stand up against the
 11 11?
 12 MS. IBE: Yes, sir.
 13 MR. SCISCENTO: And you will make that
 14 promise to this Court?
 15 MS. IBE: Yes, sir.
 16 MR. SCISCENTO: You will make that promise
 17 to me?
 18 MS. IBE: Yes, sir.
 19 MR. SCISCENTO: We'll pass for cause, Your
 20 Honor.
 21 THE COURT: Thank you. Okay. Let's --
 22 we'll go next to Mr. Sprouse.
 23 Good afternoon again.
 24 Mr. Sprouse, do you know of any

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1 reason why you couldn't be a completely fair and impartial
2 juror if selected to serve in this case?

3 MR. SPROUSE: No, sir.

4 THE COURT: Can you wait in forming your
5 opinion, as to the guilt or innocence of the defendant,
6 until all the evidence has been heard?

7 MR. SPROUSE: Yes, sir.

8 THE COURT: Can you -- have you or anyone
9 close to you, such as a family member or friend, ever been
10 arrested for a crime?

11 MR. SPROUSE: Yes.

12 THE COURT: Who was that?

13 MR. SPROUSE: My son.

14 THE COURT: What was he arrested for?

15 MR. SPROUSE: Uh, theft.

16 THE COURT: Okay. And what was the
17 disposition of that case?

18 MR. SPROUSE: Well, he was brought in front
19 of a judge here in Las Vegas; was found guilty. The
20 circumstances, he was working for someone and they fired
21 him; and he had pawned some equipment, and before he could
22 recover the pawned equipment, they caught him stealing it
23 after -- the pawn slip was actually in his vehicle. That's
24 how they found out he pawned it.

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1 bear any grudges against the District Attorney's Office for
2 prosecuting the case?

3 MR. SPROUSE: No.

4 THE COURT: How about the judge who heard
5 the case?

6 MR. SPROUSE: Possibly, because there was
7 circumstances that was brought up from the past that should
8 not even have been in that particular case.

9 THE COURT: Okay. Now, in this case, Mr.
10 Sciscento and Mr. Santacrose are representing Mr. Nasby.

11 You don't know either one of
12 those gentlemen, do you?

13 MR. SPROUSE: No, sir.

14 THE COURT: Okay. So the fact that you were
15 upset with the -- with the attorneys that represented your
16 son, you wouldn't hold that against either Mr. Sciscento or
17 Mr. Santacrose or Mr. Nasby, would you?

18 MR. SPROUSE: No.

19 THE COURT: So they're entitled to have a
20 fair trial and present their cases as they see it to this
21 jury then?

22 MR. SPROUSE: Yes.

23 THE COURT: Okay. Have you or anyone close
24 to you, such as a family member or friend, ever been the

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1 And they brought him to court
2 here and you guys found him guilty; and so he's on probation
3 now, three year probation.

4 THE COURT: Okay. Well, let me ask you
5 this: Is there anything about your son being involved with
6 the criminal justice system which in any way affects your
7 ability to be fair and impartial to both the State of
8 Nevada, the District Attorney's Office, and the defendant in
9 this case?

10 MR. SPROUSE: Well, possibly, because I
11 thought he got a raw deal. He --

12 THE COURT: Okay.

13 MR. SPROUSE: He didn't have the money and
14 the Court appointed an attorney that was given to him. He
15 went through four before he actually appeared in court,
16 almost a year and a half after charges had been brought
17 against him.

18 THE COURT: Okay. You say he got a raw
19 deal.

20 Who do you feel gave him the
21 raw deal?

22 MR. SPROUSE: I think it was his appointed
23 lawyer that did it.

24 THE COURT: Okay. How about the -- do you

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1 victim of a crime?

2 MR. SPROUSE: Many years ago, we had a
3 breaking and entering in our home.

4 THE COURT: Did they catch the people
5 responsible?

6 MR. SPROUSE: No.

7 THE COURT: Is there anything about that
8 experience, being a victim of a crime, that you feel would
9 be -- affect your ability to be fair and impartial to both
10 the State and the defense in this case?

11 MR. SPROUSE: No.

12 THE COURT: Okay. Can you base your verdict
13 solely on the evidence brought out at the trial and the law
14 that applies, as stated in my instructions to you, without
15 fear of criticism or popular opinion?

16 MR. SPROUSE: Yes.

17 THE COURT: Have you ever served as a juror
18 before?

19 MR. SPROUSE: No, sir.

20 THE COURT: If you were a party to this
21 case, meaning sitting where Mr. Counou is representing the
22 State or sitting where Mr. Nasby is sitting, would you be
23 comfortable with 14 jurors just like yourself?

24 MR. SPROUSE: Yes.

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THE COURT: Thank you.

Mr. Coumou.

MR. COUMOU: Thank you, Judge.

Mr. -- Sprouse?

MR. SPROUSE: Sprouse.

MR. COUMOU: Sprouse.

I just want to make sure that you will be fair in this matter to my -- my witnesses, my case in chief, and then promise me also to be fair to the defendant.

Can you do that in this case?

MR. SPROUSE: I think so.

MR. COUMOU: Okay. And if -- if -- if you look back on what happened to your son, you indicated that you felt like he had a raw deal.

Can -- will that keep on coming back in your mind, that you feel like the criminal justice system let him down; and would that then hinder you in trying to be fair and impartial and paying attention to this case?

MR. SPROUSE: No. I think I could give you a hundred percent of my attention towards the case. And what happened to him has already happened, and there is nothing else I can do about it. It's just there and nothing

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Mr. Sciscento.

MR. SCISCENTO: Mr. Sprouse --

MR. SPROUSE: Yes.

MR. SCISCENTO: -- If I'm pronouncing that correct.

Maybe it's no. It seems I'm getting a little -- there is some tension that you have, and I hope it's not geared towards defense attorneys because of this prior problem you had with your son and your son's prior problem.

I want to make sure the problems that your son had, with his court appointed attorneys, that's not going to be -- that's not going to affect your judgment in this case.

MR. SPROUSE: No, I don't think so.

MR. SCISCENTO: Okay. There is a case -- you had mentioned your son's case took about a year and a half to go to trial; is that correct?

MR. SPROUSE: Close to that, yes.

MR. SCISCENTO: Did you know about the discovery or the investigation that the police did in that case?

MR. SPROUSE: No. Actually, we weren't informed of anything. They just kept postponing it and

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to do about it.

MR. COUMOU: And you said you harbor no ill feelings towards the prosecutors, the District Attorney's Office, who may have brought these charges on him?

MR. SPROUSE: No.

MR. COUMOU: It wasn't -- it wasn't I, was it, as far as prosecutor? I just wanted --

MR. SPROUSE: It was somebody in your office, but it wasn't you.

MR. COUMOU: But you don't recognize me, I take it?

MR. SPROUSE: No.

MR. COUMOU: Okay. Good.

One other thing, sir: If there is a chance that this case ends up in a guilty verdict of first degree murder, can you sit in judgment of this defendant and either -- impose a sentence that the Court would give to you -- could you do that?

MR. SPROUSE: Yes.

MR. COUMOU: -- your options of sentencing?

MR. SPROUSE: Yes.

MR. COUMOU: I'll pass for cause then, Judge.

THE COURT: Thank you.

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postponing it and --

MR. SCISCENTO: Do you know if they did, that being the police, any investigation in the case?

MR. SPROUSE: No. They said they did and the items that he was charged with taking, one of the items they never proved, couldn't locate it; and the other two, he admitted he done it and he had the pawn slips for it.

MR. SCISCENTO: Okay.

MR. SPROUSE: And he got charged for everything.

MR. SCISCENTO: And I don't want to go deep into that.

Now, his defense attorneys -- and I will not ask you the names -- do you feel that they didn't investigate enough?

MR. SPROUSE: Yeah, I feel they didn't do the correct job on his behalf, sure.

MR. SCISCENTO: Okay. So there were lingering questions left that you had?

MR. SPROUSE: Yeah.

MR. SCISCENTO: Okay. You are not going to hold that against anybody in this courtroom, about those --

MR. SPROUSE: No.

MR. SCISCENTO: Okay. You said that you

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1 were a victim of a crime; is that correct?

2 MR. SPROUSE: Yes. I had a breaking and
3 entering in my home.

4 MR. SCISCENTO: Was anybody -- I may have
5 missed this: Was anybody ever found --

6 MR. SPROUSE: No.

7 MR. SCISCENTO: -- Liable for that?
8 Did the police investigate that
9 case?

10 MR. SPROUSE: They say they did.

11 MR. SCISCENTO: And how do you think the
12 investigation went?

13 MR. SPROUSE: Pretty sour; but they showed
14 up and took a statement, and I -- and we told them what was
15 taken and that was the last I heard from them.

16 MR. SCISCENTO: And that was it?

17 MR. SPROUSE: That was it.

18 MR. SCISCENTO: When we come in here as jury
19 members, we're asked to use your common -- common, every day
20 experiences and common sense, basically.

21 And as a juror, if you are
22 selected, you are going to be asked to use your common sense
23 and every day knowledge that you acquire throughout your
24 life.

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1 got the feeling that you are a person that will do that.

2 Are you?

3 MR. SPROUSE: Yes.

4 MR. SCISCENTO: It's not a bad answer.
5 That's what I'm looking for.

6 I just want to make sure that
7 you will sit there and you will go through everything. I
8 don't want somebody who will just join the wave and plead
9 guilty or not guilty. I want somebody to deliberate.

10 And you promise to do that?

11 MR. SPROUSE: Yes, I will listen to the
12 case.

13 MR. SCISCENTO: Okay. I appreciate that.
14 Thank you.

15 I will pass for cause, Your
16 Honor.

17 THE COURT: Okay. Thank you very much.

18 Okay. We'll go next to Juror

19 Number 3, Miss Vetter.

20 Good afternoon.

21 MS. VETTER: Good afternoon.

22 THE COURT: Miss Vetter, do you know of any
23 reason why you couldn't be a completely fair and impartial
24 juror if selected to serve in this case?

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1 Now, based on what you've told
2 me already; that is, that you feel the investigation was
3 sour, or that your son's case was not investigated properly,
4 would you be able to put those biases aside or those
5 thoughts aside when you deliberate on this case?

6 MR. SPROUSE: I think so. I'll concentrate
7 on what's going on in here.

8 MR. SCISCENTO: Okay. Would you want to
9 know more of the case -- if we don't present any evidence,
10 that being the defense, if the defense doesn't present any
11 evidence, would you want to know more about it?

12 MR. SPROUSE: Sure. I would like to know
13 why the individual is here and why I'm here.

14 MR. SCISCENTO: Would you be willing to
15 inquire as to all those questions when you are in the jury
16 deliberation room?

17 MR. SPROUSE: Yes.

18 MR. SCISCENTO: What I'm trying to get at
19 is: I think a proper jury member is somebody -- and the
20 rules about this is: You hear the evidence and you then go
21 back and deliberate, not just vote to find out guilty or not
22 guilty, deliberate.

23 Deliberating means that you go
24 through all the evidence that was presented in court. And I

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1 MS. VETTER: No.

2 THE COURT: Can you wait in forming your
3 opinion, as to the guilt or innocence of the defendant,
4 until all the evidence has been heard?

5 MS. VETTER: Yes.

6 THE COURT: Have you or anyone close to you,
7 such as a family member or friend, ever been arrested for a
8 crime?

9 MS. VETTER: Yes.

10 THE COURT: Could you tell me about that,
11 please?

12 MS. VETTER: My son was arrested for drugs.

13 THE COURT: Drugs? Was that here in Clark
14 County?

15 MS. VETTER: No. It was in Portland,
16 Oregon.

17 THE COURT: Okay. And what happened to your
18 son's case?

19 MS. VETTER: He went to jail, prison.

20 THE COURT: Okay. Is there anything about
21 that experience your son had with the criminal justice
22 system, which you feel would affect your ability to be both
23 fair and impartial to the State of Nevada and to the
24 defendant in this case?

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1 MS. VETTER: No.
 2 THE COURT: Anybody also in the family been
 3 arrested for a crime?
 4 MS. VETTER: Nieces and nephews.
 5 THE COURT: Okay. Just give me idea of what
 6 types of crimes.
 7 MS. VETTER: Drugs.
 8 THE COURT: Drug?
 9 MS. VETTER: Yes.
 10 THE COURT: So it looks like they come into
 11 some drugs and -- your family then like that.
 12 So, again, do you harbor any
 13 animosity towards law enforcement because they prosecuted or
 14 arrested your son or your nieces and nephews?
 15 MS. VETTER: No.
 16 THE COURT: Have you or anyone close to you,
 17 such as a family member or friend, ever been the victim of a
 18 crime?
 19 MS. VETTER: No.
 20 THE COURT: Excuse me.
 21 Can you base your verdict
 22 solely on the evidence brought out at the trial and the law
 23 that apply, as stated in my instructions to you, without
 24 fear of criticism or popular opinion?

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1 different.
 2 The State has the burden of
 3 proving -- of proving a defendant's guilt beyond a
 4 reasonable doubt; and the defendant is considered innocent
 5 and remains innocent unless the State meets that burden of
 6 proving each of the essential elements of the charges beyond
 7 a reasonable doubt.
 8 So you understand the
 9 difference in the burden of proof between the two types of
 10 cases?
 11 MS. VETTER: Yes.
 12 THE COURT: Okay. Is there anything about
 13 the experiences you had on jury duty which you believe would
 14 affect your ability to sit as a fair and impartial juror in
 15 this case?
 16 MS. VETTER: No.
 17 THE COURT: If you were a party to this
 18 case, would you be comfortable with 14 jurors just like
 19 yourself?
 20 MS. VETTER: Yes.
 21 THE COURT: Thank you.
 22 Mr. COUNOU.
 23 MR. COUNOU: Thank you.
 24 Hi, Miss Vetter.

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1 MS. VETTER: I believe so.
 2 THE COURT: Have you ever served as a juror
 3 before?
 4 MS. VETTER: Yes.
 5 THE COURT: On how many occasions?
 6 MS. VETTER: Twice.
 7 THE COURT: Twice. Okay. Were they civil
 8 or criminal cases?
 9 MS. VETTER: One each.
 10 THE COURT: Good. Well, that's good.
 11 You've had a little bit of experience with both.
 12 Let me ask you this: Were you
 13 the jury foreperson on either one of those juries?
 14 MS. VETTER: No.
 15 THE COURT: Did your juries reach
 16 verdicts -- without telling us what the verdicts were, did
 17 they reach verdicts in those cases?
 18 MS. VETTER: Yes, they did.
 19 THE COURT: And, again, as you probably
 20 remember from the civil and criminal case, in a civil case,
 21 the plaintiff is the person that brings an action, in a
 22 civil case, and the plaintiff has the burden of proof of
 23 proving his or her case by what we call a preponderance of
 24 the evidence; where in a criminal case, it's a little bit

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1 MS. VETTER: Hi.
 2 MR. COUNOU: Just going back to that prior
 3 jury experience, right now, how -- how much time has passed
 4 since you did that?
 5 MS. VETTER: Two years.
 6 MR. COUNOU: Two years ago?
 7 And was that here in Clark
 8 County?
 9 MS. VETTER: Yes, it was.
 10 MR. COUNOU: And if you look back now,
 11 without -- and I don't want to know what the verdict is, but
 12 do you kind of feel like, yeah, we did the right thing there
 13 or we came with the right decision?
 14 MS. VETTER: I do.
 15 MR. COUNOU: Okay. Now, your son, you said
 16 that he had some problems in Oregon?
 17 MS. VETTER: Right.
 18 MR. COUNOU: Correct?
 19 MS. VETTER: Right.
 20 MR. COUNOU: Do you harbor any feelings as
 21 to how he was treated through the criminal justice system?
 22 MS. VETTER: None.
 23 MR. COUNOU: None?
 24 Do you think he was treated

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1 fairly?

2 MS. VETTER: Absolutely.

3 MR. COUNOU: And so you don't harbor any ill
4 feeling towards the prosecuting agency, whether in Oregon,
5 me or --

6 MS. VETTER: No. I feel they probably saved
7 his life.

8 MR. COUNOU: Okay. That's good to know
9 then.

10 How about you, yourself; could
11 you tell me a little bit about what line of work you are in?

12 MS. VETTER: I work for the Salvation Army
13 adult day care center, where we take care of the frail,
14 elderly and the handicapped adults.

15 MR. COUNOU: How long have you been doing
16 that?

17 MS. VETTER: Seven years.

18 MR. COUNOU: And your husband, what does he
19 do?

20 MS. VETTER: He's retired Air Force;
21 currently working for the Convention Authority.

22 MR. COUNOU: What did he do in the Air
23 Force?

24 MS. VETTER: He was a mechanic.

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1 Can you make that promise?

2 MS. VETTER: Yes.

3 MR. COUNOU: Okay. Thank you.

4 Pass for cause, Judge.

5 THE COURT: Mr. Santacroce.

6 MR. SANTACROCE: Good afternoon, Miss
7 Vetter. How are you?

8 MS. VETTER: I'm fine. Thank you.

9 MR. SANTACROCE: In that prior experience
10 with the criminal justice system, was there anything in that
11 experience that you had that was unpleasant to you or might
12 cause you problems in this particular case?

13 MS. VETTER: I don't think so.

14 MR. SANTACROCE: We expect that, during this
15 trial, there is going to be some scientific evidence
16 presented in this case.

17 Do you think that just because
18 the State puts on some scientific evidence that that
19 evidence, by and of itself, is persuasive to you?

20 MS. VETTER: I believe so.

21 MR. SANTACROCE: Now, you are a -- worked at
22 the Salvation Army for seven years?

23 MS. VETTER: Yes.

24 MR. SANTACROCE: And in your occupation at

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1 MR. COUNOU: Okay. And now he works for the
2 Convention Authority here?

3 MS. VETTER: Yes.

4 MR. COUNOU: And how many years did he put
5 it with the Air Force before he retired?

6 MS. VETTER: Twenty-one.

7 MR. COUNOU: Besides your son, do you have
8 any other children?

9 MS. VETTER: I have a grown daughter in
10 Washington.

11 MR. COUNOU: Washington state?

12 MS. VETTER: State.

13 MR. COUNOU: And what does she do?

14 MS. VETTER: She works in a pet store.

15 MR. COUNOU: There may be a chance -- should
16 you be picked in this jury, and there is a -- a guilty
17 verdict for first degree, you may be asked to determine the
18 punishment of this young man right there. (Indicating)

19 Could you do that in this case?

20 MS. VETTER: I believe so.

21 MR. COUNOU: Okay. And -- and all what the
22 State would like is for you to be fair and impartial and not
23 make up your mind until you hear everything that will be
24 presented from this witness -- from that witness seat.

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1 the Salvation Army, what are your particular duties?

2 MS. VETTER: Right now, I'm the secretary,
3 so I do all the billing and interviewing clients.

4 MR. SANTACROCE: Let me just go back again
5 to your prior jury experience: Was the last case you had a
6 criminal or civil trial?

7 MS. VETTER: Criminal.

8 MR. SANTACROCE: Criminal.

9 After that trial, were you
10 approached by anyone from the District Attorney's Office or
11 the defense who asked you about that trial?

12 MS. VETTER: No.

13 MR. SANTACROCE: Thank you, Miss Vetter.

14 I pass for cause.

15 THE COURT: Thank you.

16 Okay. We'll go next to Juror
17 Number 4 -- let's see -- Miss Dominguez.

18 Good afternoon.

19 MS. DOMINGUEZ: Good afternoon.

20 THE COURT: Miss Dominguez, do you know of
21 any reason why you couldn't be a completely fair and
22 impartial juror if selected to serve in this case?

23 MS. DOMINGUEZ: No.

24 THE COURT: Okay. Can you wait in forming

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1 your opinion, as to the guilt or innocence of the defendant,
2 until all the evidence has been heard?

3 MS. DOMINGUEZ: Yes.

4 THE COURT: Have you or anyone close to you,
5 such as a family member or friend, ever been arrested for a
6 crime?

7 MS. DOMINGUEZ: No.

8 THE COURT: Have you or anyone close to you,
9 such as a family member or friend, ever been the victim of a
10 crime?

11 MS. DOMINGUEZ: No.

12 THE COURT: Have you -- excuse me,

13 Can you base your verdict
14 solely on the evidence brought out at the trial and the law
15 that applies, as stated in my instructions to you, without
16 fear of criticism or popular opinion?

17 MS. DOMINGUEZ: Yes.

18 THE COURT: Have you ever served as a juror
19 before?

20 MS. DOMINGUEZ: Yes, many, many years ago;
21 maybe 15, 18 years ago in California.

22 THE COURT: Okay. Was that a civil or
23 criminal case?

24 MS. DOMINGUEZ: Civil.

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1 doing that kind of work?

2 MS. DOMINGUEZ: Ah, about 18, 20 years.

3 MR. COUNOU: Always with Bank of America?

4 MS. DOMINGUEZ: Bank of America in
5 California; transferred to Nevada about nine years ago.

6 MR. COUNOU: Did you come here because of
7 the job transfer or did you decide to move here?

8 MS. DOMINGUEZ: No. Ah, boyfriend
9 relationship.

10 MR. COUNOU: Okay. Was it a good move?

11 MS. DOMINGUEZ: Well, we -- we still live
12 together.

13 MR. COUNOU: I won't go further then.

14 Now about what brought you in
15 to that line of work?

16 MS. DOMINGUEZ: I originally started as a
17 bank teller and made my way up.

18 MR. COUNOU: And so you actually were born
19 and raised then in California; is that --

20 MS. DOMINGUEZ: Los Angeles, yes.

21 MR. COUNOU: Do you ever talk to your
22 brother about work -- cases that he works?

23 MS. DOMINGUEZ: My brother-in-law.

24 MR. COUNOU: Oh, your brother-in-law?

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1 THE COURT: Without telling us what the
2 verdict was, did your jury reach a verdict?

3 MS. DOMINGUEZ: It was settled before we got
4 to the --

5 THE COURT: Okay. So you didn't really get
6 a chance to deliberate and all?

7 MS. DOMINGUEZ: No.

8 THE COURT: Is there anything about that
9 experience you had on jury duty which you feel would affect
10 your ability to be fair and impartial to both sides in this
11 case?

12 MS. DOMINGUEZ: No.

13 THE COURT: Okay. If you were a party to
14 this case, would you be comfortable with 14 jurors just like
15 yourself?

16 MS. DOMINGUEZ: Yes.

17 THE COURT: Thank you.

18 Mr. Counou.

19 MR. COUNOU: Thank you.

20 Miss Dominguez, could you tell
21 me a little bit what you do as far as line of work goes?

22 MS. DOMINGUEZ: I work for Bank of America,
23 commercial and industrial division.

24 MR. COUNOU: And how long have you been

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1 MS. DOMINGUEZ: No, not really.

2 MR. COUNOU: Do you like your
3 brother-in-law?

4 MS. DOMINGUEZ: Yes.

5 MR. COUNOU: Okay. And in this particular
6 case, Miss Dominguez, the charge is murder, the main charge.
7 There is conspiracy to commit murder and then murder.

8 Does that charge itself harbor
9 any feelings inside you that you may wonder yourself as the
10 trial goes on that you don't know if you could be fair and
11 impartial in this case?

12 MS. DOMINGUEZ: No.

13 MR. COUNOU: Okay. What about the
14 possibility if -- you may be asked to make a determination,
15 if there is a guilty verdict of first degree, to be able to
16 sit in judgment and impose penalty on this defendant.

17 Could you be able to do that
18 and follow all the instructions as they would be instructed
19 to you by the Court?

20 MS. DOMINGUEZ: Yes.

21 MR. COUNOU: Okay. Judge, I'll pass for
22 cause.

23 THE COURT: Mr. Santacrose.

24 MR. SANTACROCE: Thank you.

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1 Good afternoon, Miss Dominguez.
 2 MS. DOMINGUEZ: Good afternoon.
 3 MR. SANTACROCE: Do you have any
 4 preconceived ideas that just because Mr. Nasby sits here
 5 today that he must be guilty if he's here?
 6 MS. DOMINGUEZ: No.
 7 MR. SANTACROCE: Do you think that you would
 8 be able to wait until all the evidence was presented to you
 9 before you made a decision?
 10 MS. DOMINGUEZ: Yes.
 11 MR. SANTACROCE: And you understand that the
 12 State is going to present evidence first, and then the
 13 defense may or may not put on evidence.
 14 Would you hold that against Mr.
 15 Nasby, if the defense didn't put on any evidence whatsoever,
 16 if the State did not prove its case beyond a reasonable
 17 doubt?
 18 MS. DOMINGUEZ: No.
 19 MR. SANTACROCE: Now, with regard to your --
 20 your brother-in-law, are you close with your brother-in-law?
 21 Do you see -- see him very often?
 22 MS. DOMINGUEZ: Uh, I baptized his daughter.
 23 MR. SANTACROCE: That's pretty close.
 24 MS. DOMINGUEZ: Pretty close.

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1 selected to serve in this case?
 2 MS. FLIPPIN: No, sir.
 3 THE COURT: Can you wait in forming your
 4 opinion, as to the guilt or innocence of the defendant,
 5 until all the evidence has been heard?
 6 MS. FLIPPIN: Yes.
 7 THE COURT: Have you or anyone close to you,
 8 such as a family member or friend, ever been arrested for a
 9 crime?
 10 MS. FLIPPIN: No, sir.
 11 THE COURT: Have you or anyone close to you,
 12 such as a family member or friend, ever been the victim of a
 13 crime?
 14 MS. FLIPPIN: No.
 15 THE COURT: Can you base your verdict solely
 16 on the evidence brought out at the trial and the law that
 17 applies, as stated in my instructions to you, without fear
 18 of criticism or popular opinion?
 19 MS. FLIPPIN: Yes, sir.
 20 THE COURT: Have you ever served as a juror
 21 before?
 22 MS. FLIPPIN: Yes, I have.
 23 THE COURT: On how many occasions?
 24 MS. FLIPPIN: One.

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1 MR. SANTACROCE: And you have holidays with
 2 him and your sister?
 3 MS. DOMINGUEZ: Sometimes; uh-huh.
 4 MR. SANTACROCE: All right. And does he
 5 ever share, like, stories with you about police work and
 6 detective work?
 7 MS. DOMINGUEZ: No.
 8 MR. SANTACROCE: So he keeps his occupation
 9 pretty much to himself?
 10 MS. DOMINGUEZ: Yes.
 11 MR. SANTACROCE: And you have -- you
 12 wouldn't give any more weight to a police officer's
 13 testimony than you would to just an average person that gets
 14 up there, would you?
 15 MS. DOMINGUEZ: No.
 16 MR. SANTACROCE: Thank you.
 17 We'll pass for cause.
 18 THE COURT: Thank you.
 19 Okay. We'll go next to Miss
 20 Flippin.
 21 Good afternoon.
 22 MS. FLIPPIN: Good afternoon.
 23 THE COURT: Miss Flippin, do you know of any
 24 reason why you couldn't be a fair and impartial juror if

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1 THE COURT: Was it a civil or criminal case?
 2 MS. FLIPPIN: It was a criminal case.
 3 THE COURT: Okay. Was it here in Clark
 4 County?
 5 MS. FLIPPIN: Yes, it was.
 6 THE COURT: And without telling us what the
 7 verdict was, did your jury reach a verdict?
 8 MS. FLIPPIN: Yes, we did.
 9 THE COURT: Were you elected the foreperson
 10 of that jury?
 11 MS. FLIPPIN: No, I was not.
 12 THE COURT: Was there anything about that
 13 experience that you had on jury duty which you feel would
 14 affect your ability to be fair and impartial to both sides
 15 in this case?
 16 MS. FLIPPIN: No, sir.
 17 THE COURT: If you were a party to this
 18 case, would you be comfortable with 14 jurors just like
 19 yourself?
 20 MS. FLIPPIN: Yes, I would.
 21 THE COURT: Thank you.
 22 Mr. Counou.
 23 MR. COUNOU: Thank you.
 24 Miss Flippin, that experience

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1 that you had in the judicial system here in Clark County --

2 MS. FLIPPIN: Uh-huh.

3 MR. COUNOU: -- looking back now, do you
4 think you and your fellow jurors came to the right decision?

5 MS. FLIPPIN: Yes, I do.

6 MR. COUNOU: Okay. And, did the
7 experience -- do you feel like it was a good experience all
8 in all, looking back?

9 MS. FLIPPIN: Yes, I do.

10 MR. COUNOU: Now, it shows here that you are
11 retired; and also your spouse occupation listed as retired.

12 Could you please tell me
13 exactly what you did and what your husband did before
14 retirement?

15 MS. FLIPPIN: Yes. We were both real estate
16 agents. He was the broker. I was the salesman.

17 MR. COUNOU: You were bad wrap sales then?
18 So how long did you do that
19 here in Clark County?

20 MS. FLIPPIN: For 38 years.

21 MR. COUNOU: Prior to that, did you do
22 anything else through the 38 years? Did you move to Clark
23 County?

24 MS. FLIPPIN: Yes, I did, from Colorado.

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1 MS. FLIPPIN: I'm sorry?

2 MR. COUNOU: Can you -- can you sit as a
3 fair and impartial juror?

4 MS. FLIPPIN: Yes, I could.

5 MR. COUNOU: Okay. And can you make that
6 promise to the State that you will not only be fair to us,
7 but, certainly, toward the defendant and not make up your
8 mind until you hear everything that will be presented from
9 that witness stand?

10 MS. FLIPPIN: Yes, sir.

11 MR. COUNOU: And finally, should there come
12 a -- with a particular verdict, that may cause you to sit in
13 judgment and render punishment.

14 Could you make that
15 determination?

16 MS. FLIPPIN: Yes, I could.

17 MR. COUNOU: Okay. Thank you.

18 Judge, I'll pass for cause.

19 THE COURT: Mr. Sciscento.

20 MR. SCISCENTO: Thank you.

21 Miss -- Flippin, is that it?

22 MS. FLIPPIN: Yes.

23 MR. SCISCENTO: Looking over at Mr. Masby
24 right now, do you have any ill will towards him?

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1 MR. COUNOU: Okay. And did your husband
2 also -- been the entire 38 years or --

3 MS. FLIPPIN: Well, no. I met him on a
4 vacation from Colorado. He was living in Las Vegas at the
5 time; and then we married and had a family and settled here.

6 MR. COUNOU: So he's the culprit, why you're
7 here?

8 MS. FLIPPIN: He's the culprit.

9 MR. COUNOU: Well, you said a family.

10 Do you have children then?

11 MS. FLIPPIN: Yes, I do. I have two
12 daughters.

13 MR. COUNOU: And what do they do?

14 MS. FLIPPIN: One daughter is with casinos
15 and the other daughter is an engineer.

16 MR. COUNOU: Okay. Working locally here?

17 MS. FLIPPIN: Yes, she is.

18 MR. COUNOU: Okay. Now, I've asked several
19 of the jurors previous to you: The charge is murder --

20 MS. FLIPPIN: Yes.

21 MR. COUNOU: -- the main charge is murder.
22 Does that charge in itself
23 harbor any feelings to you as to being able to sit as a fair
24 and impartial juror?

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1 MS. FLIPPIN: No, sir.

2 MR. SCISCENTO: You are not biased against
3 him?

4 MS. FLIPPIN: No.

5 MR. SCISCENTO: Not because he's black?

6 MS. FLIPPIN: No.

7 MR. SCISCENTO: Would you tell us if you
8 were?

9 MS. FLIPPIN: Yes, I would.

10 MR. SCISCENTO: You'd promise that?

11 MS. FLIPPIN: I promise.

12 MR. SCISCENTO: Okay. I know a lot of
13 people want to be liked and being prejudiced is not
14 something that is admirable.

15 I'm not saying that you are.
16 I'm just saying that a lot of people don't want to admit it;
17 and so in the jury deliberation room, the biases may come
18 out.

19 Are you strong enough to stand
20 up against that?

21 MS. FLIPPIN: Yes.

22 MR. SCISCENTO: Mr. Counou, the District
23 Attorney over here, has mentioned to almost every jury
24 member: This is a murder case and it's a serious crime.

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1 Does that have any feelings --
2 affect any feelings for you as to whether or not you can
3 deliberate properly?

4 MS. FLIPPIN: No.

5 MR. SCISCENTO: Okay. Do you think -- just
6 because it's a murder and Mr. Nasby is sitting over there,
7 do you think he's guilty?

8 MS. FLIPPIN: No.

9 MR. SCISCENTO: What does the defense have
10 to do to prove to you he's not guilty?

11 MS. FLIPPIN: Well --

12 MR. COUNOU: Judge, I would object to that
13 question. That's asking a potential juror a point of law.

14 THE COURT: Okay. Sustained. Sustained as
15 phrased.

16 Well, me'ani, let me ask you
17 this --

18 MS. FLIPPIN: Yes.

19 THE COURT: Do you understand that the
20 defense is not obligated to present any evidence here if
21 they feel the State hasn't met their burden of establishing
22 the defendant's guilt beyond a reasonable doubt?

23 MS. FLIPPIN: I do.

24 THE COURT: And do you feel that if the

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1 MS. FLIPPIN: Well, we asked them during
2 deliberations.

3 MR. SCISCENTO: And in the deliberations,
4 you probably could have the same -- do you promise to do the
5 same deliberation that you did in that case --

6 MS. FLIPPIN: Yes, I do.

7 MR. SCISCENTO: -- in this case?

8 MS. FLIPPIN: Yes, I do.

9 MR. SCISCENTO: And that wouldn't bother you
10 having to go through all the evidence, no matter how much it
11 is?

12 MS. FLIPPIN: No, it would not.

13 MR. SCISCENTO: Mr. Santacrose mentioned
14 earlier that there may be some scientific evidence that's
15 being put out.

16 MS. FLIPPIN: Right.

17 MR. SCISCENTO: Would you be swayed either
18 way by an expert witness getting up here and testifying?

19 MS. FLIPPIN: No.

20 MR. SCISCENTO: Okay. Would you promise to
21 use common sense and every day knowledge --

22 MS. FLIPPIN: Absolutely.

23 MR. SCISCENTO: -- on all your
24 deliberations?

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1 defense elects not to present any evidence, you won't hold
2 that against them?

3 MS. FLIPPIN: No, I won't.

4 THE COURT: Mr. Sciscento.

5 MR. SCISCENTO: Okay. Thank you.

6 The prior jury you did, you
7 said was a criminal matter, did you deliberate for -- how
8 long did you deliberate for in that case?

9 MS. FLIPPIN: Oh, it was a short case, and I
10 think it was all settled in one day.

11 MR. SCISCENTO: Do you think you took enough
12 time to go over that?

13 MS. FLIPPIN: Yes, I do.

14 MR. SCISCENTO: Okay. There were no
15 lingering questions that you had?

16 MS. FLIPPIN: No.

17 MR. SCISCENTO: Okay. No questions you
18 would like to have asked anybody?

19 MS. FLIPPIN: We asked several.

20 MR. SCISCENTO: Of the jury -- of the
21 attorneys?

22 MS. FLIPPIN: Right.

23 MR. SCISCENTO: And you asked them after the
24 deliberations?

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1 MS. FLIPPIN: Absolutely.

2 MR. SCISCENTO: Okay. How old are your two
3 daughters, generally, the --

4 MS. FLIPPIN: They are 34 and 36.

5 MR. SCISCENTO: Okay. How long did they
6 reside with you? They don't still reside with you, do they?

7 MS. FLIPPIN: No.

8 MR. SCISCENTO: How old were they before
9 they left the home?

10 MS. FLIPPIN: Well, they left when they went
11 off to college.

12 MR. SCISCENTO: Okay. So about 18, 19?

13 MS. FLIPPIN: Right.

14 MR. SCISCENTO: Okay. Are you in close
15 contact with them?

16 MS. FLIPPIN: Yes.

17 MR. SCISCENTO: Okay. Did they ever have
18 any friends that they hung around with that you didn't like?

19 MS. FLIPPIN: Oh, yes.

20 MR. SCISCENTO: They did?

21 MS. FLIPPIN: Uh-huh.

22 MR. SCISCENTO: I think they all do.

23 Were you always concerned for
24 your daughters' safety when you were around these people --

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1 MS. FLIPPIN: Yes.
 2 MR. SCISCENTO: -- these friends?
 3 MS. FLIPPIN: Yes.
 4 MR. SCISCENTO: And there are some friends
 5 that can lead you astray?
 6 MS. FLIPPIN: Yes.
 7 MR. SCISCENTO: There are some friends that
 8 can do bad things and get you in trouble; would you agree
 9 with that?
 10 MS. FLIPPIN: Yes.
 11 MR. SCISCENTO: And in today's world,
 12 today's -- society today, that's something that you really
 13 need to be worried about; would you agree with that?
 14 MS. FLIPPIN: Yes.
 15 MR. SCISCENTO: Okay. And would you also
 16 agree that a mother needs to be wary of where her children
 17 are at all times?
 18 MS. FLIPPIN: Yes, she would like to know
 19 that.
 20 MR. SCISCENTO: Okay. Would you think it's
 21 fair if your daughter's friends got in trouble, your
 22 daughter should also get in trouble if she didn't do
 23 anything?
 24 MS. FLIPPIN: Well, I wasn't faced with that

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1 such as a family member or friend, ever been arrested for a
 2 crime?
 3 MR. KOSTUSAK: No.
 4 THE COURT: Have you or anyone close to you,
 5 such as a family member or friend, ever been the victim of a
 6 crime?
 7 MR. KOSTUSAK: Yes.
 8 THE COURT: Could you tell me about that,
 9 please.
 10 MR. KOSTUSAK: One case was Barbara Turner
 11 here in town, about two or three years ago, was killed. Her
 12 body was found out in the desert.
 13 THE COURT: Okay.
 14 MR. KOSTUSAK: I was very close friends with
 15 her son.
 16 THE COURT: I see.
 17 And the person -- was the
 18 person responsible prosecuted for that?
 19 MR. KOSTUSAK: Yes.
 20 THE COURT: Okay. Was there anything about
 21 that experience that you feel would affect your ability to
 22 be both fair and impartial to both the State and the
 23 defendant in this case?
 24 MR. KOSTUSAK: It's -- I -- I got to see how

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1 situation.
 2 MR. SCISCENTO: Okay. Well, let me ask you:
 3 Do you think everyone should be responsible for their own
 4 actions?
 5 MS. FLIPPIN: Yes.
 6 MR. SCISCENTO: Okay. And not try to blame
 7 somebody else?
 8 MS. FLIPPIN: No.
 9 MR. SCISCENTO: Okay. No further questions.
 10 Your Honor. We pass for cause.
 11 THE COURT: Thank you very much.
 12 Okay. We'll go next to Mr. --
 13 is it Kostusak? Is that correct?
 14 Mr. Kostusak, good afternoon.
 15 MR. KOSTUSAK: How are you doing?
 16 THE COURT: Do you know of any reason why
 17 you couldn't be a completely fair and impartial juror if
 18 selected to serve in this case?
 19 MR. KOSTUSAK: No.
 20 THE COURT: Can you wait in forming your
 21 opinion, as to the guilt or innocence of the defendant,
 22 until all the evidence has been heard?
 23 MR. KOSTUSAK: Yes.
 24 THE COURT: Have you or anyone close to you,

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1 things worked, firsthand; maybe questioned a couple things
 2 of the way detectives proceeded, but --
 3 THE COURT: Okay. Well, again, detectives
 4 will probably testify in this case, and you will hear
 5 questions from the attorneys.
 6 I'm also going to give the jury
 7 a chance to ask questions too during the course of this
 8 trial.
 9 So, again, do you feel, though,
 10 you could decide this case based upon the evidence presented
 11 in the courtroom here?
 12 MR. KOSTUSAK: For this one, yes.
 13 THE COURT: Okay. And you could be fair and
 14 impartial to both the State and to Mr. Nasby as well?
 15 MR. KOSTUSAK: Yes.
 16 THE COURT: Thank you.
 17 Can you base your verdict
 18 solely on the evidence brought out at the trial and the law
 19 that applies, as stated in my instructions to you, without
 20 fear of criticism or popular opinion?
 21 MR. KOSTUSAK: Yes.
 22 THE COURT: Have you ever served as a juror
 23 before?
 24 MR. KOSTUSAK: No.

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1 THE COURT: If you were a party to this
2 case, would you be comfortable with 14 jurors just like
3 yourself?
4 MR. KOSTUSAK: Yes.
5 THE COURT: I'm sorry?
6 MR. KOSTUSAK: Yes.
7 THE COURT: Thank you.
8 Mr. COUNOU.
9 MR. COUNOU: Thank you, Judge.
10 Mr. Kostusak, you said you
11 saw -- with what happened to your friend's mom, you saw how
12 the process worked.
13 Will you start thinking about
14 that while you are sitting here as a juror or will you be
15 able to put that aside?
16 MR. KOSTUSAK: I think I could put it aside.
17 MR. COUNOU: Okay. And what happened to
18 your friend's mom, the way you saw it, do you think it was
19 handled properly?
20 MR. KOSTUSAK: Um, in the end, yes.
21 MR. COUNOU: In the end?
22 Is it a case that went to a
23 jury trial, as far as you know?
24 MR. KOSTUSAK: Yes, it did.

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1 that?
2 MR. KOSTUSAK: About a year now.
3 MR. COUNOU: And prior to that, were you
4 employed?
5 MR. KOSTUSAK: Yes, at MGM.
6 MR. COUNOU: At where?
7 MR. KOSTUSAK: MGM.
8 MR. COUNOU: And doing what at the MGM?
9 MR. KOSTUSAK: Pit clerk.
10 MR. COUNOU: Okay. Did you obtain a school
11 degree that got you into the current job that you are in?
12 MR. KOSTUSAK: Yes, business degree.
13 MR. COUNOU: Business degree?
14 What -- what university?
15 MR. KOSTUSAK: Uh, Cal Poly, San Luis
16 Obispo.
17 MR. COUNOU: Okay. And you got your
18 bachelor's from there?
19 MR. KOSTUSAK: Yes.
20 MR. COUNOU: What brought you out here, sir?
21 MR. KOSTUSAK: The employment situation was
22 pretty bad in California when I graduated and Las Vegas had
23 a lot of job opportunities.
24 MR. COUNOU: Now, just out of curiosity,

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1 MR. COUNOU: Okay. And did you have
2 occasion to accompany your friend to the District Attorney's
3 Office to talk to -- to talk about the case?
4 MR. KOSTUSAK: I drove him there a couple of
5 times, but I did not go in with him.
6 MR. COUNOU: Okay. Now, did your friend
7 make mention of anything, whether or not he was happy with
8 the prosecuting agency, the police agency, one way or
9 another?
10 MR. KOSTUSAK: He was very unhappy with
11 them.
12 MR. COUNOU: Unhappy?
13 MR. KOSTUSAK: Yes.
14 MR. COUNOU: Did he mention -- don't mention
15 the name, but -- he didn't mention my name, by any chance,
16 did he?
17 MR. KOSTUSAK: No.
18 MR. COUNOU: Okay. Now, I want to ask you
19 also: Could you tell me a little bit about your profession?
20 It just says representative.
21 MR. KOSTUSAK: I'm a customer service
22 representative for Casino Data Systems. We install computer
23 software in casinos.
24 MR. COUNOU: How long have you been doing

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1 sir -- I don't want you to tell me where you live, but what
2 part of town do you live? I'm just trying to figure out
3 where the zip code is.
4 MR. KOSTUSAK: Spring Valley.
5 MR. COUNOU: Okay. And you've lived here
6 for six years, correct?
7 MR. KOSTUSAK: Yes.
8 MR. COUNOU: Now, I've asked to several
9 other jurors: The charge itself -- and keep in mind the
10 experience that you went through with your friend's -- the
11 tragedy.
12 Can you put that aside, sir? I
13 mean, can -- can -- what I'm asking you is: Will this case,
14 because it's a murder case, stir-up feelings, that you
15 suddenly are tuned out and not listening to the witnesses
16 because it's just bringing up these emotions that you may
17 have felt or went through back when you were involved with
18 your friend's family?
19 MR. KOSTUSAK: It could very well stir up
20 some emotions --
21 MR. COUNOU: Okay.
22 MR. KOSTUSAK: -- and cause me to distract.
23 MR. COUNOU: What -- would you say that you
24 will be fair and impartial or would you try to be fair and

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1 impartial?

2 MR. KOSTUSAK: Yes, I would.

3 MR. COUMOU: Okay. And can you make that
4 promise, to be fair and impartial?

5 MR. KOSTUSAK: Yes.

6 MR. COUMOU: Okay. And if -- if there is a
7 certain verdict in this case, if there is a verdict in this
8 case, could you be able to sit in judgment and impose
9 sentence on that man over there? (Indicating)

10 MR. KOSTUSAK: I would have some trouble
11 with that.

12 MR. COUMOU: Why is that?

13 MR. KOSTUSAK: I have no problem with
14 ascertaining whether or not the person is guilty or
15 innocent, but it's just a personal belief that it's none of
16 my business to determine what should happen to the person
17 because of their guilt or innocence.

18 MR. COUMOU: Okay. Now, if you feel that
19 way, is there a possibility that that would roll over into
20 the -- into the -- your determination, should you be picked
21 on this jury, as to the guilt or not guilt of that man right
22 there? (Indicating)

23 MR. KOSTUSAK: Putting it that way, it
24 possibly could.

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1 sorry -- it was a Barbara Turner?

2 MR. KOSTUSAK: Yes.

3 MR. SCISCENTO: -- If your feelings on that
4 would affect your ability to deliberate or to come up --
5 to -- to find guilt or innocence on Mr. Nasby.

6 What about that, the Barbara
7 Turner case, causes you to have problems with the
8 deliberating?

9 MR. KOSTUSAK: Oh, it's -- I don't know if
10 it's so much the case itself. It's just -- I've always had
11 problems in determining what would be a just punishment for
12 someone.

13 MR. SCISCENTO: Well, let's step away from
14 the punishment for a second and talk about the guilt, that
15 being that the State is going to present evidence and
16 witnesses, and the defense is going to cross-examine and may
17 present evidence and witnesses, as to whether or not Mr.
18 Nasby is guilty of murder.

19 The feelings you have regarding
20 the Barbara Turner case, will they affect your ability to
21 determine his guilt or innocence?

22 MR. KOSTUSAK: Possibly, they would.

23 MR. SCISCENTO: Okay. The feelings you have
24 about Barbara -- and you -- I'll just call it the Barbara

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1 MR. COUMOU: Okay. So now thinking about --
2 thinking about that, would it be safe to say then that you
3 would have to be -- it would be difficult for you to be able
4 to sit as a fair and impartial juror then in this case?

5 MR. KOSTUSAK: Defining it that way, I think
6 so.

7 MR. COUMOU: Judge, I may have to challenge
8 Mr. Kostusak for cause.

9 MR. SCISCENTO: May I attempt, Your Honor,
10 to at least rehabilitate him?

11 THE COURT: Okay. I'll reserve, Mr. Coumou.

12 MR. COUMOU: Okay.

13 THE COURT: I understand your objections
14 though, like that.

15 Okay. Go ahead, Mr. Sciscento.

16 MR. SCISCENTO: Mr. -- I'm going to have
17 trouble with this one -- Kostusak?

18 MR. KOSTUSAK: Kostusak.

19 MR. SCISCENTO: Ko -- Ko --

20 MR. KOSTUSAK: Kostusak.

21 MR. SCISCENTO: Kostusak; Kostusak.

22 Mr. Coumou asked you if your
23 feelings that you had about this murder case -- and I'm
24

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1 Turner case, would that prevent you from being able to weigh
2 the evidence?

3 MR. KOSTUSAK: I don't believe so.

4 MR. SCISCENTO: Okay. Would that prevent
5 you from listening to the witnesses up here?

6 MR. KOSTUSAK: No.

7 MR. SCISCENTO: If they showed you gruesome
8 pictures of a murder of a body, would you have problems
9 dealing with that emotionally?

10 MR. KOSTUSAK: The pictures would be a
11 problem.

12 MR. SCISCENTO: Okay. But would they do
13 that to such a degree that you would be unable to adequately
14 determine guilt or innocence?

15 MR. KOSTUSAK: No.

16 MR. SCISCENTO: Okay. Now, this other
17 problem that you had, what exactly is the problem that you
18 have about determining somebody's punishment?

19 MR. KOSTUSAK: It's -- it's mainly just a
20 personal thing. It's --

21 MR. SCISCENTO: Okay.

22 MR. KOSTUSAK: I don't feel comfortable with
23 determining somebody's punishment for something they have
24 done wrong.

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1 MR. SCISCENTO: Give me one second, Your
2 Honor.
3 If the law says -- well, the
4 first thing is you got to find the penalty phase -- guilt
5 phase; the second is the penalty phase.
6 If the law says you've
7 determined that he's guilty, you then must determine a set
8 of punishments, and it sets it forth for you, would you be
9 able to decide which punishment it is?
10 You understand this is not a
11 death penalty case; we're not asking you to have this man
12 killed?
13 MR. KOSTUSAK: Oh, yes.
14 MR. SCISCENTO: We're only asking you for
15 terms.
16 Would you be able to do that if
17 the law tells you the terms you must set forth?
18 MR. KOSTUSAK: I suppose if I had a specific
19 formula and I just applied the formula, I could probably
20 say: Well, that's what the formula says, so let's do this.
21 MR. SCISCENTO: So if there is a formula
22 that says it's this, this or this, if you find him guilty of
23 this, you must give this, this or this, could you do that?
24 MR. KOSTUSAK: I think I could.

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1 MR. KOSTUSAK: Yes.
2 MR. SCISCENTO: What did you study out
3 there?
4 MR. KOSTUSAK: Business administration.
5 MR. SCISCENTO: Okay. I used to -- they
6 have that big mountain up there with the letters in the
7 rocks, right?
8 MR. KOSTUSAK: Uh-huh; yes.
9 MR. SCISCENTO: Yes?
10 MR. KOSTUSAK: Sorry.
11 MR. SCISCENTO: But mostly that's a
12 poly-technical school?
13 MR. KOSTUSAK: Yes.
14 MR. SCISCENTO: Okay. Witnesses may get up
15 here who are expert witnesses, especially scientific
16 witnesses.
17 Would you give him more
18 credence or her more credence because she has or he has a
19 degree in science than somebody who doesn't have a degree in
20 science?
21 MR. KOSTUSAK: Not necessarily.
22 MR. SCISCENTO: Okay. Would you be able to
23 question -- in your mind, in what this person, this expert
24 witness says, would you be able to question it?

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1 MR. SCISCENTO: Okay. In other words, it's
2 pre-set already.
3 Could you do that?
4 MR. KOSTUSAK: Yes.
5 MR. SCISCENTO: Okay. I don't know if I've
6 rehabilitated him or not, Your Honor.
7 If I -- if Mr. Coumou wants
8 to --
9 THE COURT: Mr. Coumou, do you pass for
10 cause?
11 MR. COUMOU: I'll pass for cause then,
12 Judge.
13 THE COURT: Mr. Sciscento, anything else?
14
15 (Whereupon, a sotto voce at this time.)
16
17 MR. SCISCENTO: If I can, I'll get into some
18 personal matters, Judge.
19 Mr. Ko- --
20 MR. KOSTUSAK: Kostusak.
21 MR. SCISCENTO: -- Kostusak, you want to San
22 Luis Obispo?
23 MR. KOSTUSAK: Yes.
24 MR. SCISCENTO: That's a technical school?

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1 MR. KOSTUSAK: Yes.
2 MR. SCISCENTO: You wouldn't take it as
3 gospel whatever that expert witness says, would you?
4 MR. KOSTUSAK: No.
5 MR. SCISCENTO: Okay. Would you agree that
6 there are sometimes flaws in experiments?
7 MR. KOSTUSAK: Yes.
8 MR. SCISCENTO: Okay. In San Luis Obispo,
9 did you take a lot of technical -- technical classes and
10 science classes?
11 MR. KOSTUSAK: Yes.
12 MR. SCISCENTO: And that's a highly rated
13 school in California, am I correct --
14 MR. KOSTUSAK: Yes.
15 MR. SCISCENTO: -- for sciences?
16 Okay. With all that background
17 though, you wouldn't think a scientist was smarter than a
18 layperson?
19 MR. KOSTUSAK: They would have a little
20 better skills in their judgment and probably what they say
21 is going to be true, but not necessarily always.
22 MR. SCISCENTO: Okay.
23 MR. KOSTUSAK: Scientists do make mistakes.
24 MR. SCISCENTO: Scientists do make mistakes,

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1 yes.

2 We'll pass for cause, your

3 Honor.

4 THE COURT: Thank you.

5 Okay. We'll speak to one more

6 juror, and then we'll take our afternoon break, ladies and

7 gentlemen.

8 Okay. So we'll go ahead and

9 speak to Miss McNeal.

10 Again, good afternoon, Miss

11 McNeal.

12 Do you know of any reason why

13 you couldn't be a completely fair and impartial juror if

14 selected to serve in this case?

15 MS. McNEAL: No.

16 THE COURT: Can you wait in forming your

17 opinion, as to the guilt or innocence of the defendant,

18 until all the evidence has been heard?

19 MS. McNEAL: Yes.

20 THE COURT: Have you or anyone close to you,

21 such as a family member or friend, ever been arrested for a

22 crime?

23 MS. McNEAL: Yes.

24 THE COURT: Who was that?

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1 responsible?

2 MS. McNEAL: No.

3 THE COURT: Was that in Clark County, where

4 that --

5 MS. McNEAL: Yes.

6 THE COURT: Did you feel that the police did

7 what they could to find who was responsible?

8 MS. McNEAL: No.

9 THE COURT: Okay. Do you bear any animosity

10 towards the police or the District Attorney's Office based

11 upon experiences you've gone through involving your son and

12 your nephew?

13 MS. McNEAL: No.

14 THE COURT: Can you base your verdict solely

15 on the evidence brought out at the trial and the law that

16 applies, as stated in my instructions to you, without fear

17 of criticism or popular opinion?

18 MS. McNEAL: Yes.

19 THE COURT: Have you ever served on jury

20 duty before?

21 MS. McNEAL: Yes.

22 THE COURT: On how many occasions?

23 MS. McNEAL: Once.

24 THE COURT: And was that a civil or criminal

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1 MS. McNEAL: My son.

2 THE COURT: What was he arrested for?

3 MS. McNEAL: Theft.

4 THE COURT: I'm sorry. What was that?

5 MS. McNEAL: Theft.

6 THE COURT: Theft. And what was the

7 disposition of that case?

8 MS. McNEAL: He pled guilty to it.

9 THE COURT: Did he have to go to prison for

10 that?

11 MS. McNEAL: Yes, he did.

12 THE COURT: Okay. Is there anything about

13 that experience your son went through that you feel would

14 affect your ability to be fair and impartial to both the

15 District Attorney's Office and the defense attorneys in this

16 case?

17 MS. McNEAL: No.

18 THE COURT: Okay. Have you or anyone close

19 to you, such as a family member or friend, ever been the

20 victim of a crime?

21 MS. McNEAL: Yes.

22 THE COURT: What was that?

23 MS. McNEAL: My nephew was murdered.

24 THE COURT: Okay. Did they catch the person

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1 case?

2 MS. McNEAL: Criminal.

3 THE COURT: Without telling us what the

4 verdict was, did your jury reach a verdict?

5 MS. McNEAL: Yes.

6 THE COURT: And were you elected the

7 foreperson of that jury?

8 MS. McNEAL: No.

9 THE COURT: Is there anything about that

10 experience you had on criminal jury duty which you feel

11 would affect your ability to be fair and impartial to both

12 sides in this case?

13 MS. McNEAL: No.

14 THE COURT: Okay. If you were a party to

15 this case, would you be comfortable with 14 jurors just like

16 yourself?

17 MS. McNEAL: Yes.

18 THE COURT: Thank you.

19 MR. COUNCIL:

20 MR. COUNCIL: Thank you.

21 Miss McNeal, I'm going to pick

22 up on kind of what you told us here initially, when you were

23 sitting out here in the -- in the main seating area, is that

24 you -- you said you may have trouble if -- based on

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1 religious grounds, if it is a death penalty case --

2 MS. McNEAL: Yes.

3 MR. COUNOU: -- correct?

4 And just as the juror that was
5 asked previous to you, the question is: There may be a
6 point in this trial, may be a point in this trial, that you
7 were -- that you were to be asked to impose sentence, a
8 particular sentence guideline that the judge will instruct
9 you on.

10 And I want you now to be honest
11 and think about that right now; and can you sit in judgment
12 of that man right there? (Indicating)

13 MS. McNEAL: Based on the guidelines, yes.

14 MR. COUNOU: Okay. Could you explain that?

15 MS. McNEAL: Whatever the guidelines that
16 the judge sets forth for presenting the -- what the evidence
17 that was presented, only based on evidence that was
18 presented and without a shadow of a doubt, yes, I could.

19 MR. COUNOU: Okay. And why -- why is that
20 different than if the judge would also instruct you on the
21 death penalty?

22 MS. McNEAL: I feel that I don't have a
23 right to judge anyone. That's my personal feeling: That I
24 do not have the right to judge.

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1 convictions aside and be a fair person in my --

2 MR. COUNOU: I'm sorry?

3 MS. McNEAL: -- and I could be a fair person
4 in evaluation of it.

5 MR. COUNOU: Okay. You mentioned the
6 tragedy that happened to your nephew.

7 MS. McNEAL: Yes.

8 MR. COUNOU: And that was here in Clark
9 County?

10 MS. McNEAL: Yes.

11 MR. COUNOU: You mentioned that you don't
12 feel like the police did everything.

13 Could you explain that?

14 MS. McNEAL: Yes. Um, my nephew had been a
15 problem child. He had been sentenced; he had been put in a
16 boys' school in Elko; and he hung out with those -- with the
17 wrong kind of people at all times.

18 And I feel that when you've
19 been a problem in society, I really feel that the police
20 don't really do too much to defend you or to help you in any
21 way. You are just one more person out there that we can get
22 off the street and put away.

23 So, no, I never felt that, you
24 know, it was a problem --

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1 MR. COUNOU: What difference is that with
2 what you just told me originally, earlier, that you can make
3 a de- -- a judgment on somebody if the judge gives you that?

4 MS. McNEAL: I could still make the
5 judgment, but within my own self, I'm going to be thinking:
6 This is not right for me, you know.

7 I could follow the guidelines
8 as put before me, and I could hold the court pretty strong
9 with the rest of the jury members without being persuaded
10 one way or the other, but I personally feel that I don't
11 have the right to do that.

12 MR. COUNOU: Okay. And I'm not saying
13 there's anything wrong with that, Miss McNeal, but what I'm
14 concerned about is were you to be picked as a juror and sit
15 in judgment of this man, first determining guilt and not
16 guilt, and then possibly penalty, that we don't go through
17 the entire trial and then towards that moment of truth, that
18 these personal convictions are so strong that you feel you
19 can't go on with your deliberations.

20 Now, keeping -- keeping that
21 then in mind, do you feel that you can hold your personal
22 convictions aside and be a fair and impartial juror to both
23 sides?

24 MS. McNEAL: I could hold my personal

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1 MR. COUNOU: Okay. Did -- now, that -- that
2 personal feeling then, would that trouble you in this trial?

3 MS. McNEAL: No, it wouldn't trouble me in
4 this trial.

5 MR. COUNOU: You could be fair and impartial
6 and listen to all the witnesses --

7 MS. McNEAL: I would be fair and impartial
8 with all the witnesses.

9 MR. COUNOU: A final question: Could you
10 tell me about your occupation, please?

11 MS. McNEAL: I'm a permit specialist at the
12 Clark County Building Department.

13 MR. COUNOU: So you work for the County?

14 MS. McNEAL: Yes.

15 MR. COUNOU: And how long have you worked
16 for the County?

17 MS. McNEAL: Twenty-four years and four
18 months.

19 MR. COUNOU: Are you counting toward
20 retirement? It sure sounds like it.

21 MS. McNEAL: Yes.

22 MR. COUNOU: Thank you. I'll pass for
23 cause, Judge.

24 THE COURT: Mr. Sciscento.

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1 MR. SCISCENTO: Thank you, Your Honor.
 2 Miss McNeal --
 3 MS. McNEAL: Yes.
 4 MR. SCISCENTO: -- the District Attorney,
 5 Mr. Coughlin, is asking you if you could set aside your
 6 convictions or your personal beliefs and convict somebody.
 7 MS. McNEAL: Yes, I could.
 8 MR. SCISCENTO: Let me ask you: You
 9 couldn't let a guilty man go free, could you?
 10 MS. McNEAL: No. I -- no, I would not let a
 11 guilty man go free.
 12 MR. SCISCENTO: Would you let an innocent
 13 man go to prison?
 14 MS. McNEAL: No, I would not let an innocent
 15 man go to prison.
 16 MR. SCISCENTO: You strike me as somebody
 17 who would stand up against everybody.
 18 MS. McNEAL: I sure do.
 19 MR. SCISCENTO: You've had some personal
 20 battles in your life.
 21 MS. McNEAL: Yes.
 22 MR. SCISCENTO: Let me focus a little on
 23 your nephew.
 24 You know, your personal beliefs

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1 Now, in effect, she may have a
 2 bias towards the defendant because he's black and it may
 3 help out the -- the prosecution because maybe she says I
 4 can't convict him because he's black. I think we have a
 5 right to --
 6 THE COURT: Well, let's do it this way:
 7 He'll, do you understand in our
 8 courts, the way it works -- and I'm speaking to all the
 9 jurors as well here -- we don't consider skin color of
 10 people. We consider cases based upon evidence and -- and
 11 whether or not the State meets its burden of proof.
 12 So with that in mind, do you
 13 feel you could vote on the guilt or innocence of the
 14 defendant based upon the evidence presented in court and not
 15 based upon race?
 16 MS. McNEAL: Based upon the evidence
 17 presented in court, yes.
 18 THE COURT: Okay. Mr. Sciscento.
 19 MR. SCISCENTO: Thanks, Your Honor.
 20 Your nephew, was he involved in
 21 any kind of gangs?
 22 MS. McNEAL: No.
 23 MR. SCISCENTO: Okay. Today's society,
 24 there is a lot of gang members; would you agree with that?

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1 or your personal battles, did they -- the investigating --
 2 the investigation of the murder, the police just abandoned
 3 it in your -- in your eyes?
 4 MS. McNEAL: Yes.
 5 MR. SCISCENTO: Do you think that's relevant
 6 or -- I'm sorry -- prevalent in this society?
 7 MS. McNEAL: Yes.
 8 MR. SCISCENTO: You are African American?
 9 MS. McNEAL: Yes.
 10 MR. SCISCENTO: The defendant is --
 11 MS. McNEAL: Yes.
 12 MR. SCISCENTO: -- is African American.
 13 Do you think he stands a chance
 14 in court?
 15 MS. McNEAL: No.
 16 MR. SCISCENTO: Why not?
 17 MS. McNEAL: Because he --
 18 MR. COUGHLIN: Judge, I'm going to have to
 19 object to this line of questioning. This is highly
 20 inflammatory, racially charged and this is not a racial
 21 case.
 22 MR. SCISCENTO: Your Honor, this is going
 23 directly for biases and unbiases. I'm asking this potential
 24 juror whether or not she has biases or unbiases.

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1 MS. McNEAL: Yes.
 2 MR. SCISCENTO: Especially in Clark County?
 3 MS. McNEAL: Yes.
 4 MR. SCISCENTO: Do you think people who
 5 associate with gang members should be found guilty because
 6 of association?
 7 MS. McNEAL: No.
 8 MR. SCISCENTO: Okay. Would you agree that
 9 a person should be held liable for what he has done and not
 10 what other people have done?
 11 MS. McNEAL: For what he has done, yes.
 12 MR. SCISCENTO: Okay. And so if other
 13 people have done an act, that person, if he was there, or
 14 associated with them, shouldn't be found guilty, would you
 15 agree with that?
 16 MS. McNEAL: I would agree with that, yes.
 17 MR. SCISCENTO: Okay. And I bet you would
 18 agree that you were going to stand out against everybody
 19 else in your beliefs.
 20 MS. McNEAL: Yes.
 21 MR. SCISCENTO: And you promise that to the
 22 prosecution?
 23 MS. McNEAL: Yes.
 24 MR. SCISCENTO: And to me?

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1 MS. McNEAL: Yes.
 2 MR. COUNOU: And to the judge?
 3 MS. McNEAL: Yes.
 4 MR. SCISCENTO: And, most importantly, to my
 5 client, Mr. Brendan Nasby?
 6 MS. McNEAL: Yes.
 7 MR. SCISCENTO: And to me?
 8 MS. McNEAL: And to you.
 9 MR. SCISCENTO: We'll pass for cause, Your
 10 Honor.
 11 THE COURT: Okay. Thank you very much.
 12 Okay. Ladies and gentlemen, as
 13 I promised -- this was an hour ago -- about taking our
 14 break, so we'll go ahead and do that and take a 15 minute
 15 recess.
 16 During this recess, you are
 17 admonished not to talk or converse among yourselves or with
 18 anyone else on any subject connected with this trial;
 19 Or to read, watch or listen to
 20 any report of or commentary on the trial or any person
 21 connected with this trial by any medium of information,
 22 including, without limitation, newspaper, television, the
 23 Internet and radio;
 24 Or to form or express any

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1 okay with you?
 2 I should be available about 11
 3 tomorrow morning.
 4 Also, Mr. Sciscento, again, as
 5 we discussed at the bench, you can talk to Mr. Nasby, and if
 6 you wish to have the -- waive the penalty phase and the
 7 State is willing to waive it -- it's something you would
 8 have to mutually agree upon, but why don't you do that
 9 and --
 10 MR. SCISCENTO: So, in other words, he will
 11 be found guilty, but not sentenced?
 12 THE COURT: No.
 13 MR. SCISCENTO: I'm kidding.
 14 I understand, Your Honor. I
 15 will explain that.
 16 THE COURT: But it's up to either side.
 17 Both sides would have to stipulate to that.
 18 MR. COUNOU: Right. And that's the thing.
 19 I'm -- and I'm -- I'm having a hard time on this particular
 20 case --
 21 THE COURT: Okay.
 22 MR. COUNOU: -- because of the
 23 circumstances.
 24 THE COURT: Well, again, if you can't agree,

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1 opinion on any subject connected with the trial until the
 2 case is finally submitted to you.
 3 And, this is Ike, who is
 4 filling in for Lisa for the time being. What you do, if you
 5 would meet Ike at -- it looks like it's almost 3:25 now --
 6 so let's say 20 minutes to four, right outside the door,
 7 we'll go ahead and get started at that time.
 8 And for those of you in the
 9 jury box, just come on right back to the same chair you're
 10 in right now.
 11
 12 (The following proceedings were had in open
 13 court outside the presence of the
 14 prospective jury panel:)
 15 THE COURT: Let the record reflect the jury
 16 has left the courtroom.
 17 Just a couple matters here if
 18 we could: What I was thinking of doing is the -- the motion
 19 at like eleven a.m. tomorrow morning and then bring the jury
 20 back at 1:50.
 21 Would that work for you, Mr.
 22 COUNOU, on the issue?
 23 MR. COUNOU: Yes. Yes, I will call them --
 24 in fact, I will call right now and make sure --
 25 THE COURT: Okay. Mr. Sciscento, is that

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1 then we'll --
 2 MR. COUNOU: Right.
 3 THE COURT: -- then we will have a penalty
 4 phase, assuming Mr. Nasby was found guilty of first degree
 5 murder.
 6 And why don't you two talk and
 7 let me know. That way if you did waive it, we could waive
 8 those hypotheticals to the jury on those particular issues;
 9 the jury wouldn't be considering punishment.
 10 MR. COUNOU: Judge, also if -- if the
 11 defendant chooses to make a Batson challenge, will that be
 12 done in open court or will that be done in private?
 13 THE COURT: No, if you are -- if there is a
 14 Batson challenge, then we'd have to step outside. Indicate
 15 it's a Batson challenge; we will step outside and make a
 16 record, then like that. Okay.
 17 MR. COUNOU: Okay.
 18 THE COURT: Okay. We'll be in recess.
 19
 20 (Recess in proceedings.)
 21
 22 (The following proceedings were had in open
 23 court in the presence of the prospective
 24 jury panel:)
 25 THE COURT: Okay. Good afternoon, again,

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1 Ladies and gentlemen.

2 This is the continuation of
3 Case Number C154293, the State of Nevada versus Brandon
4 James Nasby.

5 Let the record reflect the
6 presence of Mr. Nasby, together with his attorneys; Frank
7 Courou, deputy District Attorney, representing the State of
8 Nevada.

9 Mr. Courou, will you
10 stipulate -- oh, we're missing Number 6 here.

11 Okay. Mr. Kostusak.

12 Will you stipulate we can go
13 forward, Mr. Courou, with the examination of the other
14 jurors in the absence of the other prospective juror?

15 THE REPORTER: There he is.

16 THE COURT: He's here.

17 Now, will you stipulate to the
18 presence of the prospective jury panel?

19 MR. COUROU: Yes, Judge.

20 THE COURT: Thank you.

21 Mr. Sciscento?

22 MR. SCISCENTO: Yes, Your Honor.

23 THE COURT: Thank you.

24 Okay. We will pick up where we

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1 MR. HAYNES: My son has had his car stolen a
2 couple of times.

3 THE COURT: Is that in Las Vegas?

4 MR. HAYNES: Yes.

5 THE COURT: And did the police ever catch
6 whoever was responsible?

7 MR. HAYNES: Yeah, well -- no.

8 THE COURT: They haven't?

9 Do you feel that because --
10 would the fact that they haven't caught the police --
11 haven't caught the perpetrator, would that affect your
12 ability to be fair and impartial to both the State of Nevada
13 and the defendant in this case?

14 MR. HAYNES: No, Your Honor.

15 THE COURT: Okay. Can you base your verdict
16 solely on the evidence brought out at the trial and the law
17 that applies, as stated in my instructions to you, without
18 fear of criticism or popular opinion?

19 MR. HAYNES: Yes.

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

22 MR. HAYNES: No, sir.

23 THE COURT: If you were a party to this
24 case, would you be comfortable with 14 jurors just like

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1 left off with Juror Number 8, Mr. Haynes.

2 Good afternoon.

3 MR. HAYNES: Good afternoon.

4 THE COURT: Mr. Haynes, do you know of any
5 reason you couldn't be a fair and impartial juror if
6 selected to serve in this case?

7 MR. HAYNES: No, sir.

8 THE COURT: Can you wait in forming your
9 opinion, as to the guilt or innocence of the defendant,
10 until all the evidence has been heard?

11 MR. HAYNES: Yes.

12 THE COURT: Have you or anyone close to you,
13 such as a family member or friend, ever been arrested for a
14 crime?

15 MR. HAYNES: Uh, I had a cousin arrested.

16 THE COURT: What for, do you know?

17 MR. HAYNES: I think it was armed robbery.

18 THE COURT: Okay. And were you close to
19 that cousin?

20 MR. HAYNES: Not -- not really. He lives in
21 another state.

22 THE COURT: Okay. Have you or anyone close
23 to you, such as a family member or friend, ever been the
24 victim of a crime?

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1 yourself?

2 MR. HAYNES: Yes, sir.

3 THE COURT: Thank you.

4 Mr. Courou.

5 MR. COUROU: Thank you.

6 Good afternoon, Mr. Haynes.

7 Could you tell me exactly what

8 do you do as your occupation?

9 MR. HAYNES: I'm a surgical technologist.

10 MR. COUROU: How long have you been doing
11 that line of work?

12 MR. HAYNES: About -- about ten years.

13 MR. COUROU: And do you work for a hospital
14 or for a doctor's office?

15 MR. HAYNES: I work for an outpatient
16 surgery center, hospital, small --

17 MR. COUROU: How long -- for the ten years
18 at this particular place or have you moved?

19 MR. HAYNES: No. I moved here approximately
20 six years ago.

21 MR. COUROU: Okay. And prior to moving
22 here, where did you come from, sir?

23 MR. HAYNES: New Orleans, Louisiana.

24 MR. COUROU: Oh, is that right? Are you a

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1 Saints fan?

2 MR. HAYNES: Love them.

3 MR. COUNOU: A happy Saints' fan right now.

4 MR. HAYNES: Very; very.

5 MR. COUNOU: Well, good.

6 So were -- were you raised in

7 Louisiana, in New Orleans?

8 MR. HAYNES: For the first 17 years of my

9 life, yes.

10 MR. COUNOU: Okay. And -- well, I take it,
11 you probably miss the food there.

12 MR. HAYNES: Tremendously.

13 MR. COUNOU: Okay. Now, what about your
14 wife, what does she do?

15 MR. HAYNES: She works for the Bureau of
16 Land Management.

17 MR. COUNOU: And how long has she worked for
18 them?

19 MR. HAYNES: She's been with the federal
20 government for about ten years.

21 MR. COUNOU: Ten years.

22 You mentioned your son, sir.

23 What -- what does he do?

24 MR. HAYNES: He's presently in the Marine

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1 MR. HAYNES: I didn't retire.

2 MR. COUNOU: Okay, you haven't retired?

3 MR. HAYNES: No.

4 MR. COUNOU: So you are still currently in
5 the Air Force?

6 MR. HAYNES: No, I -- I got out.

7 MR. COUNOU: Oh, you got out?

8 MR. HAYNES: Uh-huh.

9 MR. COUNOU: Okay. How long were you in the
10 Air force then?

11 MR. HAYNES: About 12 years.

12 MR. COUNOU: Okay.

13 MR. HAYNES: Should have retired.

14 MR. COUNOU: Hindsight is a dangerous thing.
15 Thank you, sir.

16 Judge, I'll pass for cause.

17 THE COURT: Mr. Santacroce.

18 MR. SANTACROCE: Good afternoon, Mr. Haynes.

19 How are you?

20 MR. HAYNES: Good afternoon.

21 Fine. Thank you.

22 MR. SANTACROCE: Surgical technologist, what
23 is that?

24 MR. HAYNES: What we do is we assist in

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1 Corps Reserves, but he's not working or anything. He's
2 going to go to school in January.

3 MR. COUNOU: All right. Now, you said
4 you've lived here for five years.

5 Did you live somewhere between
6 New Orleans and Las Vegas?

7 MR. HAYNES: Yes.

8 MR. COUNOU: Where is that?

9 MR. HAYNES: Well, I was in the military, so
10 it was a few places.

11 MR. COUNOU: Okay.

12 MR. HAYNES: Turkey. I was here for a
13 while; left and came back again and went overseas to
14 England; came back again.

15 MR. COUNOU: Were you in the Air Force or
16 the Army?

17 MR. HAYNES: Air Force.

18 MR. COUNOU: Air Force.

19 And what were you doing in the

20 Air Force?

21 MR. HAYNES: I was a mechanic.

22 MR. COUNOU: Mechanic.

23 How long did you stay in the

24 Air Force before you retired?

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1 surgery. We set up everything for the surgeon and make sure
2 he has all of his equipment that he needs, maintain the
3 sterile field, assist in the surgery.

4 MR. SANTACROCE: Have you ever assisted in
5 the surgery of a patient that had a bullet wound?

6 MR. HAYNES: Yes.

7 MR. SANTACROCE: If there is testimony by or
8 scientific testimony explaining, perhaps, entry wounds and
9 exit wounds, would you supplant or put your knowledge of
10 that above a person testifying?

11 Do you understand what I'm
12 asking?

13 MR. HAYNES: Yes.

14 MR. SANTACROCE: Okay.

15 MR. HAYNES: And certainly I wouldn't, would
16 not.

17 MR. SANTACROCE: So you would take the
18 testimony from the witnesses at face -- at face value?

19 MR. HAYNES: Yes.

20 MR. SANTACROCE: Can you tell me a little
21 bit about your educational background?

22 MR. HAYNES: I graduated from high school;
23 went in the military for a while; got out of the military as
24 a -- and went to school on the GI Bill at a two year

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1 surgical technical program.

2 MR. SANTACROCE: And what was the highest
3 rank you achieved in the military?

4 MR. HAYNES: I was an E-5, staff sergeant.

5 MR. SANTACROCE: And did you have an
6 honorable discharge?

7 MR. HAYNES: Yes.

8 MR. SANTACROCE: Children, you mentioned
9 your one son.

10 Do you have any other children
11 besides that?

12 MR. HAYNES: I have two sons.

13 MR. SANTACROCE: Two sons.

14 And how old are they?

15 MR. HAYNES: One is 19; the other one is 18.

16 MR. SANTACROCE: The one that's not in the
17 military, what does he do?

18 MR. HAYNES: He's a student.

19 MR. SANTACROCE: Where does he go to school?

20 MR. HAYNES: Community College.

21 MR. SANTACROCE: And your wife's occupation
22 in the BLM, what does she do for the BLM?

23 MR. HAYNES: She's a fire -- the fire
24 warehouse supervisor.

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1 are you?

2 MR. HAYNES: Certainly, no.

3 MR. SANTACROCE: We may exceed that
4 standard, I don't know, but you are not going to -- you are
5 not going to give us -- what I'm getting at: You are not
6 going to put any unfair demands upon us based on what you
7 see on TV?

8 MR. HAYNES: No.

9 MR. SANTACROCE: And you understand that the
10 State has the burden of proof in this case; is that also
11 correct?

12 MR. HAYNES: Yes.

13 MR. SANTACROCE: And you would hold the
14 State to that burden of proof?

15 MR. HAYNES: Yes, I would.

16 MR. SANTACROCE: And you understand that Mr.
17 Nesby comes into this courtroom today innocent.

18 You understand that?

19 MR. HAYNES: Yes.

20 MR. SANTACROCE: Is there anything that
21 would cause you to presume anything other than him being
22 innocent today?

23 MR. HAYNES: No.

24 MR. SANTACROCE: We pass for cause, Your

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1 MR. SANTACROCE: And what does that mean?

2 I don't understand what that
3 means.

4 MR. HAYNES: Well, the people that fight the
5 brush fires --

6 MR. SANTACROCE: Okay.

7 MR. HAYNES: -- and we have a lot of them
8 out here, she makes sure that they have everything that they
9 need to fight the fires.

10 MR. SANTACROCE: Okay. How long has she
11 been doing that?

12 MR. HAYNES: Ah, about four years.

13 MR. SANTACROCE: I notice on your jury
14 questionnaire that you have not served on a jury before; is
15 that correct?

16 MR. HAYNES: Correct.

17 MR. SANTACROCE: You watch a lot of
18 courtroom shows on TV?

19 MR. HAYNES: Yes.

20 MR. SANTACROCE: Do you understand that this
21 trial may not be like those trials that you see on TV?

22 MR. HAYNES: Certainly.

23 MR. SANTACROCE: And you are not going to
24 hold Mr. Sciscento or I to that standard that you see on TV,

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1 Honor.

2 THE COURT: Thank you very much.

3 Okay. We'll go next to Juror
4 Number 9, and that will be Miss Hernandez.

5 Good afternoon.

6 MS. HERNANDEZ: Good afternoon, sir.

7 THE COURT: Okay. Miss Hernandez, do you
8 know of any reason why you couldn't be a completely fair and
9 impartial juror if selected to serve in this case?

10 MS. HERNANDEZ: No.

11 THE COURT: Can you wait in forming your
12 opinion, as to the guilt or innocence of the defendant,
13 until all the evidence has been heard?

14 MS. HERNANDEZ: Yes.

15 THE COURT: Have you or anyone close to you,
16 such as a family member or friend, ever been arrested for a
17 crime?

18 MS. HERNANDEZ: No.

19 THE COURT: Have you or anyone close to you,
20 such as a family member or friend, ever been the victim of a
21 crime?

22 MS. HERNANDEZ: No.

23 THE COURT: Can you base your verdict solely
24 on the evidence brought out at the trial and the law that

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1 applies, as stated in my instructions to you, without fear
2 of criticism or popular opinion?

3 MS. HERNANDEZ: Yes.

4 THE COURT: Okay. Have you ever served as a
5 juror before?

6 MS. HERNANDEZ: No.

7 THE COURT: If you were a party to this
8 case, would you be comfortable with 14 jurors just like
9 yourself?

10 MS. HERNANDEZ: Uh, yes.

11 THE COURT: Okay. Sure?

12 MS. HERNANDEZ: Uh-huh.

13 THE COURT: Okay. Well, thank you.

14 Mr. Courou.

15 MR. COUROU: Okay.

16 Why that hesitation? Why did
17 you have that hesitation when the judge asked: Can you be
18 fair and impartial? Would you like to be -- If you were
19 standing in trial, would you like to have jurors such as
20 yourself?

21 There was a hesitation there.

22 MS. HERNANDEZ: No, no problem.

23 MR. COUROU: No problem?

24 MS. HERNANDEZ: No.

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1 trouble understanding some of these English words that have
2 been used here today, what they mean?

3 MS. HERNANDEZ: Yes.

4 THE COURT: You have some problems with
5 that?

6 MS. HERNANDEZ: Uh-huh.

7 THE COURT: Okay. I know Mr. Courou and I
8 both speak some Spanish to a certain extent, but we will --
9 our court reporter doesn't, so she gets upset with us if we
10 try to explain it a different way.

11 But, anyway, we'll go ahead
12 and -- I'm going to excuse you, ma'am, because of the
13 language issue, but thank you for telling us. We appreciate
14 it, then like that.

15 MS. HERNANDEZ: Thank you.

16 MR. SCISCENTO: Your Honor, could I approach
17 for a moment?

18 THE COURT: Yeah.

19 (Unreported discussion at the bench.)

22 THE COURT: Miss Hernandez, thank you.
23 Venga aqui, por favor.
24

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1 MR. COUROU: Okay. And -- can you be fair
2 and impartial in this case?

3 MS. HERNANDEZ: No.

4 MR. COUROU: No? Why not?

5 MS. HERNANDEZ: I don't understand.

6 MR. COUROU: Okay. Is language a problem?

7 MS. HERNANDEZ: Uh-huh.

8 MR. COUROU: I mean, do you understand
9 English?

10 MS. HERNANDEZ: Uh-huh; yeah.

11 MR. COUROU: Are you catching everything,
12 what I'm saying?

13 MS. HERNANDEZ: A little bit.

14 MR. COUROU: Okay.

15 MS. HERNANDEZ: Yeah.

16 MR. COUROU: I'll ask you again: Can you be
17 fair and impartial, make up your mind once the trial is over
18 in this case?

19 MS. HERNANDEZ: No, I don't understand.

20 MR. COUROU: You don't understand.

21 THE COURT: Let me ask you, Miss Hernandez:
22 Do you have -- Spanish is your primary language?

23 MS. HERNANDEZ: Yeah.

24 THE COURT: Okay. So do you have any

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1 (Unreported discussion at the bench.)

2 THE COURT: You can go check in downstairs,
3 then like that. Thank you.

4 MS. HERNANDEZ: Thank you.

5 THE COURT: Okay. We'll call the next
6 juror.

7 THE CLERK: Number 147, Gloria Leavitt.

8 THE COURT: Okay. Miss Leavitt, could you
9 come --

10 Okay. Miss Leavitt, if you
11 would come on back here and just come on up here; just step
12 around to your right here and just go ahead and go in the
13 first row here and have a seat in that second chair in the
14 first row.

15 Okay. Miss Leavitt, good
16 afternoon.

17 First of all, thank you for
18 your patience being with us all afternoon.

19 Do you know of any reason why
20 you couldn't be a completely fair and impartial juror if
21 selected to serve in this case?

22 MS. LEAVITT: No.

23 THE COURT: Can you wait in forming your
24

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1 opinion, as to the guilt or innocence of the defendant,
2 until all the evidence has been heard?

3 MS. LEAVITT: Yes.

4 THE COURT: Have you or anyone close to you,
5 such as a family member or friend, ever been arrested for a
6 crime?

7 MS. LEAVITT: Yes.

8 THE COURT: Could you tell me who was that?

9 MS. LEAVITT: Cousin, but it's -- I'm not
10 close to them.

11 THE COURT: So that wouldn't --

12 MS. LEAVITT: It's like hearsay again.

13 THE COURT: But that wouldn't affect your
14 ability to be fair and impartial to both sides in this case?

15 MS. LEAVITT: No.

16 THE COURT: Have you or anyone close to you,
17 such as a family member or friend, ever been the victim of a
18 crime?

19 MS. LEAVITT: No.

20 THE COURT: Can you base your verdict solely
21 on the evidence brought out at the trial and the law that
22 applies, as stated in my instructions to you, without fear
23 of criticism or popular opinion?

24 MS. LEAVITT: Yes.

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1 THE COURT: Okay. Have you ever served as a
2 juror before?

3 MS. LEAVITT: No.

4 THE COURT: If you were a party to this
5 case, would you be comfortable with 14 jurors just like
6 yourself?

7 MS. LEAVITT: Yes.

8 THE COURT: Thank you very much.

9 Mr. Coumou.

10 MR. COUMOU: Thank you.

11 Now, Miss Leavitt, it shows you
12 are a school teacher, correct?

13 MS. LEAVITT: Yes; yes.

14 MR. COUMOU: You're not going to correct my
15 English?

16 MS. LEAVITT: No; not right now.

17 MR. COUMOU: I know poor Miss Hernandez had
18 a hard time with the English, but I don't want to be stood
19 up here.

20 But, now, Miss Leavitt, how
21 long have you been teaching?

22 MS. LEAVITT: Fourteen years.

23 MR. COUMOU: And all for the school district
24 here?

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1 MS. LEAVITT: Yes.

2 MR. COUMOU: And what grade do you teach?

3 MS. LEAVITT: At the present time, first
4 grade.

5 MR. COUMOU: First grade?

6 MS. LEAVITT: Uh-huh.

7 MR. COUMOU: In all 14 years, have you been
8 a first grade teacher?

9 MS. LEAVITT: And kindergarten.

10 MR. COUMOU: Kindergarten also?

11 What brought you in to
12 teaching? What made you want to be a teacher?

13 MS. LEAVITT: I love the children.

14 MR. COUMOU: Okay. Do you have any children
15 of your own?

16 MS. LEAVITT: Yes, I do.

17 MR. COUMOU: And how old are they?

18 MS. LEAVITT: Twenty-five and 28.

19 MR. COUMOU: What are they doing?

20 MS. LEAVITT: One is an attorney and one is
21 going to school, I guess, computers. I'm not sure.

22 MR. COUMOU: You have a son who is an
23 attorney?

24 MS. LEAVITT: Yes.

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1 MR. COUMOU: It's not Andy Leavitt or James
2 Leavitt?

3 MS. LEAVITT: Oh, no. He's out of town.

4 MR. COUMOU: Oh, he's out of town. Okay.

5 MS. LEAVITT: Yes.

6 MR. COUMOU: Are you related to our Supreme
7 Court Justice with the last name Leavitt?

8 MS. LEAVITT: Not -- my children are. I'm
9 not because of the marriage situation.

10 MR. COUMOU: Okay.

11 MS. LEAVITT: So I'm no longer married to a
12 Leavitt.

13 MR. COUMOU: What kind of law does your son
14 practice?

15 MS. LEAVITT: He's a prosecuting attorney.

16 MR. COUMOU: Oh, he is? In -- where?

17 MS. LEAVITT: Kansas City, Missouri.

18 MR. COUMOU: Okay. How long has he been
19 doing that then?

20 MS. LEAVITT: Oh, I think two to three years
21 now.

22 MR. COUMOU: Has he ever come home and
23 talked to you about the cases that he does?

24 MS. LEAVITT: No; no.

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1 MR. COUNOU: Are you interested in the type
2 of work that he does?

3 MS. LEAVITT: His safety.

4 MR. COUNOU: Why do you say that, safety?

5 MS. LEAVITT: Criminals.

6 MR. COUNOU: Okay. I mean, I'm just being
7 an overprotective mom. I mean, he says it's not like that
8 there, but --

9 MR. COUNOU: Okay. In this particular case,
10 can you be fair and impartial in this trial?

11 MS. LEAVITT: Yes.

12 MR. COUNOU: And were this case to reach a
13 verdict of a particular charge, can you sit in judgment of
14 that man right there (indicating) and impose sentence?

15 MS. LEAVITT: Well, I wouldn't be judging;
16 the judge does that. Everything has already been set, you
17 said --

18 MR. COUNOU: Right.

19 MS. LEAVITT: -- I'm just going along with
20 the law.

21 MR. COUNOU: Okay. Can you do that? Can
22 you make that promise?

23 MS. LEAVITT: Yes.

24 MR. COUNOU: Okay. Do you have any

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1 MS. LEAVITT: Okay.

2 MR. SANTACROCE: Can you tell me how you
3 are -- is it your husband that's related to him?

4 MS. LEAVITT: My ex-husband.

5 MR. SANTACROCE: Your ex-husband?

6 MS. LEAVITT: Uh-huh.

7 MR. SANTACROCE: And how was he related?

8 MS. LEAVITT: That's his uncle.

9 MR. SANTACROCE: Your ex-husband, was he in
10 the law field at all?

11 MS. LEAVITT: Yes, he was.

12 MR. SANTACROCE: What did he do?

13 MS. LEAVITT: He was -- just a moment. You
14 mentioned -- personal injury, divorces.

15 MR. SANTACROCE: He was an attorney?

16 MS. LEAVITT: Yes. You asked specifically.

17 MR. SANTACROCE: Was he an attorney in Clark
18 County?

19 MS. LEAVITT: Yes, right in this system,
20 right in this court. I think that is why I didn't do jury
21 duty, because of that, being a family member.

22 MR. SANTACROCE: I don't mean to be
23 personal --

24 MS. LEAVITT: Okay.

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1 feelings, personal feelings, convictions, that may creep up
2 during this trial?

3 MS. LEAVITT: No, just the law.

4 MR. COUNOU: Okay. And, um, you've lived
5 here all your life, ma'am?

6 MS. LEAVITT: No.

7 MR. COUNOU: Where did you come from?

8 MS. LEAVITT: Buffalo, New York.

9 MR. COUNOU: Buffalo, New York?

10 MS. LEAVITT: Uh-huh.

11 MR. COUNOU: Okay. And then, I take it,
12 marriage brought you out here?

13 MS. LEAVITT: No. I was a child and we met
14 here. I mean, you know, I was very young.

15 MR. COUNOU: Oh, okay. Thank you very much.
16 I'll pass for cause, Judge.

17 THE COURT: Thank you. Who is going to
18 handle this one?

19 Okay. Mr. Santacroce.

20 MR. SANTACROCE: Good after, Miss Leavitt.

21 MS. LEAVITT: Hi.

22 MR. SANTACROCE: I want to explore a little
23 bit more about your relationship with our Supreme Court
24 judge.

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1 MR. SANTACROCE: -- but how long has it been
2 since you've been divorced?

3 MS. LEAVITT: Divorced, it's over ten years.

4 MR. SANTACROCE: Your son that's a
5 prosecutor in Missouri --

6 MS. LEAVITT: Yes.

7 MR. SANTACROCE: -- how is your
8 relationship? Do you have a lot of contact with him,
9 holidays, things of that nature?

10 MS. LEAVITT: Well, yes, because of the
11 grandchildren. I mean, we don't -- you know, family get
12 together and talk on the phone, keep in touch.

13 MR. SANTACROCE: Did you ever sit in and
14 watch him try a case?

15 MS. LEAVITT: No.

16 MR. SANTACROCE: Would you give the
17 prosecution in this case more weight than the defense simply
18 because your son was a prosecuting attorney?

19 MS. LEAVITT: No.

20 MR. SANTACROCE: Do you think the fact that
21 Mr. Nasby sits here today is evidence that he is guilty?

22 MS. LEAVITT: No.

23 MR. SANTACROCE: Do you think he wouldn't be
24 here if he wasn't guilty?

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1 MS. LEAVITT: No.
 2 MR. SANTACROCE: You are a school teacher;
 3 you teach first grade, kindergarten?
 4 MS. LEAVITT: Uh-huh.
 5 MR. SANTACROCE: Can you tell me which
 6 school you teach at?
 7 MS. LEAVITT: Andrew J. Mitchell.
 8 MR. SANTACROCE: I'm not familiar with that.
 9 Is it an inner city school or --
 10 MS. LEAVITT: It's a K-2 school. It's up in
 11 Boulder City. It's an elementary.
 12 MR. SANTACROCE: And it's up to second
 13 grade, you said?
 14 MS. LEAVITT: Yes; uh-huh.
 15 MR. SANTACROCE: So I don't suppose, at that
 16 age, you have much classification of kids? There is not
 17 gangs starting to form or that types of things? You don't
 18 see that kind of activity, do you?
 19 MS. LEAVITT: No.
 20 MR. SANTACROCE: Do you deal with any
 21 underprivileged kids at all in your line of work?
 22 MS. LEAVITT: Of course, yes.
 23 MR. SANTACROCE: There is no -- you don't
 24 have any feelings of Mr. Nasby as a black man sitting here

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1 MS. THOMAS: Yes, my brother, years ago.
 2 THE COURT: What was he arrested for?
 3 MS. THOMAS: Burglary.
 4 THE COURT: Okay. And what happened to
 5 these charges against him?
 6 MS. THOMAS: He -- he was a teenager. He
 7 spent a few months in jail and that cured that.
 8 THE COURT: Okay. So he didn't have any
 9 problems after that?
 10 MS. THOMAS: No.
 11 THE COURT: Anybody else in your family ever
 12 been arrested for a crime?
 13 MS. THOMAS: No.
 14 THE COURT: Have you or anyone close to you,
 15 such as a family member or friend, ever been the victim of a
 16 crime?
 17 MS. THOMAS: Yes.
 18 THE COURT: And who was that?
 19 MS. THOMAS: Our -- me -- me.
 20 THE COURT: You were.
 21 Okay. And what was that?
 22 MS. THOMAS: Breaking and entering, our
 23 house.
 24 THE COURT: And did the police find whoever

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1 before you; you are able to presume his innocence until the
 2 State met its burden?
 3 MS. LEAVITT: Yes.
 4 MR. SANTACROCE: And you don't have any
 5 feelings of prejudice toward him because of his color?
 6 MS. LEAVITT: No.
 7 MR. SANTACROCE: Pass for cause.
 8 THE COURT: Thank you very much.
 9 MR. SANTACROCE: Thank you.
 10 THE COURT: Okay. We'll then go to Juror
 11 Number 10, Miss Thomas.
 12 Good afternoon.
 13 MS. THOMAS: Hi.
 14 THE COURT: Miss Thomas, do you know of any
 15 reason why you couldn't be a completely fair and impartial
 16 juror if selected to serve in this case?
 17 MS. THOMAS: No.
 18 THE COURT: Can you wait in forming your
 19 opinion, as to the guilt or innocence of the defendant,
 20 until all the evidence has been heard?
 21 MS. THOMAS: Yes.
 22 THE COURT: Have you ever or anyone close to
 23 you, such as a family member or friend, ever been arrested
 24 for a crime?

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1 was responsible?
 2 MS. THOMAS: No.
 3 THE COURT: Do you feel the police did what
 4 they could under the circumstances?
 5 MS. THOMAS: Yes.
 6 THE COURT: Okay. Can you base your verdict
 7 solely on the evidence brought out at the trial and the law
 8 that applies, as stated in my instructions to you, without
 9 fear of criticism or popular opinion?
 10 MS. THOMAS: Yes.
 11 THE COURT: Have you ever served as a juror
 12 before?
 13 MS. THOMAS: Yes.
 14 THE COURT: On how many occasions?
 15 MS. THOMAS: Two.
 16 THE COURT: Were they civil or criminal
 17 cases?
 18 MS. THOMAS: Criminal.
 19 THE COURT: Without telling us what the
 20 verdicts were, did your juries reach verdicts?
 21 MS. THOMAS: Yes.
 22 THE COURT: And were you elected the
 23 foreperson of either one of those juries?
 24 MS. THOMAS: Yes.

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1 THE COURT: Both of them or one of them?
 2 MS. THOMAS: One of them.
 3 THE COURT: Was there anything about that
 4 experience that you had on jury duty and as a foreperson
 5 that you feel would affect your ability to be fair and
 6 impartial to both sides in this case?
 7 MS. THOMAS: No.
 8 THE COURT: If you were a party to this
 9 case, would you be comfortable with 14 jurors just like
 10 yourself?
 11 MS. THOMAS: Yes.
 12 THE COURT: Thank you.
 13 MR. COUNOU: Thank you.
 14 MR. COUNOU: Thank you.
 15 Hi, Miss Thomas.
 16 Could you tell me what did you
 17 retire from, and your spouse also?
 18 MS. THOMAS: Oh, well, I was a secretary
 19 here and there and every where around town.
 20 MR. COUNOU: Here in Las Vegas?
 21 MS. THOMAS: Yes.
 22 MR. COUNOU: And how about your spouse?
 23 MS. THOMAS: Engineering, Gibraltar
 24 Engineering.

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1 there.
 2 MS. THOMAS: Well, with being a foreperson,
 3 I think it was hard because it's hard to tell people to just
 4 pay attention to the evidence that was presented at that
 5 time, not what they think or what they feel. You have to
 6 just go by what you have presented.
 7 MR. COUNOU: Okay. And do you think you
 8 would be able to do that in this case --
 9 MS. THOMAS: Uh-huh.
 10 MR. COUNOU: -- if you were just selected as
 11 a general --
 12 MS. THOMAS: Yes.
 13 MR. COUNOU: -- juror in this case?
 14 MS. THOMAS: Yes.
 15 MR. COUNOU: Okay. Also, as I asked to
 16 previous jurors, can you withhold any personal feeling as to
 17 imposing sentence on someone in this case?
 18 MS. THOMAS: Yes.
 19 MR. COUNOU: Thank you.
 20 Judge, I'll pass for cause.
 21 THE COURT: Thank you.
 22 Mr. Santacroce.
 23 MR. SANTACROCE: Thank you.
 24 Miss Thomas, you've served on a

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1 MR. COUNOU: How long did he stay with them?
 2 MS. THOMAS: Pardon me?
 3 MR. COUNOU: How long did he remain with
 4 them?
 5 MS. THOMAS: Seventeen years.
 6 MR. COUNOU: Seventeen years?
 7 Do you have any children of
 8 this union?
 9 MS. THOMAS: Yes.
 10 MR. COUNOU: How many?
 11 MS. THOMAS: Two, boys.
 12 MR. COUNOU: And what are they doing?
 13 MS. THOMAS: One works here for sound
 14 systems. I can't remember the name of the company now.
 15 MR. COUNOU: Uh-huh.
 16 MS. THOMAS: And the other one is a
 17 mechanical engineer in California.
 18 MR. COUNOU: Okay. And you indicated that
 19 you have been a juror twice now, once a foreman, correct?
 20 MS. THOMAS: Yes.
 21 MR. COUNOU: Was it a rewarding experience
 22 both times?
 23 MS. THOMAS: Yes.
 24 MR. COUNOU: You kind of said -- hesitated

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1 jury twice and -- commendable. We certainly appreciate
 2 that.
 3 Have you ever been a witness in
 4 a trial?
 5 MS. THOMAS: No.
 6 MR. SANTACROCE: When you were the victim of
 7 the breaking and entering, you said the police caught the
 8 people; is that correct?
 9 MS. THOMAS: No.
 10 MR. SANTACROCE: Oh, they did not?
 11 MS. THOMAS: Huh-uh.
 12 MR. SANTACROCE: Okay. You did say that you
 13 were satisfied at their handling of the case, didn't you?
 14 MS. THOMAS: Because it was just a run of
 15 the mill, kick in the front door and steal the jewelry.
 16 MR. SANTACROCE: Did the police investigate
 17 that?
 18 MS. THOMAS: As far as I know. They took a
 19 report.
 20 MR. SANTACROCE: Well, the officer came to
 21 your house?
 22 MS. THOMAS: Yes.
 23 MR. SANTACROCE: And he --
 24 MS. THOMAS: They took fingerprints.

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1 MR. SANTACROCE: They did?
 2 MS. THOMAS: Took the door knob off the
 3 door.
 4 MR. SANTACROCE: And filed a police report;
 5 is that correct?
 6 MS. THOMAS: Uh-huh.
 7 MR. SANTACROCE: Were you ever contacted
 8 after that?
 9 MS. THOMAS: No.
 10 MR. SANTACROCE: And how did you know that
 11 they didn't catch the people that did it?
 12 MS. THOMAS: Well, I would assume that they
 13 would have notified us if they did, so I could get my stuff
 14 back.
 15 MR. SANTACROCE: And you were never
 16 notified?
 17 MS. THOMAS: No.
 18 MR. SANTACROCE: The comment you made
 19 regarding serving as a jury foreman -- foreman --
 20 foreperson -- excuse me --
 21 MS. THOMAS: Uh-huh.
 22 MR. SANTACROCE: -- you said it was hard
 23 getting other people to focus in on -- can you just tell me
 24 that feeling again?

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1 MS. THOMAS: Oh, the Meadows School, I was a
 2 secretary; and the Clark County School District; Valley
 3 Bank; and then through Manpower. I was in the health
 4 district.
 5 MR. SANTACROCE: And your husband was an
 6 engineer?
 7 MS. THOMAS: Yes.
 8 MR. SANTACROCE: And I believe you also have
 9 a son that's an engineer?
 10 MS. THOMAS: Yes.
 11 MR. SANTACROCE: So engineering runs deep in
 12 your family then, I take it?
 13 MS. THOMAS: Yes.
 14 MR. SANTACROCE: And what is your schooling;
 15 what is your --
 16 MS. THOMAS: Just graduated from high
 17 school.
 18 MR. SANTACROCE: Was -- how long have you
 19 been a resident of Clark County?
 20 MS. THOMAS: Twenty-seven years.
 21 MR. SANTACROCE: You've certainly seen this
 22 valley grow and change?
 23 MS. THOMAS: Yes.
 24 MR. SANTACROCE: Crime rate has sky

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1 MS. THOMAS: Yeah. We had -- basically, it
 2 was just one juror that we had that was going -- her whole
 3 opinion was of what she felt. I don't think he could have
 4 done it. I don't think, instead of looking at the evidence
 5 that was presented.
 6 MR. SANTACROCE: You understand, of course,
 7 that we ask all of you to bring your common sense --
 8 MS. THOMAS: Uh-huh.
 9 MR. SANTACROCE: -- and every day knowledge
 10 to your verdict.
 11 Do you understand that?
 12 MS. THOMAS: Yes.
 13 MR. SANTACROCE: And you are willing to do
 14 that?
 15 MS. THOMAS: Yes. But you still have to
 16 listen to the testimony.
 17 MR. SANTACROCE: Absolutely.
 18 A little bit about your
 19 employment history, if you will.
 20 You said you were a secretary
 21 here, there and every where?
 22 MS. THOMAS: And every where.
 23 MR. SANTACROCE: Okay. What kinds of places
 24 did you work for?

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1 rocketed, wouldn't you agree?
 2 MS. THOMAS: Yes.
 3 MR. SANTACROCE: Do you think the police are
 4 doing all they can to adequately control the crime problem
 5 that we have in Clark County, Nevada?
 6 MS. THOMAS: Yes.
 7 MR. SANTACROCE: Do you think they're doing
 8 a good job?
 9 MS. THOMAS: I think they're doing the best
 10 that they can do with what's here. I don't know.
 11 MR. SANTACROCE: Thank you very much.
 12 THE COURT: Pass for cause?
 13 MR. SANTACROCE: Yes.
 14 THE COURT: Okay. We'll go next to Mr.
 15 King.
 16 Good afternoon.
 17 MR. KING: Hello.
 18 THE COURT: Mr. King, do you know of any
 19 reason why you couldn't be a completely fair and impartial
 20 juror if selected to serve in this case?
 21 MR. KING: No, sir.
 22 THE COURT: Can you wait in forming your
 23 opinion, as to the guilt or innocence of the defendant,
 24 until all the evidence has been heard?

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1 MR. KING: Yes, sir.
 2 THE COURT: Have you or anyone close to you,
 3 such as a family member or friend, ever been arrested for a
 4 crime?
 5 MR. KING: Yes, sir.
 6 THE COURT: Who was that?
 7 MR. KING: My son, about '73, he was
 8 arrested for possession of marijuana. The case was
 9 dismissed.
 10 THE COURT: Okay. Was that in Clark County?
 11 MR. KING: Clark County.
 12 '75, he was stopped for
 13 speeding, and somewhere on the computer came up this
 14 original possession of marijuana charge.
 15 THE COURT: Uh-huh.
 16 MR. KING: He was rearrested on the same
 17 thing. Somehow -- from whoever was supposed to get the
 18 message to the computer, that the charge had been dismissed,
 19 didn't get it there, but it was straightened out.
 20 THE COURT: Okay. Did he have to go spend
 21 some time in jail until it was straightened out?
 22 MR. KING: Overnight.
 23 THE COURT: I'm sure he wasn't very happy
 24 about that.

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1 THE COURT: Have you ever served as a juror
 2 before?
 3 MR. KING: No, sir.
 4 THE COURT: If you were a party to this
 5 case, would you be comfortable with 14 jurors just like
 6 yourself?
 7 MR. KING: Yes, sir.
 8 THE COURT: Thank you.
 9 Mr. COUNOU.
 10 MR. COUNOU: Thank you.
 11 Mr. King, drawing your
 12 attention to this incident in 1983, with your daughter's
 13 home being burglarized, you mentioned that you felt like the
 14 police could have done more or -- could you explain that for
 15 me?
 16 MR. KING: No. You must have misunderstood
 17 me --
 18 MR. COUNOU: Okay.
 19 MR. KING: -- or I didn't make myself clear.
 20 I think the police probably did
 21 all they could, but I was not -- I'm not completely
 22 conversant or knowledgeable about the entire incident
 23 because the police acted with my daughter --
 24 MR. COUNOU: Okay.

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1 MR. KING: No, but it probably didn't do him
 2 any harm.
 3 THE COURT: Okay. Well, let me ask you
 4 this: Based upon what your son went through, do you have
 5 any animosity towards any of the employees of the District
 6 Attorney's Office because of this foul up here?
 7 MR. KING: No, sir.
 8 THE COURT: Have you or anyone close to you,
 9 such as a family member or friend, ever been the victim of a
 10 crime?
 11 MR. KING: Yes, sir. My daughter's home was
 12 burglarized about '83, '84.
 13 THE COURT: Did they catch the people
 14 responsible?
 15 MR. KING: They did not.
 16 THE COURT: Do you feel the police did what
 17 they could do to try to catch them?
 18 MR. KING: Ah, yes, sir, although I am not
 19 completely familiar with all aspects of that.
 20 THE COURT: Can you base your verdict solely
 21 on the evidence brought out at the trial and the law that
 22 applies, as stated in my instructions to you, without fear
 23 of criticism or popular opinion?
 24 MR. KING: Yes, sir.

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1 MR. KING: -- not with me; two different
 2 households.
 3 MR. COUNOU: Okay. Thank you for clarifying
 4 that for me then.
 5 And now you mentioned that
 6 incident with your son in '73. You realize -- '73. I was
 7 still feeding off of my mommy's plate. Okay?
 8 So you are not holding the
 9 prosecution -- or do you have any feelings about maybe that
 10 incident --
 11 MR. KING: No, no --
 12 MR. COUNOU: Okay.
 13 MR. KING: -- no feelings, one way or the
 14 other on that one.
 15 MR. COUNOU: And can you put those two
 16 incidences aside, not sit there and think about it, when you
 17 start hearing testimony and evidence in this case?
 18 MR. KING: Yes, sir, I could.
 19 MR. COUNOU: Okay. And can you promise, not
 20 only to the State, but also to the defendant, that you will
 21 be fair and impartial and not make up your mind until you
 22 hear all the evidence in this case?
 23 MR. KING: Yes, sir, I would.
 24 MR. COUNOU: Okay. As to penalty, were it

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1 to come to that stage, sir, can you sit in judgment of a man
2 and impose a sentence?

3 MR. KING: Yes, sir.

4 MR. COUNOU: Okay. Through the guidelines
5 that the judge will ask you to follow?

6 MR. KING: Correct.

7 MR. COUNOU: And, finally, sir, could you
8 explain to me what line of work were you in and the
9 education that you have?

10 I show that you have 18 years
11 total of education.

12 MR. KING: Ah, I was a school teacher in
13 Clark County School District from '64 to '94.

14 MR. COUNOU: Okay.

15 MR. KING: I have a degree from the
16 University of Arizona in mathematics and education.

17 I taught at K.O. Knudson, Hydo
18 Park, Del Robison and Valley.

19 MR. COUNOU: As a math --

20 MR. KING: As a math teacher.

21 MR. COUNOU: Okay. And so you retired since
22 '94 and you've been retired ever since?

23 MR. KING: That's correct.

24 MR. COUNOU: Have you -- your spouse, was

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1 and just strictly judge the defendant on the facts as they
2 are presented against him?

3 MR. KING: Yes, sir.

4 MR. COUNOU: Thank you.

5 Judge, I'll pass for cause.

6 THE COURT: Mr. Sciscento.

7 MR. SCISCENTO: Yes. Thank you, Your Honor.

8
9 MR. King, you studied math in
10 college, University of Arizona?

11 MR. KING: Yes, sir.

12 MR. SCISCENTO: Okay. And you have a degree
13 in that?

14 MR. KING: Yes, sir.

15 MR. SCISCENTO: Okay. There is going to be
16 probably -- there will be -- some expert witnesses who are
17 going to take the stand.

18 Would you give their testimony
19 more credence than anybody else?

20 MR. KING: That's a tough question. It
21 would depend on the type of information they were trying to
22 impart.

23 MR. SCISCENTO: Okay.

24 MR. KING: Such things -- science -- science

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1 she also a school teacher?

2 MR. KING: No, sir.

3 MR. COUNOU: Okay. What -- what line of
4 work was she in?

5 MR. KING: She was a homemaker.

6 MR. COUNOU: Okay. And your son, what does
7 he do now, the one that had this little --

8 MR. KING: He is deceased.

9 MR. COUNOU: Oh, okay.

10 And the time that you spent as
11 a school teacher here, from '64 to '94, you've seen some
12 tremendous growth; and at the time that you were at Valley,
13 was that towards the end of your --

14 MR. KING: No, sir. That was when Valley
15 opened.

16 MR. COUNOU: Okay. Did -- did you --

17 MR. KING: '65.

18 MR. COUNOU: '65?

19 The time that you were in the
20 school district, though, did you see the school -- schools
21 change, gangs becoming more prevalent and stuff like that?

22 MR. KING: Yes, sir.

23 MR. COUNOU: Okay. And if you hear
24 insinuations of gangs in this case, can you put that aside

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1 has done a world of good for us. It increases our knowledge
2 and what we're able to do with it.

3 Yet, still, we are learning so
4 much that it makes what we thought was scientific fact
5 yesterday not necessarily scientific fact today.

6 MR. SCISCENTO: Okay.

7 MR. KING: I think we've got -- I can't give
8 you a good yes or no answer on that question. It -- it just
9 kind of depends on the subject.

10 MR. SCISCENTO: Okay.

11 MR. KING: Computers have done a great thing
12 for disseminating information; and yet, I'm sure almost
13 everybody in here has experienced a computer glitch of one
14 kind or another. You can't say that because it's a
15 computer, it's right. You got to kind of accept the
16 circumstances.

17 MR. SCISCENTO: Okay. For an expert
18 witness, though, who bases a theory on scientific methods,
19 the basics on what he -- on his own belief, would you give
20 that more credence?

21 Did I say that right? I'm not
22 sure if I made sense.

23 MR. KING: If I understand the question
24 correctly, I will say yes, sir.

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1 MR. SCISCENTO: Okay. Mathematicians are
2 more analytical; would you agree with that?

3 MR. KING: I -- I would tend to agree
4 somewhat with that.

5 MR. SCISCENTO: Okay. And they like the
6 hard cold facts, the one plus one is two and that kind of --
7 this theorem and that theorem; they got to be proven in both
8 different ways, correct?

9 MR. KING: Not necessarily.

10 MR. SCISCENTO: Okay.

11 MR. KING: Just because that's their
12 occupation, it's not meaning that we all agree that way.

13 MR. SCISCENTO: My understanding of math,
14 though, you work -- for a theorem to be correct, it's got to
15 be tested numerous times --

16 MR. KING: That's true, yes.

17 MR. SCISCENTO: -- and everybody who has the
18 same --

19 MR. KING: Yes.

20 MR. SCISCENTO: And that is probably the
21 purest science. Once there is -- from point A to point D,
22 and if you follow, you know, these steps, A, B, C, you get
23 to D.

24 MR. KING: Correct.

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1 MR. KING: Yes, sir.

2 MR. SCISCENTO: Yes. And that presumption
3 is very strong. In other words, the State has to make --
4 prove beyond a reasonable doubt that he's guilty.

5 MR. KING: Yes, sir.

6 MR. SCISCENTO: Okay. That means if there
7 is some reasonable doubt, and you'll understand that, with
8 the jury instructions --

9 MR. KING: Right.

10 MR. SCISCENTO: -- but if there is some
11 reasonable doubt that you have, even if you don't like him
12 or even if you think he may have committed a crime, if you
13 have reasonable doubt in your mind, you have to find him not
14 guilty.

15 MR. KING: Correct.

16 MR. SCISCENTO: Could you do that?

17 MR. KING: Yes, sir.

18 MR. SCISCENTO: Even if there was a laboring
19 doubt that he may have done something wrong?

20 If you weigh it out --

21 MR. KING: If there is a reasonable doubt,
22 you cannot find him guilty.

23 MR. SCISCENTO: Okay. We'll pass for cause,
24 Your Honor.

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1 MR. SCISCENTO: The expert witness that may
2 testify may base part of it on his own belief or own
3 theories or own observation.

4 Would you give him more
5 credence in his testimony?

6 MR. KING: Generally, yes, sir, but I still
7 have to say it depends on how this is expressed.

8 MR. SCISCENTO: Would you question his
9 testimony?

10 I just want to make --

11 MR. KING: If I felt my background and
12 knowledge were sufficient to question what he was saying,
13 yes, I would.

14 MR. SCISCENTO: Okay. You have no problem
15 questioning him, even though he may get up here with his
16 credentials and say: I'm an expert witness and this is what
17 I believe?

18 MR. KING: If my experience was different
19 than his, I would not hesitate to question him.

20 MR. SCISCENTO: Okay. I just want to make
21 sure that you are not just going to listen to him and say:
22 Well, he said it; therefore, it's gospel and that's it.

23 Mr. Nasby over here, as he sits
24 here, you understand that the presumption is he's innocent.

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1 THE COURT: Thank very much.

2 Okay. Next, we'll to go Mr.
3 Foisel.

4 Good afternoon.

5 MR. FOISEL: Hi, Judge.

6 THE COURT: Do you know of any reason why
7 you couldn't be a fair and impartial juror if selected to
8 serve on this case?

9 MR. FOISEL: Not at all.

10 THE COURT: Can you wait in forming your
11 opinion, as to the guilt or innocence of the evidence, until
12 all of the evidence has been heard?

13 MR. FOISEL: Definitely.

14 THE COURT: Have you or anyone close to you,
15 such as a family member or friend ever been arrested for a
16 crime?

17 MR. FOISEL: Yes.

18 THE COURT: Who was that?

19 MR. FOISEL: Myself.

20 THE COURT: What were you arrested for?

21 MR. FOISEL: As a teenager, for reckless
22 driving; and last Christmas, for brandishing.

23 THE COURT: Brandishing what, a weapon?

24 MR. FOISEL: Well, I have a concealed carry

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1 permit. I was assaulted in a pet cemetery, of all places,
2 on Christmas Eve; video taped the entire event; came back
3 after reporting it to Metro.

4 They dispatched a patrol car.
5 I was promptly arrested, and about two hours later, after
6 them seeing the video evidence of what led to me deploying
7 my weapon, I was out loose.

8 However, my weapon was
9 impounded and I was investigated by the Metropolitan Police
10 Department, and about four weeks later, I was told to pick
11 up my weapon. It was found to be just use.

12 THE COURT: So you still have your concealed
13 weapon permit?

14 MR. FOISEL: Permit, yes.

15 THE COURT: Have you or anyone close to you,
16 such as a family member or friend, ever been the victim of a
17 crime?

18 MR. FOISEL: Yes, myself.

19 THE COURT: And what was that?

20 MR. FOISEL: Back in the days before Las
21 Vegas became a very deadly place to do it, I used to commute
22 regularly to and from work on a bicycle.

23 In 1991, I was run off the
24 road, beaten, nearly knifed and thrown off a bridge; ended

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1 Imperial Palace -- I developed a real hatred for the
2 Metropolitan Police Department.

3 However, my experience in the
4 brandishing incident and several traffic stops has changed
5 that opinion dramatically. I now have a tremendous amount
6 of respect, specifically for the younger officers of the
7 Metropolitan Police Department.

8 The evening I was arrested, I
9 witnessed some of the most professional police work I've
10 ever experienced and I was very impressed with that, and
11 I've discovered that I -- you can't, you know, stereotype
12 them all as bad.

13 THE COURT: Okay. So police officers
14 testify in this case, you can listen to their testimony
15 fairly and impartially as far as evaluating their testimony?

16 MR. FOISEL: Certainly.

17 THE COURT: Can you base your verdict solely
18 on the evidence brought out at the trial and the law that
19 applies, as stated in my instructions to you, without fear
20 of criticism or popular opinion?

21 MR. FOISEL: Yes.

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

24 MR. FOISEL: No.

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1 up suffering from a broken back.

2 And just, you know, continual
3 barrage of road rage incidents since then. Two years ago, I
4 was run off the road on my motorcycle.

5 THE COURT: Well, going back to that
6 incident a number of years ago, did they catch the person
7 responsible?

8 MR. FOISEL: I identified them
9 photographically. A witness appeared out of nowhere and
10 testified to what she'd seen, but Detective Al Sharp, in the
11 assault and battery division, chose not to press charges
12 against them and said that if I would, he would hold me
13 guilty for the assault and I would be arrested.

14 I went to the Internal Affairs
15 Bureau; stated what I'd experienced and didn't get anywhere;
16 and shortly after that, within the following week, I went
17 out and I armed myself.

18 THE COURT: Okay. Well, it sounds like you
19 have a little -- you are upset with the police department
20 over this, at least this episode a number of years ago.

21 MR. FOISEL: Well, between that and, roughly
22 ten years ago, one of my best friends was murdered by a trio
23 of detectives -- Amerson, Casey and Campbell, a gentleman by
24 the name of Charles Bush. He was a floorman over at the

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1 THE COURT: If you were a party to this
2 case, would you be comfortable with 14 jurors just like
3 yourself?

4 MR. FOISEL: Yes.

5 THE COURT: Thank you.

6 Mr. COUNOU.

7 MR. COUNOU: Thank you.

8 You realize that we, as
9 prosecutors, we're not police officers, correct?

10 MR. FOISEL: You are part of the judicial
11 branch of the --

12 MR. COUNOU: Yeah.

13 MR. FOISEL: -- of the --

14 MR. COUNOU: Right. But I'm not a law
15 enforcement peace officer, that kind of stuff?

16 MR. FOISEL: Understood.

17 MR. COUNOU: You indicated that you felt --
18 you felt like you were treated professionally at this
19 brandishing a weapon incident?

20 MR. FOISEL: Yes.

21 MR. COUNOU: Is that pet cemetery that's off
22 of Craig Road?

23 MR. FOISEL: Yes, the Craig Road pet
24 cemetery.

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1 MR. COUDOU: It happened out there?
 2 MR. FOISEL: Yes, Christmas Eve.
 3 MR. COUDOU: Pass for cause, Judge.
 4 THE COURT: Thank you.
 5 Mr. Santacroce.
 6 MR. SANTACROCE: Thank you.
 7 Mr. Foisel.
 8 MR. FOISEL: Mr. Santacroce.
 9 MR. SANTACROCE: How are you today?
 10 MR. FOISEL: Very much enjoying what I'm
 11 seeing here. This is something I've been looking forward
 12 to.
 13 MR. SANTACROCE: You never served on a jury
 14 before?
 15 MR. FOISEL: No. I've come in twice and
 16 been dismissed twice, before even getting into the
 17 courtroom.
 18 MR. SANTACROCE: So this is a -- a good
 19 experience for you, what you've experienced so far?
 20 MR. FOISEL: Yes.
 21 MR. SANTACROCE: You know, recently, we've
 22 had a lot of high profile criminal trials on TV and there
 23 was a lot of talk about the jury system on talk radio and
 24 probably among your peers.

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1 MR. SANTACROCE: They were three off duty
 2 Metropolitan policemen?
 3 MR. FOISEL: Yes.
 4 MR. SANTACROCE: That beat you up?
 5 MR. KING: Yes, but they were very drunk.
 6 MR. SANTACROCE: Where did this incident
 7 happen?
 8 MR. FOISEL: On the Boulder Highway, just
 9 north of the Sam's Town Hotel & Casino.
 10 MR. SANTACROCE: And what were you doing?
 11 MR. FOISEL: Um, at that time in my life, I
 12 made it a point that after I would get off work, I would
 13 ride my bicycle from Las Vegas out to Boulder city and
 14 return.
 15 And in the process of
 16 returning, a pickup truck hauling a huge boat hit me with
 17 the tires on the -- with the right side of the trailer,
 18 nearly knocking me off my bicycle.
 19 At the next intersection, when
 20 the light changed, I pulled up alongside them and I said:
 21 Hey, bud, you know, could you pay attention? You know, you
 22 hit me with your trailer back.
 23 The response I received was
 24 they rolled down the window, spit and cursed at me.

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1 What do you think about the
 2 jury system?
 3 MR. FOISEL: I read what Thomas Mitchell,
 4 the editor of the RJ has to say about that, and I compare
 5 that with what Brian Greenspun has to say, specifically, the
 6 Grand Jury being criticized recently, but, generally, I
 7 think that it's a fairly honest system, but it can be prone
 8 to manipulation.
 9 MR. SANTACROCE: If there was something that
 10 you would change about the jury system, what would that be?
 11 MR. FOISEL: Not being intimately aware of
 12 how it works, I can't make a comment on that.
 13 MR. SANTACROCE: Okay. This incident that
 14 you had when you were beaten and knifed, they found the
 15 person that did that?
 16 MR. FOISEL: They identified them, all three
 17 of them.
 18 MR. SANTACROCE: Did it go to trial?
 19 MR. FOISEL: No.
 20 MR. SANTACROCE: Were any of those
 21 individuals black?
 22 MR. FOISEL: No. They were what I
 23 believed -- I found out later on -- were three off duty
 24 Metropolitan policemen.

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1 MR. SANTACROCE: And then what happened at
 2 that point? They proceeded to beat you up?
 3 MR. FOISEL: I called them dirt balls; the
 4 light changed; they took off. I proceeded south on Boulder
 5 Highway. They slowed down; tried repeatedly to run me over,
 6 but they couldn't due to the wide wheel base of the truck,
 7 as opposed to the short wheel base of the bicycle.
 8 Eventually, they just blocked
 9 my access to the shoulder that I was riding on; three of
 10 them came out and surrounded me and I was attacked.
 11 MR. SANTACROCE: Did they ever identify
 12 themselves as police officers, either off duty or --
 13 MR. FOISEL: No.
 14 MR. SANTACROCE: -- otherwise?
 15 And you say that you have a
 16 newfound respect for Las Vegas Metropolitan Police
 17 Department?
 18 MR. FOISEL: Based on my experience of being
 19 a suspected perpetrator.
 20 MR. SANTACROCE: So the way they treated you
 21 regarding the brandishing incident has given you newfound
 22 respect for Metro?
 23 MR. FOISEL: Yes.
 24 MR. SANTACROCE: Will that newfound respect

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1 translate in to a witness that testifies for Metro; in other
2 words, will you believe that witness?

3 MR. FOISEL: I will be critical of them.

4 MR. SANTACROCE: You will be critical of
5 them?

6 MR. FOISEL: Yes.

7 MR. SANTACROCE: What was this
8 professional -- to use your words -- professional police
9 work that you highly regard regarding Metro? What did they
10 do?

11 MR. FOISEL: They -- first of all, right off
12 the bat, they didn't come out and start yelling obscenities
13 at me. Secondly, I wasn't beaten up immediately.

14 In the past -- because I grew
15 up in a small town in Nevada, a little place called Las
16 Vegas, and Las Vegas in the '60s and '70s, the only
17 requirement to be a policeman was evidently proving that you
18 had been a member of the Hell's Angels.

19 And needless to say, the police
20 work seen back in that era was not very professional; and,
21 typically, any occasions I would have to have contact with
22 the police department at that time, that's usually what
23 happened.

24 But it's changed dramatically.

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1 Like I say, I fully expected to go to jail that evening.

2 MR. SANTACROCE: Uh-huh.

3 MR. FOISEL: But if it hadn't have been for
4 the fact that I was wearing my camcorder and recorded the
5 event, I probably would have, but the police officer -- one
6 of the police officers just wanted to wash his hands of it
7 and get on to his next call. He wanted to take me to jail
8 and have me arrested.

9 The second officer, when I told
10 him that I had recorded the entire event, he was a little
11 astonished. When I said I had it queued up, I was
12 anticipating it, I had it queued up on the second camcorder
13 in the passenger seat of my van, can you please look at
14 that?

15 They were initially hesitant to
16 do that, but finally retrieved the camera, pressed the play
17 button and within five minutes, the handcuffs were off me,
18 and I was being told that they -- that this experience was
19 beyond what their training had prepared them for; however,
20 they asked me if I would mind if they would impound my -- my
21 weapon.

22 And I said no, not at all; and,
23 at that time, I was told it was being assigned out for
24 investigation.

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1 MR. SANTACROCE: Do you normally carry a
2 camcorder with you in your car?

3 MR. FOISEL: It's something I started doing
4 about two -- two years ago.

5 I commute religiously on a
6 motorcycle, and I've discovered that it's a passive weapon.
7 Once people that are doing stupid things realize they're
8 being video taped, they usually stop.

9 MR. SANTACROCE: So you carry the camcorder
10 on you on the motorcycle, is that it?

11 MR. FOISEL: Yes, it's something -- I've
12 worked for the Air Force for years, and it's something I've
13 picked up on from the flight recorders that were installed
14 on a lot of the aircraft.

15 MR. SANTACROCE: I want to get back to this
16 police work business, because in this case you are probably
17 going to hear some officers get up there and tell you about
18 police work that they conducted.

19 When they tell you about this
20 police work and investigation that they conducted, are you
21 going to believe them, that what they did was true and
22 correct?

23 MR. FOISEL: No, I'm going to be the
24 technician that I am, the science technician that I am, and

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1 I'm going to see what evidence they have to present and use
2 that to judge the very scientists that I worked for Lockheed
3 for, some of which were very good and some of which were
4 very bad.

5 MR. SANTACROCE: Do you think that the
6 police can make mistakes in their investigation?

7 MR. FOISEL: Oh, it's inevitable; they're
8 human.

9 MR. SANTACROCE: One other thing: You
10 mentioned something about road rage and I didn't catch all
11 of that.

12 What was that about?

13 MR. FOISEL: With the growth of the city and
14 the congestion problems inherent in it, you drive something
15 as vulnerable as an intermediate sized motorcycle, people
16 are going to try to pick on you.

17 And I -- I -- one incident,
18 there was a truckload of rednecks behind me. It was bumper
19 to bumper traffic. They wanted me to be right up on the
20 bumper of the car ahead of me; stop and go traffic on I-15
21 at rush hour; 80 miles down to zero in just a minute and
22 then you just crawl along at 15.

23 So I just followed the rule of
24 the road by maintaining two -- one or two car lengths ahead

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1 of me. They pulled up behind me, started revving their
2 engine up or honking their horn, eventually passed on the
3 shoulder, pushed me out of my lane. I nearly collided with
4 another vehicle that was in the lane next to me; got yelled
5 at by that guy.

6 Stabilized everything in the
7 lane next to him, pulled up alongside that truck, and made
8 the statement: Hey, man, that, you know, "s" isn't cool.
9 Will you please knock it off.

10 MR. SANTACROCE: That what?

11 MR. FOISEL: The "s" isn't cool, the
12 expletive.

13 MR. SANTACROCE: Okay.

14 MR. FOISEL: At that point, I got in front
15 of them; traffic came to a complete stop. I looked into my
16 rearview mirror and, once again, three men armed with -- two
17 of them armed with aluminum baseball bats were coming out
18 after me, yelling obscenities and swinging their bats in a
19 threatening manner.

20 At that point, I had had my
21 concealed carry permit for about two years, and falling back
22 on the training of not one, but two schools, that I went
23 through to familiarize myself with how to handle that, the
24 prime directive in that is to exhaust all means of escape

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1 client over here? (indicating)

2 MR. FOISEL: Yes, depending on the evidence
3 that's demonstrated for me.

4 MR. SANTACROCE: As you look at him, do you
5 have any preconceived ideas about this young man.

6 MR. FOISEL: I think, right now, I'm
7 wondering if he's related to the policeman that arrested me
8 last year, but that is the same policeman that turned me
9 loose after seeing the video evidence.

10 He looks also like a -- a lot
11 like my neighbor, if you were to take his moustache off.

12 MR. SCISCENTO: May we approach, Your Honor?

13 THE COURT: Yes.

14 (Unreported discussion at the bench.)

15 THE COURT: Okay. Mr. Foisel, we're going
16 to excuse you. Thank you very much.

17 MR. FOISEL: Thank you.

18 THE COURT: Thank you. I appreciate your
19 candor with everything that's happened and everything like
20 that. Good luck to you and, hopefully, you won't have any
21 more problems.

22 Okay. The clerk will call the

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1 before you deploy your weapon.

2 So I dropped the kick stand on
3 my motorcycle; ran about two car lengths ahead of me. I
4 jumped over the concrete median, sat down, flipped on my
5 camcorder, pulled my weapon out and chambered a round.

6 At that point, a gentleman
7 jumped over the concrete barricade, recoiled back, ready to
8 smack me. I just demonstrated the fact that I had a weapon.
9 It was just, you know, I -- I've got a -- you've got a bat.
10 I've got a weapon. You know, I don't have a lot of respect
11 for someone that shows up to a gun fight armed with a bat.

12 He apologized; yelled back to
13 his fellow -- his friends that: The guy's got a gun; the
14 guy's got a gun. I stayed there for a minute or two to
15 regain my composure; looked over the concrete barricade and
16 they were gone.

17 MR. SANTACROCE: You described them as being
18 rednecks. What -- and I'm not looking for a Jeff Foworthy
19 kind of explanation here.

20 What, to you, is a redneck?

21 MR. FOISEL: Beat up, jacked up pickup truck
22 with a drunken macho attitude.

23 MR. SANTACROCE: Mr. Foisel, do you think
24 that you can be fair and impartial as it relates to my

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1 next name.

2 THE CLERK: Number 148, Robin O'Rourke.

3 THE COURT: Okay. Miss O'Rourke, if you
4 would just come up and sit in that third chair in the front
5 row, please.

6 Okay. Miss O'Rourke, good
7 afternoon. Thank you for your patience being with us all
8 afternoon.

9 Do you know of any reason why
10 you couldn't be a completely fair and impartial juror if
11 selected to serve in this case?

12 MS. O'ROURKE: No.

13 THE COURT: Can you wait in forming your
14 opinion, as to the guilt or innocence of the defendant,
15 until all the evidence has been heard?

16 MS. O'ROURKE: Yes.

17 THE COURT: Have you or anyone close to you,
18 such as a family member or friend, ever been arrested for a
19 crime?

20 MS. O'ROURKE: No.

21 THE COURT: Have you or anyone close to you,
22 such as a family member or friend, ever been the victim of a
23 crime?

24 MS. O'ROURKE: No.

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1 THE COURT: Can you base your verdict solely
2 on the evidence brought out at the trial and the law that
3 applies, as stated in my instructions to you, without fear
4 of criticism or popular opinion?

5 MS. O'ROURKE: Yes.

6 THE COURT: Have you ever served as a juror
7 before?

8 MS. O'ROURKE: No.

9 THE COURT: If you were a party to this
10 case, would you be comfortable with 14 jurors just like
11 yourself?

12 MS. O'ROURKE: Yes.

13 THE COURT: Thank you.

14 Mr. COUNOU.

15 MR. COUNOU: Thank you.

16 Miss O'Rourke, it lists you as
17 an administrator.

18 Could you explain that? What
19 line of work are you in?

20 MS. O'ROURKE: It's computer work for the
21 government.

22 MR. COUNOU: Which state or federal
23 government do you work for?

24 MS. O'ROURKE: It's a branch off the federal

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1 the police that -- that you have any opinion as to the
2 Metropolitan Police Department, positive or negative?

3 MS. O'ROURKE: No.

4 MR. COUNOU: Okay. And do you have any
5 preconceived feelings that you have developed through
6 your -- through your years that may come -- come back to
7 question you, you know, that comes up to your -- to the
8 surface again, by hearing a trial like this, a murder case?

9 MS. O'ROURKE: No.

10 MR. COUNOU: And can you be fair and
11 impartial and listen to all the evidence before you make a
12 determination as to guilt or not guilt?

13 MS. O'ROURKE: Yes.

14 MR. COUNOU: Would you like to be on this
15 jury?

16 MS. O'ROURKE: Well, I don't know.

17 Do -- do I have a choice?

18 MR. COUNOU: Not if I have a say in it.

19 But, as you sit there right
20 now, what's going on in your mind?

21 MS. O'ROURKE: I don't know. I'm nervous.

22 I mean, I feel like I'm on trial.

23 MR. COUNOU: I don't make you nervous, do I?

24 MS. O'ROURKE: Well, the whole scenario.

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1 government. It's a subcontract for the Department of
2 Energy.

3 MR. COUNOU: Okay. How long have you been
4 in that line of work for them?

5 MS. O'ROURKE: Ten years.

6 MR. COUNOU: Ten years.

7 And your husband's occupation
8 is plumber?

9 MS. O'ROURKE: Yes.

10 MR. COUNOU: And how long has he been in the
11 plumbing business?

12 MS. O'ROURKE: Twelve years.

13 MR. COUNOU: Okay. Did you -- were you born
14 and raised here?

15 MS. O'ROURKE: I was raised here.

16 MR. COUNOU: Okay. Where -- what part of
17 the country did you come from?

18 MS. O'ROURKE: New Mexico.

19 MR. COUNOU: And so you went through
20 schooling here in high school; and everything then in your
21 major part of your life has happened here in Clark County,
22 correct?

23 MS. O'ROURKE: Yes.

24 MR. COUNOU: Have you had any contact with

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1 MR. COUNOU: Okay. Do you think you -- you
2 realize that you are not on trial?

3 MS. O'ROURKE: Yes.

4 MR. COUNOU: Okay. And, were you to be
5 picked as a juror, do you think you will be getting more
6 relaxed as you -- and all of what your job would be would be
7 the trier of facts.

8 MS. O'ROURKE: Yes.

9 MR. COUNOU: I believe that's it, Judge.

10 Thank you. Pass for cause.

11 THE COURT: Thank you.

12 Mr. Sciscento.

13 MR. SCISCENTO: Yes. Thank you.

14 Miss O'Rourke, do you have any
15 children?

16 MS. O'ROURKE: No.

17 MR. SCISCENTO: Okay. And you grew up out
18 here in Las Vegas?

19 MS. O'ROURKE: Yes.

20 MR. SCISCENTO: Okay. Did you ever have any
21 friends who always got you in trouble?

22 MS. O'ROURKE: No.

23 MR. SCISCENTO: You didn't hang around with
24 any people who were bad people?

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1 MS. O'ROURKE: No.
 2 MR. SCISCENTO: Do you know of people that
 3 have?
 4 MS. O'ROURKE: Yes.
 5 MR. SCISCENTO: Okay. Do you think it's
 6 fair that birds of a feather -- that old saying "Birds of a
 7 feather flock together," do you think that's true?
 8 MS. O'ROURKE: Yes.
 9 MR. SCISCENTO: So if one person in the
 10 group is bad, then the other person in the group is bad;
 11 would you agree with that?
 12 MS. O'ROURKE: I don't know.
 13 MR. SCISCENTO: Do you think if you place
 14 yourself in the situation or position where somebody does
 15 something wrong, that you should also be held accountable
 16 for that person's actions?
 17 MS. O'ROURKE: No.
 18 MR. SCISCENTO: Even if that other person
 19 commits a murder?
 20 MS. O'ROURKE: Right.
 21 MR. SCISCENTO: Okay. And I want to know
 22 how you feel about somebody being responsible for their own
 23 actions.
 24 Do you think that they should

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1 be responsible just for their own actions?
 2 MS. O'ROURKE: Yes.
 3 MR. SCISCENTO: Even if you know something
 4 was going to happen, but you still were there? Even if you
 5 knew something bad was going to happen --
 6 MS. O'ROURKE: Well, they're responsible if
 7 they knew something bad was going to happen.
 8 MR. SCISCENTO: What do you think they
 9 should do in that situation?
 10 MS. O'ROURKE: Well, I don't know. Tell
 11 someone.
 12 MR. SCISCENTO: Okay. You have no
 13 preconceived notions against Mr. Nasby here, do you?
 14 MS. O'ROURKE: No.
 15 MR. SCISCENTO: You have no ill will towards
 16 him?
 17 MS. O'ROURKE: No.
 18 MR. SCISCENTO: You don't have a
 19 determination right now of guilt or innocence in your mind
 20 at all?
 21 MS. O'ROURKE: No.
 22 MR. SCISCENTO: Would somebody -- if you
 23 were on trial for a very serious crime, would you want
 24 somebody with your mind, with your thought process, with

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1 your beliefs right now, judging you as you were to judge Mr.
 2 Nasby?
 3 MS. O'ROURKE: Yes.
 4 MR. SCISCENTO: Without a doubt?
 5 MS. O'ROURKE: Without a doubt.
 6 MR. SCISCENTO: You could be completely fair
 7 to Mr. Nasby?
 8 MS. O'ROURKE: Yes.
 9 MR. SCISCENTO: Okay. We'll pass for cause,
 10 Your Honor.
 11 THE COURT: Thank you very much.
 12 Okay. We'll go next to Mr.
 13 Barbeau.
 14 Good afternoon.
 15 MR. BARBEAU: How are you doing?
 16 THE COURT: Mr. Barbeau, do you know of any
 17 reason why you couldn't be a completely fair and impartial
 18 juror if selected to serve in this case?
 19 MR. BARBEAU: No.
 20 THE COURT: Can you wait in forming your
 21 opinion, as to the guilt or innocence of the defendant,
 22 until all the evidence has been heard?
 23 MR. BARBEAU: Yes.
 24 THE COURT: Can you -- have you or anyone

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1 close to you, such as a family member or friend, ever been
 2 arrested for a crime?
 3 MR. BARBEAU: No.
 4 THE COURT: Have you or anyone close to you,
 5 such as a family member or friend, ever been the victim of a
 6 crime?
 7 MR. BARBEAU: Yes, I have.
 8 THE COURT: Okay. What was that?
 9 MR. BARBEAU: Armed robbery when I was a
 10 bank teller; and also, I had my car stolen.
 11 THE COURT: Okay. So you worked at a bank
 12 and somebody came in and robbed the bank?
 13 MR. BARBEAU: Yes.
 14 THE COURT: And did they catch the people or
 15 person responsible?
 16 MR. BARBEAU: Yes.
 17 THE COURT: Did you have to testify in court
 18 against that person?
 19 MR. BARBEAU: No.
 20 THE COURT: Okay. How about when your car
 21 was stolen, did they catch the person responsible for that?
 22 MR. BARBEAU: To my knowledge, no. I don't
 23 know.
 24 THE COURT: Despite having been a victim of

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1 a crime, do you feel you could be fair and impartial both to
2 the State and the defense in this case?

3 MR. BARBEAU: Oh, yeah.

4 THE COURT: Can you base your verdict solely
5 on the evidence brought out at the trial and the law that
6 applies, as stated in my instructions to you, without fear
7 of criticism or popular opinion?

8 MR. BARBEAU: Yes, I can.

9 THE COURT: Have you ever served as a juror
10 before?

11 MR. BARBEAU: Yes, I have.

12 THE COURT: On how many occasions?

13 MR. BARBEAU: One.

14 THE COURT: Was it civil or criminal case?

15 MR. BARBEAU: Criminal.

16 THE COURT: Without telling us what the
17 verdict was, did your jury reach a verdict?

18 MR. BARBEAU: No.

19 THE COURT: Was it a -- a hung jury?

20 MR. BARBEAU: Hung jury, yes.

21 THE COURT: Okay. Is there anything about
22 that experience you had on jury duty which you feel would
23 affect your ability to be fair and impartial to both sides
24 in this case?

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1 experience or was it a frustrating experience?

2 MR. BARBEAU: It was a good experience.

3 MR. COUNOU: Okay. Why? Could you explain
4 that?

5 MR. BARBEAU: Um, again, just about learning
6 about the criminal -- the criminal justice system, of how it
7 works; um, individual people, of how each person has their
8 own way of deciding facts and the way that they see a case
9 as it is brought within the court.

10 MR. COUNOU: If you were to be selected as a
11 member of this jury, would you like that?

12 MR. BARBEAU: Yes, definitely.

13 MR. COUNOU: And why would you like to be a
14 juror in this case?

15 MR. BARBEAU: Um, I feel that myself, I am
16 fair and impartial, because I've personally worked with a
17 lot of different people within my job. And just the fact
18 that -- I don't know. It's just something I -- I enjoy -- I
19 enjoy the law and how it works.

20 MR. COUNOU: Okay. And speaking of the job,
21 could you explain exactly what -- what do you do, a personal
22 banker?

23 MR. BARBEAU: Yeah, I'm a personal banker at
24 Bank of America, new accounts, loans, commercial business

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1 MR. BARBEAU: No.

2 THE COURT: And were you elected a
3 foreperson of that jury?

4 MR. BARBEAU: No, I was not.

5 THE COURT: If you were a party to this
6 case, would you be comfortable with 14 jurors just like
7 yourself?

8 MR. BARBEAU: Yes, I would.

9 THE COURT: Thank you.

10 MR. COUNOU.

11 MR. COUNOU: Thank you.

12 MR. Barbeau, could you tell me
13 what your -- now looking back, your experience when you were
14 a part of that hung jury, could you tell me about it, your
15 experience?

16 MR. BARBEAU: My experience?

17 MR. COUNOU: Yeah.

18 MR. BARBEAU: Well, it was -- it was almost
19 seven years ago. It was -- it was enlightening about the --
20 the whole trial process, how it -- the direction of how it
21 goes and the kind of the information that is brought out in
22 trial, of how each side tries to derive within their case.

23 MR. COUNOU: Okay. And did you find that --
24 in looking back now, do you still -- was it still a good

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1 accounts.

2 MR. COUNOU: Okay. And that's at Bank of
3 America?

4 MR. BARBEAU: Yes, it is.

5 MR. COUNOU: Do you know Miss Dominguez, by
6 any chance?

7 MR. BARBEAU: No, I do not.

8 MR. COUNOU: And the fact that maybe you
9 work together and you were selected on this jury, do you
10 think, if there were to be a hung jury, opposite ends, would
11 you feel like you would be pressured to come up and follow
12 with what Miss Dominguez wants to do or vice versa?

13 MR. BARBEAU: No.

14 MR. COUNOU: Can you stand on your own two
15 feet and make your -- make up your own mind?

16 MR. BARBEAU: Yes, I can.

17 MR. COUNOU: And then, in that respect,
18 making up your own mind, can you make up your own mind only
19 after you listen to all the evidence?

20 MR. BARBEAU: Yes.

21 MR. COUNOU: And can you promise then, to
22 the State and also to the defendant, that you could be fair
23 and impartial in this case?

24 MR. BARBEAU: Yes, I can.

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1 MR. COUNOU: Okay. Should this case go to a
2 penalty hearing, could you sit and impose a penalty on that
3 man right there (indicating) if he's found guilty of first
4 degree murder with use of a deadly weapon?

5 MR. BARBEAU: Yes, I can.

6 MR. COUNOU: Judge, I'll pass for cause.

7 THE COURT: Okay. Mr. Santacroce.

8 MR. SANTACROCE: Thank you very much.

9 Good afternoon, Mr. Barbeau.

10 MR. BARBEAU: Hi. How are you doing?

11 MR. SANTACROCE: Good. Thank you.

12 Can you tell me a little bit
13 about your educational background?

14 MR. BARBEAU: High school degree; currently
15 enrolled at the Community College; about two years of
16 college.

17 MR. SANTACROCE: And did you grow up in
18 Clark County?

19 MR. BARBEAU: I've been here since 1980.

20 MR. SANTACROCE: Did you have any negative
21 feelings about your experience with being on the jury last
22 time?

23 MR. BARBEAU: No, not at all.

24 MR. SANTACROCE: It was a good experience?

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1 against my client, are you?

2 MR. BARBEAU: No.

3 MR. SANTACROCE: Okay. And you understand
4 that our raising objections doesn't necessarily mean that
5 our client's guilty or not guilty, right?

6 MR. BARBEAU: That's correct.

7 MR. SANTACROCE: And you are not going to
8 form any -- any kind of opinion based upon our objections or
9 our zealousness, are you?

10 MR. BARBEAU: No.

11 MR. SANTACROCE: Have you ever been a victim
12 of any kind of discrimination?

13 MR. BARBEAU: Have I?

14 MR. SANTACROCE: Yes.

15 MR. BARBEAU: No.

16 MR. SANTACROCE: Have you ever witnessed any
17 kind of discrimination against other people?

18 MR. BARBEAU: Other than words?

19 MR. SANTACROCE: Any kind.

20 MR. BARBEAU: Well, I mean, you know, a kid
21 growing up, or even in a person's bigotry or something of
22 that nature, fights, whatever; but no -- no actual
23 discrimination in that sense.

24 MR. SANTACROCE: Do you think that we have

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1 MR. BARBEAU: Yes, it was. Probably,
2 deliberating got a little -- I guess hostile.

3 MR. SANTACROCE: A little heated?

4 MR. BARBEAU: Yeah, a little heated, but --
5 but it was a good experience.

6 MR. SANTACROCE: Everybody came out
7 unscathed?

8 MR. BARBEAU: Yes.

9 MR. SANTACROCE: Good. I'm glad you're
10 back.

11 You, no doubt, saw, on that
12 last trial that you were in, that attorneys make objections
13 during the course of a trial.

14 MR. BARBEAU: Uh-huh; yes.

15 MR. SANTACROCE: You saw that, didn't you?

16 MR. BARBEAU: Yes.

17 MR. SANTACROCE: And sometimes, the judge
18 will rule one way; sometimes, the judge will rule another
19 way; and sometimes, the attorneys can become very zealous in
20 their arguments; and maybe sometimes, the attorneys can
21 become obnoxious. You might perceive them as obnoxious.

22 If either Mr. Sciscanto or I --
23 probably him -- not me, but maybe him -- if either one of us
24 becomes obnoxious to you, you are not going to hold that

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1 any kind of problems regarding race relations in Clark
2 County?

3 MR. BARBEAU: I think there is race
4 relations problems probably all over the country.

5 MR. SANTACROCE: How do you feel --

6 MR. BARBEAU: I mean, it's not only just in
7 the United States.

8 MR. SANTACROCE: How do you feel about that?

9 MR. BARBEAU: That's just ignorance, so --
10 it's not my personal belief.

11 MR. SANTACROCE: Thank you very much.

12 I pass.

13 THE COURT: Thank you very much.

14 Okay. We'll go next to Juror
15 Number 14, Mr. -- Mr. Schlieman -- is that --

16 MR. SCHLIEMAN: Schlieman.

17 THE COURT: Schlieman. Okay. Thank you.

18 Do you know of any reason why
19 you couldn't be a completely fair and impartial juror if
20 selected to serve in this case?

21 MR. SCHLIEMAN: No.

22 THE COURT: Can you wait in forming your
23 opinion, as to the guilt or innocence of the defendant,
24 until all the evidence has been heard?

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1 MR. SCHLIEMAN: Yes.
 2 THE COURT: Have you or anyone close to you,
 3 such as a family member or friend, ever been arrested for a
 4 crime.
 5 MR. SCHLIEMAN: Yes, yes, two incidences. I
 6 believe my wife, prior to meeting her, had some traffic
 7 issues, driving without a registration, was arrested.
 8 To be honest, I don't know if
 9 she was ever charged or how that worked out.
 10 THE COURT: Okay.
 11 MR. SCHLIEMAN: Also, my sister had an issue
 12 with her high school son, who had a party in her absence;
 13 underage drinking took place. She got arrested for
 14 contributing to minors and those charges were dropped.
 15 THE COURT: Okay. Have you or anyone close
 16 to you, such as a family member or friend, ever been the
 17 victim of a crime?
 18 MR. SCHLIEMAN: No.
 19 THE COURT: Can you base your verdict solely
 20 on the evidence brought out at the trial and the law that
 21 applies, as stated in my instructions to you, without fear
 22 of criticism or popular opinion?
 23 MR. SCHLIEMAN: Yes.
 24 THE COURT: Have you ever served as a juror

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1 hospital or --
 2 MR. SCHLIEMAN: She's a nurse at Sunrise.
 3 MR. COUMOU: Sunrise.
 4 And how long has she been in
 5 that line of work, sir?
 6 MR. SCHLIEMAN: She -- since January of this
 7 year.
 8 MR. COUMOU: Okay. Did she recently get
 9 her --
 10 MR. SCHLIEMAN: Yes.
 11 MR. COUMOU: -- education and training in
 12 that field?
 13 MR. SCHLIEMAN: She -- she went to U.N.L.V.
 14 and became a registered nurse and got her degree or
 15 certification last fall.
 16 MR. COUMOU: Okay. How about you, Mr.
 17 Schlieman, do you have a college degree?
 18 MR. SCHLIEMAN: Yes. 1986, from Iowa State.
 19 MR. COUMOU: From Iowa State?
 20 MR. SCHLIEMAN: Yes.
 21 MR. COUMOU: And what was your major?
 22 MR. SCHLIEMAN: It was business.
 23 MR. COUMOU: Business.
 24 What -- you mentioned about

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1 before?
 2 MR. SCHLIEMAN: No.
 3 THE COURT: If you were a party to this
 4 case, would you be comfortable with 14 jurors just like
 5 yourself?
 6 MR. SCHLIEMAN: Yes.
 7 THE COURT: Thank you.
 8 Mr. Coumou.
 9 MR. COUMOU: Thank you.
 10 Mr. Schlieman, could you tell
 11 me what your line of work is?
 12 MR. SCHLIEMAN: I'm a director of operations
 13 for a third party provider logistical service.
 14 MR. COUMOU: Could you explain that for me?
 15 MR. SCHLIEMAN: Basically, we run
 16 warehouses.
 17 MR. COUMOU: And how long have you been in
 18 that type of work, sir?
 19 MR. SCHLIEMAN: I have been in this field
 20 for 14 years. I've been in my current position just a
 21 couple of months.
 22 MR. COUMOU: And your wife is a nurse?
 23 MR. SCHLIEMAN: Yes.
 24 MR. COUMOU: Does she work at a local

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1 this incident with your wife. You are not saying that she's
 2 a serial traffic violator, are you?
 3 MR. SCHLIEMAN: Like I say, I'm -- I'm not
 4 even familiar with all the details. I do know she talks
 5 about the morning she got pulled over and taken to jail.
 6 MR. COUMOU: Okay. Was that well before you
 7 met her?
 8 MR. SCHLIEMAN: Ah, I think a few years,
 9 yes.
 10 MR. COUMOU: Okay. But she doesn't harbor
 11 any bad feelings with the police department or does she?
 12 MR. SCHLIEMAN: Oh, she might, but --
 13 MR. COUMOU: How about you?
 14 MR. SCHLIEMAN: Ah, I have no grounds.
 15 MR. COUMOU: Okay. Are you happy that that
 16 happened to her?
 17 MR. SCHLIEMAN: I can't speak to that.
 18 MR. COUMOU: Okay. Well, you are smiling,
 19 so I'll leave it at that.
 20 In this case, sir, can you be
 21 fair and impartial?
 22 MR. SCHLIEMAN: Yes.
 23 MR. COUMOU: And defense counsel keeps on
 24 bringing up race, but this -- this case is involving the

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1 killing of another human being.

2 Can you -- can you keep that in
3 mind, sir, and listen to all the evidence before making a
4 determination as to guilt or not guilty, whether or not this
5 man killed another man?

6 MR. SCHLIEHAN: I would try, yes.

7 MR. COUMOU: Okay. You say try.

8 Can you promise?

9 MR. SCHLIEHAN: Ah, my only concern -- and
10 as I kind of hear both sides going back and forth, or maybe
11 it's because I'm 14th in the row here --

12 MR. COUMOU: Right.

13 MR. SCHLIEHAN: -- but I'm always jumping
14 ahead: Where is this going?

15 You know, I hear about the
16 co-defendant being a witness. I hear about -- all the
17 questions about experts being called; would you listen to
18 them.

19 So, yes, I would try to do my
20 best, but I guess I have a lot of questions: What's going
21 on?

22 MR. COUMOU: Well, Mr. Schliefman, you know
23 yourself the best.

24 Can you promise yourself just

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1 MR. SCHLIEHAN: No, has nothing to do with
2 hospitals.

3 MR. SCISCENTO: Okay.

4 MR. SCHLIEHAN: I operate -- I'm responsible
5 for three facilities, one here, one in Indianapolis, one in
6 New York, that handles retail merchandise returns.

7 MR. SCISCENTO: Okay. You've only been here
8 three years.

9 Where did you live before that?

10 MR. SCHLIEHAN: Actually, I came out here in
11 '94. I got relocated to California for 18 months; and now
12 I've been back for 18 months. So I've been here three years
13 of the five. Born and raised in Iowa; worked in Iowa and
14 Illinois until I came out here in '94.

15 MR. SCISCENTO: Okay. And you've never been
16 a juror before at all?

17 MR. SCHLIEHAN: No, I have not.

18 MR. SCISCENTO: Okay. What kind of
19 schooling? You have 16 years of education?

20 MR. SCHLIEHAN: No -- well, yeah, high
21 school degree and four years of college, yeah.

22 MR. SCISCENTO: Okay. And what -- what
23 degree do you have?

24 MR. SCHLIEHAN: Bachelor's in business

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1 to sit back, relax the best you can, and then listen to the
2 evidence? And, if I tell you that the Court will allow you
3 perhaps to ask some valid legal questions, would that help
4 your concerns?

5 MR. SCHLIEHAN: Yes. I'm just a little
6 curious to where it's going; but, yes, I would try to do my
7 best to be impartial.

8 MR. COUMOU: Okay. Thank you.

9 Judge, I'll pass for cause.

10 THE COURT: Mr. Sciscento.

11 MR. SCISCENTO: Thank you, Your Honor.

12 Mr. Coumou said I'm trying to
13 bring up race. I'm not. I'm trying to hide it.

14 You have no ill will towards my
15 client because of his race?

16 MR. SCHLIEHAN: No, I do not.

17 MR. SCISCENTO: And you promise to keep it
18 that way throughout this whole trial?

19 MR. SCHLIEHAN: Yes.

20 MR. SCISCENTO: Treat him as just another
21 human being?

22 MR. SCHLIEHAN: Yes.

23 MR. SCISCENTO: You -- your job involves
24 distributing to different hospitals?

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1 administration.

2 MR. SCISCENTO: Okay. In all the evidence
3 that's going to be coming in, will you promise to wait until
4 the very last time and wait until deliberation before you
5 make a determination on that?

6 Could you do that?

7 MR. SCHLIEHAN: Yes, I would try.

8 MR. SCISCENTO: Here's the tough part:
9 We're asking you, as a human being, to sit here and listen
10 to all the evidence that's put up here. (Indicating)

11 MR. SCHLIEHAN: Okay.

12 MR. SCISCENTO: But we're telling you the
13 whole time: Don't make a determination until you go back
14 into the room and you need to deliberate.

15 Could you do that?

16 MR. SCHLIEHAN: Uh, I -- I think so. You
17 know, I know the answer you want is yes.

18 MR. SCISCENTO: Yes, I know.

19 MR. SCHLIEHAN: By nature, I think anyone
20 has to start kind of building building blocks.

21 MR. SCISCENTO: The answer I expect is yes.
22 The answer I know is no.

23 MR. SCHLIEHAN: I mean, I would have to take
24 in all the information to make a decision, yes.

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MR. SCISCENTO: It would be very, very tough; almost impossible. I could never do it. I listen to the evidence as it goes along and I make a determination. Again, could you wait until the very last moment?

MR. SCHLEMAN: I -- I think so. It's going to depend what the evidence is.

MR. SCISCENTO: The first day you will hear evidence, there will be another day, maybe a third day --

MR. SCHLEMAN: Yes.

MR. SCISCENTO: Could you wait until the second day before you make a determination on the first day?

MR. SCHLEMAN: Ah, I would try, yes.

MR. SCISCENTO: That's what you need to do. That's what I need you to do.

MR. SCHLEMAN: I know, but I'm answering honestly. I'm not trying to argue.

MR. SCISCENTO: I know. I'm trying to portray to you how tough it is.

MR. SCHLEMAN: I'm trying to tell you how I honestly think my mind would work.

MR. SCISCENTO: I'm trying to portray how very tough it is because I know I could never do it.

Would you be able, though, at

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in just a few minutes.

(Recess in proceedings.)

THE COURT: Okay. Ladies and gentlemen, I met with the attorneys to try to get a feel for, timewise, on how much longer it would take to get the jury picked. I think it's going to take at least an hour.

So, again, we tried to move it along as rapidly as we could today and I know a lot of people have plans at five o'clock, so -- children to pick up or different things like that.

So what I'm going to have to do then is recess for the day and come back at 1:30 tomorrow.

I do have to meet with the attorneys and go over some things tomorrow morning, which I'm going to take care of. That's designed to expedite the trial and get it done.

So I apologize for that, and I know it's an inconvenience, and I really hoped to get it finished today, but it just took a little bit longer than we expected.

So what I'm going to do is ask you to leave tonight; again, not discuss the case. I will read you an admonishment in a minute. Come back tomorrow at

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least to try to do that?

MR. SCHLEMAN: Yes, I would.

MR. SCISCENTO: You've got to wait and deliberate inside the jury room.

MR. SCHLEMAN: Right.

MR. SCISCENTO: That means when Mr. Nasby sits here during all of this that's going on and the defense hasn't done anything yet, you still need to wait.

Can you do that?

MR. SCHLEMAN: I'm saying that's my intention and what I would try to do, yes.

MR. SCISCENTO: We'll pass for cause. Your Honor.

THE COURT: Thank you very much.

Okay. Ladies and gentlemen, we have completed phase two of the jury selection process, which is the longest phase, by far, on what it takes.

Now, what I'm going to do is I'm going to ask the attorneys to step outside with me and meet with me because I want to talk about scheduling and timing and all this.

We'll be back in just a couple minutes on what we can do to expedite things.

So, hang on and we'll be back

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1:30.

And those of you sitting in the jury box, same place, right there. You come on up. And keep the orange badges.

And for the rest of you, just -- again, if you would come back -- I estimate between an hour and an hour and a half, so you are going to know tomorrow afternoon whether or not you are going to be on the jury. So you will know that. We will definitely get it completed by mid afternoon tomorrow.

So, again, if that's a problem for anybody with their jobs or whatever, if you need to make any calls, you can tell like, and I'll be happy to personally call any of your employees or whatever and discuss the situation, if you feel it's necessary; or if it's necessary tomorrow, you can enlist them tomorrow as well.

Okay. We'll go ahead and take our evening recess.

During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial;

Or to read, watch or listen to any report or commentary on the trial or any person connected with this trial by any medium of information.

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including, without limitation, newspaper, television, the Internet or radio.

You are further admonished not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

And, again, ladies and gentlemen, for those of you who have not been on jury duty, all courts read what we call an admonishment similar to this; and the reason we do it is every time we take a break, our state law requires us to read that to you.

So, if you are on the jury, I don't mean to be redundant, but I am required to read that at each break that we take.

So, again, thank you very much for being here; thank you for your patience today; and if you would meet Ike or Lisa -- hopefully, Lisa will be back tomorrow -- and just meet her at 1:30 right outside the door, we'll get started promptly at 1:30 in the afternoon.

Thank you.

(The following proceedings were had in open court outside the presence of the prospective jury panel:)

THE COURT: Okay. The prospective jury panel has left the courtroom.

As we discussed with counsel

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MR. SCISCENTO: Only female, only female black women, in the jury pool itself.

THE COURT: Okay.

MR. SCISCENTO: Looking back over here, I don't see that there was anything -- I don't think this is a true reflection of the -- of the makeup of our society.

But further, Your Honor, also there was another lady, a Miss Hernandez, Badge Number 140, who was removed -- and I also want to get that on the record -- I believe, because of her nationality, that being Hispanic.

So, what I'm saying is she was removed because of being Hispanic and because I understand her -- because she -- she couldn't understand the English language.

THE COURT: Well, I think -- again, Mr. Sciscento, for the record, I will let you make whatever record you want, but Juror -- former Juror Number 9, Miss Hernandez, again, my un- -- she was speaking in a rather heavy Hispanic accent and, further, that she did not appear responsive to the questions asked by the Court and by the attorneys.

And I believe her answers were not probably what she intended them to be, and I questioned

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outside the courtroom, I'm going to allow the State to make their first peremptory challenges at this time. Then we'll discuss the issue of ramifications of that.

At this time, Mr. Courau, does the State wish to exercise its first peremptory challenges?

MR. COURAU: We do, Judge.

THE COURT: And who --

MR. COURAU: The State would like to thank, but excuse the juror seated in Seat Number 7, I believe, Juror Number -- Badge Number 138, Miss McNeal.

THE COURT: Okay. Does the defense have an objection to that?

MR. SCISCENTO: Yes, Your Honor, we do.

We object to the fact that I believe Miss McNeal is the only black woman in this entire courtroom of the jury pool.

THE COURT: Okay. I believe -- and, again, I could be wrong -- but just from observation, there was a male African American in chair Number 8, and I believe Miss McNeal was the only female African American.

MR. SCISCENTO: If I can, I think it's laid down in a Batson objection I need to at least set forth: She's the only one in the population. I don't think --

THE COURT: Well, female.

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her about the familiarity with the English language, and whether or not she could understand it, very briefly.

And then it was the Court's decision to excuse her, as opposed to -- I don't believe the District Attorney even asked to excuse her. I did it because I felt she might -- would have problems understanding the proceedings here, which would hurt both the State and the defense in the presentation of the case.

MR. SCISCENTO: If I can, Your Honor, just --

THE COURT: Go ahead.

MR. SCISCENTO: -- to make a record on this, what I think prompted the -- the District Attorney prompted this Court to make that determination after the District Attorney began the voir dire questioning.

My argument is that it appears that we have two women of -- that are of minority race, who the District Attorney now has moved to exclude, that being Miss Hernandez -- by his actions, I'm saying he excused --

THE COURT: The District Attorney didn't move to exclude Miss Hernandez.

MR. SCISCENTO: And, number two, I think Miss McNeal -- that's the argument that I want to make.

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1 THE COURT: Well, also, I think, on this
2 prospective jury panel, it looks like prospective Juror
3 Number 4, Miss -- Dominguez is an Hispanic name.
4 And let's see if there is any
5 others here.

6 MR. SCISCENTO: We'll see whether the
7 District Attorney moves to exclude her then. I think we
8 have set down a great Batson argument.

9 THE COURT: You can raise it every time
10 somebody is preempted then, like that.

11 Okay. So is there any other
12 foundation you want to give as to Juror Number 7?

13 Then I'm going to ask Mr.
14 COUNOU to give his reasons for exercising the peremptory
15 challenge; and I will give you a chance to respond to the
16 that.

17 MR. SCISCENTO: I don't think that she
18 showed any reason that she was biased towards the
19 prosecution in any way. She said her nephew was murdered.
20 She knows about -- about the dealings with the police in the
21 murder. She said she had no problems with them.

22 She said that she could find
23 him guilty if it is beyond a reasonable doubt. She didn't
24 say that she was biased towards the defendant in any way.

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1 that the State is using its peremptory challenge --
2 peremptory challenge on her.

3 And these are the main basic
4 race-neutral reasons:

5 First of all, she's indicated
6 that she's on medication and she needs this medication for
7 diabetes.

8 Second, she had indicated that
9 she had trouble on religious grounds in cases where there
10 may be a death penalty.

11 She also indicated, during
12 questioning during voir dire, that she may have problems as
13 to the penalty, but that she would follow the law as it --
14 as it is instructed to her.

15 She did reserve the -- the
16 feelings though that, at the time, you know, when this is
17 going through, that she will still have strong personal
18 convictions about it.

19 And the State certainly is very
20 that this may come up during the trial, especially once we
21 go through a lengthy trial.

22 What's most troubling is,
23 besides the fact that her son has been arrested in the past,
24 her nephew is a murder victim; and she indicated that she

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1 She never said that she couldn't -- she was biased against
2 the police.

3 As a matter of fact, what she
4 said is that she was head strong and if the person was
5 guilty, she could find him guilty. If he was innocent, she
6 could find him innocent.

7 I specifically asked her that
8 and she said: I could stand alone against everybody else.

9 Again, I think the reason we're
10 kicking her off is because she's of the same race of the
11 defendant.

12 THE COURT: Okay. Let me ask you this again
13 for the record: Was the victim African American or
14 Caucasian?

15 MR. COUNOU: He was African American.

16 THE COURT: Okay. Thank you. Okay.

17 Mr. COUNOU, do you wish to
18 respond to the Batson objection raised by the defense?

19 MR. COUNOU: Yes, Judge.

20 And just to make the record
21 clear, the State certainly, by no means, has entertained a
22 thought that we're going to get rid of Miss McNeal just
23 because she's of the same race as the defendant.

24 That's far from the reasons

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1 felt like the police or the law enforcement didn't do enough
2 on that case and that it's: Oh, well, that's just the way
3 it is.

4 And that's unfortunate because
5 that tells -- that gives the State the indication that she's
6 not going to be very fair and impartial when it comes to
7 listening to all the witnesses that may be here, especially
8 law enforcement.

9 What's most troubling and the
10 main reason also is that when she was even asked by counsel
11 in this case, is that she said she doesn't feel that the
12 defendant stands a fair chance in this trial.

13 And for those reasons, being
14 race-neutral reasons, is why the State is using its
15 peremptory challenge.

16 THE COURT: Thank you.

17 Mr. Sciscento, anything else?

18 MR. SCISCENTO: No, Your Honor.

19 THE COURT: Okay. The Court finds that the
20 State has a rational basis for exercising the peremptory
21 challenge; and the Court will approve the exercise of the
22 peremptory challenge of Juror Number 7 as the State's first
23 peremptory challenge.

24 Okay. Anything else we need to

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1 do?

2 MR. SCISCENTO: Very -- very quickly, I just
3 went to put on the record my objections to Miss Bertha
4 Hernandez being removed as a juror.

5 I believe she -- there are
6 interpreters which could be provided to her to help her with
7 the English language and the Spanish language and the
8 interpretation. I don't believe that she was properly
9 removed because of her inability to understand the English
10 language.

11 THE COURT: Okay. Mr. Courou, anything
12 else?

13 MR. COUROU: Judge -- and I just want to
14 make clear: I didn't even ask this lady to be removed. It
15 just became obvious to me that, as I'm asking her questions,
16 I saw a blank stare and that's when the Court made the
17 instruction.

18 THE COURT: Okay. Thank you very much.

19 The record will so reflect.

20 Okay. We'll be in recess until
21 the eleven a.m. for the Detention Center for -- we have a
22 hearing. The defendant has to be present at eleven a.m.
23 tomorrow morning.

24 COURT SERVICES: He has to be back here at

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1 eleven?

2 THE COURT: Yeah. And then the trial itself
3 will start at 1:30.

4 MR. SCISCENTO: Do you want him dressed for
5 the hearing?

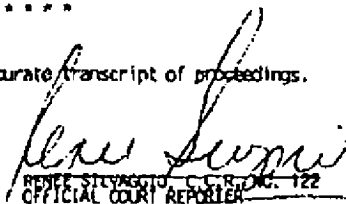
6 THE COURT: He doesn't have to be.

7 MR. SCISCENTO: No?

8 THE COURT: Just for the trial at 1:30.

9
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11 *****

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13 ATTEST: Full, true and accurate transcript of proceedings.

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17 RENE SILVA, C.T.R. NO. 122
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Electronically Filed

Tracie K. Lindeman

VS.

Case No: C154293-2
SC No: 58579

1

ATTORNEY FOR RESPONDENT

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Joetta Brown
CLERK

1 **INFO**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 10/27/98
10 8:30 A.M.
11 C. Golightly

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

15 -vs-

16 JERIMIAH JOHN DESKIN,

17 Defendant.

Case No.
Dept. No.
Docket

C 154293
III
E

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK }ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

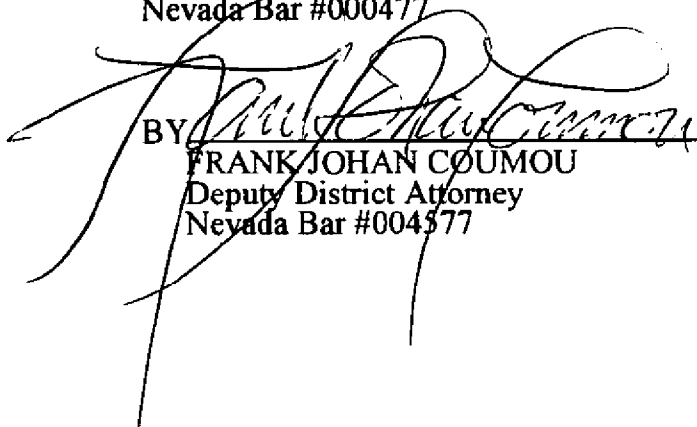
22 That JERIMIAH JOHN DESKIN, the Defendant(s) above named, having committed the
23 crime of **ACCESSORY TO MURDER (Felony - NRS 195.030, 195.040, 200.030, 200.010)**,
24 on or about the 17th day of July, 1998, within the County of Clark, State of Nevada, contrary
25 to the form, force and effect of statutes in such cases made and provided, and against the peace
26 and dignity of the State of Nevada, did wilfully, unlawfully, and feloniously harbor, conceal or
27 aid BRENDAN JAMES NASBY, to-wit: by acting as the driver of the getaway car, taking the
28 car out of the jurisdiction and concealing evidence, with intent that the said BRENDAN JAMES
29 NASBY might avoid or escape from arrest, trial, conviction or punishment having knowledge

///

///

1 that the said BRENDAN JAMES NASBY had committed a felony, to-wit: Murder, and was
2 liable to arrest therefore.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577
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26 DA#98F11168B/msr
27 LVMPD EV#9807170541
28 ACC MURD - F
(TK 3)

FILED

OCT 22 10 20 AM '98

Justice Court, Las Vegas Township

CLERK

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

JERIMIAH JOHN DESKIN

Defendant.

District Court Case No. C154293

Justice Court Case No. 98F11168 B

111
.C

10/27

I, hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

WITNESS my hand this 22nd day of OCTOBER, 19 98.

Tony Abbington
Justice of the Peace of Las Vegas Township

CEA2

MC

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—VS—

JERIMIAH JOHN DESKIN

Defendant.

Case No. 98F11168 B

COMMITMENT and ORDER TO APPEAR

An Order having been made this day by me, that

JERIMIAH JOHN DESKIN

be held to answer upon the charge of AMENDED COMPLAINT

COUNT I - CONSPIRACY TO COMMIT MURDER

COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Committed in said Township and County, on or about the 17th day of JULY, 1998.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive _____
_____ into custody, and detain _____ until _____ be legally discharged, and
that _____ be admitted to bail in the sum of _____ Dollars, and be
committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant _____ is/are commanded to appear in
Department 3 of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 8:30 A.M.,
on the 27th day of OCTOBER, 1998, for arraignment and further proceedings on the within charge S.

DATED this 22nd day of OCTOBER, 1998.


Justice of the Peace of Las Vegas Township

Justice Court, Las Vegas Township

STATE VS. DESKIN, JERIMIAH JOHN

CASE NO. 98F11168 B
PAGE TWO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES -- HEARING

CONTINUED TO:

OCTOBER 20, 1998

\$10,000 SURETY BOND POSTED BY ABACO BAIL BONDS
T/A 10-27-98 8:30 DISTRICT COURT DEPT 3

RECEIVED FOR ^{nm} 10

OCT 22 1998

COURT CLERK'S OFFICE

Justice Court, Las Vegas Township

STATE VS. DESKIN, JERIMIAH JOHN

CASE NO. 98F11168B

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
AUGUST 27, 1998 T. ABBATANGELO P. BROWN, DA L. GALLEGOS, CR M. BAUMAN, CLK	DEFENDANT NOT PRESENT IN COURT MOTION BY STATE TO FILE AMENDED COMPLAINT IN OPEN COURT - MOTION GRANTED ARREST WARRANT ISSUED: COUNT I - 6000/6000/12,000 COUNT II - 0/0/0	fp KN
10-7-98	MOTION TO PLACE ON CALENDAR TO CONFIRM COUNSEL, RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR IN THE ALTERNATIVE, TO SE BAIL FILED	mb
10-8-98	AMENDED MOTION TO PLACE ON CALENDAR TO CONFIRM COUNSEL, RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR IN THE ALTERNATIVE, TO SET BAIL FILED	mb
OCTOBER, 9, 1998 T. ABBATANGELO F. COUMOU, DA C. GOLIGHTLY, ESQ confirms R. SILVAGGIO, CR M. McCREARY, CLK	INITIAL ARRAIGNMENT DEFENDANT NOT PRESENT IN COURT MOTION BY DEFENSE TO REDUCE BAIL AND/OR O/R RELEASE COURT RESERVES RULING STATE PROVIDED COUNSEL WITH DISCOVERY DEFENSE STATES DEFT IS IN CUSTODY IN SAN BERNARDINO COUNTY AND HAS WAIVED EXTRADITION PASSED BY COURT FOR DEFT'S PRESENCE	10-23-98 8:00 #3
10-13-98	ARREST WARRANT STANDS MOTION TO REPLACE ON CALENDAR TO RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR IN THE ALTERNATIVE, TO SET BAIL FILED	mb mb
OCTOBER 15, 1998 T. ABBATANGELO S. KRISKO, DA C. GOLIGHTLY, ESQ D. ANTONACCI, CR M. McCREARY, CLK	CONTINUED INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* SIDE BAR CONFERENCE HELD APPEARANCE DATE 10-23-98 VACATED MOTION BY DEFENSE TO CONTINUE FOR BAIL MOTION - GRANTED DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF	10-20-98 8:00 #3 mb
OCTOBER 20, 1998 T. ABBATANGELO F. COUMOU, DA C. GOLIGHTLY, ESQ D. ANTONACCI, CR M. MCCREARY, CLK	DEFENDANT PRESENT IN COURT IN CUSTODY PER NEGOTIATIONS: DEFENDANT UNCONDITIONALLY WAIVES RIGHT TO PRELIMINARY HEARING ON AMENDED COMPLAINT DEFENDANT BOUND OVER AS CHARGED TO DISTRICT COURT APPEARANCE DATE SET MOTION BY DEFENSE FOR REDUCTION IN BAIL TO \$10,000 - STATE HAS NO OBJECTION - MOTION GRANTED BAIL RESET - \$10,000/10,000/20,000 TOTAL BAIL DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	10-27-98 8:30 #3 DISTRICT COURT OFFICE

AUG 27 1998

Michelle Bauman
Court Clerk

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

BRENDAN JAMES NASBY #1517690,
JERIMIAH JOHN DESKIN,

Defendants.

CASE NO. 98F11168A-B

AMENDED
CRIMINAL COMPLAINT

The Defendants above named having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998, at and within the County of Clark, State of Nevada,

COUNT I - CONSPIRACY TO COMMIT MURDER

Defendants did then and there meet with each other or unknown individuals and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Count II, said acts being incorporated by this reference as though fully set forth herein.

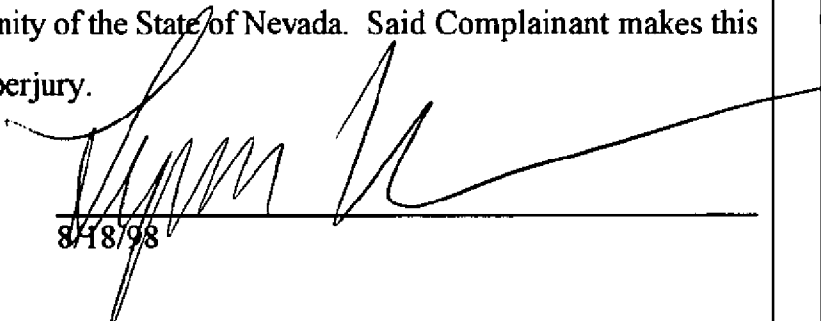
COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Defendants did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon, to-wit: a firearm, in the following manner, to-wit: by the Defendant and unknown individual or individuals acting pursuant to a conspiracy to commit murder whereby Defendant and/or unknown individuals drove MICHAEL BEASLEY into the desert, lured MICHAEL BEASLEY out of the vehicle, then one or more of the Defendants shot MICHAEL BEASLEY with a

LB

1 firearm while unknown individuals acted as lookouts throughout; or one or more of the unknown
2 individuals shot MICHAEL BEASLEY with a firearm while Defendants acted as lookout
3 throughout, Defendants and unknown individuals then fled the crime together.

4 All of which is contrary to the form, force and effect of Statutes in such cases made and
5 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
6 declaration subject to the penalty of perjury.

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27 98F11168A-B/jgw
28 LVMPD EV#9807170541
CONSP, MWDW - F
(TK3)

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 98F11168X

5 -vs-

6 BRENDAN JAMES NASBY #1517690,

7 Defendant.

CRIMINAL COMPLAINT

8
9 The Defendant above named having committed the crimes of CONSPIRACY TO
10 COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE
11 OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in
12 the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998,
13 at and within the County of Clark, State of Nevada,

14 COUNT I - CONSPIRACY TO COMMIT MURDER

15 Defendant did then and there meet with an unknown individual or individuals and
16 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
17 conspire and agree to commit the crime of murder, and in furtherance of said conspiracy,
18 Defendant did commit the acts as set forth in Count II, said acts being incorporated by this
19 reference as though fully set forth herein.

20 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

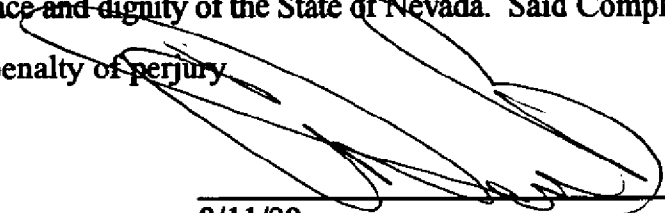
21 did then and there wilfully, feloniously, without authority of law, and with premeditation
22 and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a human being, by
23 shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon, to-wit: a
24 firearm, in the following manner, to-wit: by the Defendant and unknown individual or
25 individuals acting pursuant to a conspiracy to commit murder whereby Defendant and/or
26 unknown individuals drove MICHAEL BEASLEY into the desert, lured MICHAEL BEASLEY
27 out of the vehicle, then the Defendant shot MICHAEL BEASLEY with a firearm while unknown
28 individuals acted as lookouts throughout; or one or more of the unknown individuals shot

3A

LB

1 MICHAEL BEASLEY with a firearm while Defendant acted as lookout throughout, Defendant
2 and unknown individuals then fled the crime together.

3 All of which is contrary to the form, force and effect of Statutes in such cases made and
4 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
5 declaration subject to the penalty of perjury

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27 LVMPD EV#9807170541
28 CONSP, MUR WDW - F
(TK3)

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

STATE OF NEVADA

DATE: 01-09-1988

PLAINTIFF

VS.

DEFENDANT
CASE NO. 80037215

REQUEST FOR ARREST WARRANT

DEFENDANT.

COMES NOW, STEWART L. BELL, DISTRICT ATTORNEY,
AND REQUESTS THAT A WARRANT OF ARREST BE ISSUED
FOR THE ABOVE NAMED DEFENDANT PURSUANT TO
ARS 17.108 AND THE COMPLAINT AND/OR AFFIDAVIT(S)
WHICH PERTAIN TO AND INCORPORATE HERIN BY
THIS REFERENCE.

STEWART L. BELL
DISTRICT ATTORNEY
NEVADA BAR NO. 000477

PROBABLE CAUSE FOUND: ☒

DATE: 01-09-88

PROBABLE CAUSE NO. TO BE: _____

Tony R. Heston
JUSTICE OF THE PEACE,
LAS VEGAS TOWNSHIP

S E R V E D

* * *

* ***** NCJIS WANTED PERSON SYSTEM ***** *

* * *

* PIN-0209 NCJIS SUCCESSFULLY CLEARED THE LAST WARRANT *

* INCLUDING THE BASE AND SUPPLEMENTAL INFORMATION *

* CLEARING AGENCY /NV00201C4 - CLARK COUNTY DETENTION CENTER *

* ARRESTING AGENCY /NV0020100 - LAS VEGAS METROPOLITAN POLICE *

* ENTERING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER *

* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER *

* VALIDATING AGENCY/NV0020178 - LAS VEGAS METROPOLITAN PD *

* NIN/W008635106 DATE:10/12/98 *

* SEQ/001 REASON/SERVED TIME:23:02:57 *

* WARRANT NAME /DESKIN,JERIMIAH JOHN *

* BASE RECORD NAME/DESKIN,JERIMIAH JOHN *

* COURT CASE #/98F11168B *

* COURT/NV002023J - LAS VEGAS JUSTICE COURT *

CLARK COUNTY NEVADA

ARREST WARRANT

HP

DEFENDANT DESKIN, JERIMIAH JOHN

DEFENDANT ID# X0037215

CASE NO: 98F11168B

DEPARTMENT JCRT3

JUDGE TONY L ABBATANGELO

AGENCY: METRO-HOMICIDE

ORI VRI NAME DESKIN, JERIMIAH JOHN
DOB 101479 SOC 570692527 SID
RAC W SEX M HGT 600 WGT 160 HAI BRO EYE BRO

-----WARRANT-----

HOI COI WNM DESKIN, JERIMIAH JOHN
NOC 05582 AOC OFC F FTF TRF JUV DSO DOW 082798
OCA 9807170541 CCN 98F11168B BAIL NO BAIL
TRA MIS

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#: NAME:

COUNTS CHARGE
1 CONSP MURDER WITH A DEADLY WEAPON
1 MURDER WITH A DEADLY WEAPON

W008635106-001

27 11 31 AM '98
1008635106-001

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA

PLAINTIFF

VS.

JERIMIAH JOHN DESKIN
ID# X0037215

DEFENDANT

CASE NO: 98F11168B

DEPT. NO: 3

AGENCY: METRO-HOMICIDE

ARREST WARRANT

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER
IN THIS STATE:

A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID
BEFORE ME ACCUSING JERIMIAH JOHN DESKIN, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPER
1	CONSP MURDER WITH A DE	6,000.00	6,000.00	12,000.
1	MURDER WITH A DEADLY W	NO BAIL		

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED
DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP,
COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO
ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 27TH DAY OF AUGUST, 1998.

Tony Abbato
JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
TONY L. ABBATANGELO

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE 12 DAY OF OCT, 1998, AND SERVED THE SAME BY
ARRESTING THE WITHIN DEFENDANT, DESKIN JERIMIAH, AND
BRINGING DESKIN JERIMIAH INTO COURT THIS 12 DAY OF
OCT, 1998.

JERRY KELLER, SHERIFF, CLARK COUNTY, NEVADA
BY *[Signature]* 5304 COL LUMP, DEPUTY

10/15/98
MO
8:00
#3

DEFENDANT DESKIN, JERIMIAH JOHN

DEFENDANT ID# X0037219

CASE NO: 98F11168B

DEPARTMENT JCRT3

JUDGE TONY L ABBATANGELO

AGENCY: METRO-HOMICIDE

ORI VRI NAME DESKIN, JERIMIAH JOHN
DOB 101479 SOC 570692527 SID
RAC W SEX M HGT 600 WGT 160 HAI BRO EYE BRO

-----WARRANT-----

HOI COI WNM DESKIN, JERIMIAH JOHN
NOC 05582 AOC OFC F FTF TRF JUV DSO DOW 082798
OCA 9807170541 CCN 98F11168B BAIL NO BAIL
TRA MIS

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#: NAME:

COUNTS CHARGE
1 CONSP MURDER WITH A DEADLY WEAPON
1 MURDER WITH A DEADLY WEAPON

W008635106-001.

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Page ____ of ____ **LAS VEGAS METROPOLITAN POLICE DEPARTMENT** I.D. #: 1519995 Event #: _____
TEMPORARY CUSTODY RECORD

DATE OF ARREST: 10/12 TIME OF ARREST: 2200 I.D. ESTAB. BY: _____

INTAKE NAME (AKA, ALIAS, ETC.) Last DESKIN First JERIMIAH Middle JOHN TRUE NAME Last DESKIN First JERIMIAH Middle JOHN

ADDRESS NUMBER & STREET 18844 TALOGA ST BLDG./APT. # 6 CITY NAPA VALLEY #6 STATE CA ZIP 92317

DATE OF BIRTH 10-14-79 RACE W SEX M HEIGHT 5'6" WEIGHT 160 HAIR BR EYES BR SOCIAL SECURITY # 510692527 Speak English? ☒ Yes ☐ No PLACE OF BIRTH NAPA VALLEY, CA

LOCATION OF CRIME (# - Street - City - State - Zip) ☐ CC ☐ LV Citizen Arrest ☒ Y 330 S. CASINO CENTER LV NV PCN # _____

BKG. CODE	CHARGE ORD / NRS #	M	GM	F	ARR TYPE*	EVENT NUMBER	WARR / NCIC NUMBER	COURT LV JC DC OTHER
5445	MURDER WDW 200-030-1	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	AW		98F H168B 008635106-DN	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5450	CONSP MURDER WDW	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	AW		98F H168B	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

*ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GJI - GRAND JURY IND. OTHER COURT: _____

Arresting Officer's Signature [Signature] (Print Name) T. NELSON / 5304 / LVMPD P # _____ Agency _____

Transporting Officer's Signature _____ (Print Name) _____ P # _____ Agency _____

APPROVAL CONTROL # FOR ADDITIONAL CHARGES: _____

Time Stamp at BOOKING
 LVMPD RECORDS SECTION
 OCT 12 1 02 PM '00

P #:

☐ FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.

☐ BENCH WARRANT SERVED ON _____

☐ WARRANT SERVED ON _____

☐ GRAND JURY INDICTMENT SERVED ON _____

TYPE OF I.D. FOR VERIFICATION _____

FIRST APPEARANCE: DATE: _____ TIME: _____

COURT ☐ JUSTICE ☐ STANDARD BAIL

☐ MUNICIPAL ☐ O.R. RELEASE

☐ JUVENILE ☐ PROBABLE CAUSE

☐ I.A.D.

JUDGE: _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF WARRANT/SUMMONS

(N.R.S. 171.106)

(N.R.S. 53 amended 07/13/93)

EVENT: 980717-0541

STATE OF NEVADA) JERIMIAH JOHN DESKIN
) ss:
COUNTY OF CLARK)

DETECTIVE JAMES J. BUCZEK, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 9 1/2 years, assigned to investigate the crime of MURDER WITH A DEADLY WEAPON committed on or about 07/17/98, which investigation has developed JERIMIAH JOHN DESKIN as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

1. That on 07/17/98, at 0745 hrs, Jeffrey Craig telephoned the Las Vegas Metropolitan Police Department's Communications Center and reported that he and Robert Gilmore were riding their ATV's in the desert northwest of Alexander and Jensen, which is located in Clark County, and they found a males dead body.
2. That Las Vegas Metropolitan Police Department Homicide Detectives Thowsen, your Declarant, and Sgt Hefner responded to the scene and initiated an investigation into the death of the unknown victim.
3. That on 07/18/98, at approximately 1000 hours, Dr. R. Jordan of the Clark County Coroner and Medical Examiner's Office conducted an autopsy on the victim and determined that the cause of death was gunshot wounds to the head and back and that the manner of death was homicide.
4. That on 07/20/98, your Declarant learned that the victim's true name was Michael Lamont Beasley, LVMPD ID# 1516882.
5. That on 07/21/98, Detective Thowsen and Declarant spoke to Jomeka Beavers, Michael Beasley's aunt. Beavers told us that Beasley lived with her and her mother at 3327 Outlook Point Street in North Las Vegas. Beaver's said that she last saw Beasley on 07/16/98 at approximately 10:30 PM. She said that Beasley received a telephone call and that he asked her to watch his baby for approximately 30 minutes, while he was gone. Beavers said that he never returned.
6. That on 07/21/98, Detective Thowsen and Declarant spoke to Tanesha Banks, who has a child in common with Beasley, who related the following: On 07/17/98, between 1030

AS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 2

EVENT: 980717-0541

and 1100 hours, she was having a telephone conversation with Crystal Bradley which turned into a three-way telephone conversation with Banks, Bradley and a male called "Blue". Banks knows Blue as Brendan Nasby. Nasby said that Beasley had been tripping for the last several weeks and wanted to get out of their gang called the LA Ridaz. Beasley wanted Nasby to arrange for the gang to beat him out of the gang. Banks told Nasby and Bradley that Beasley had been by that morning to pick up the baby. Nasby responded in a panicked tone "what do you mean this morning?". Banks then explained that she meant last night (07/16/98). Nasby then tells Bradley that he needs to talk to Bradley by herself. Banks then hangs up on her end of the three-way telephone conversation.

7. That approximately ten minutes later, Bradley recalls Banks and says that Nasby told her that he killed Beasley with his new 9mm gun. Nasby told Bradley that he and other LA Ridaz members lured Beasley out to the desert with them to shoot the new gun. He told Bradley that he first shot Beasley in the neck. Beasley asked Nasby why he shot him and Nasby replied "you need to know who's runnin' shit nigger." Beasley fell to the ground and Nasby shot him in the head. The group started to leave when Nasby came back to Beasley and shot him in the head again. Banks asked Bradley who else was there when Beasley was shot and Bradley said "T-Bone" (who Banks knows as Tommie Burnside), his little brother, "Little Wee-gee" (who Banks knows as Jotee Burnside), and a white male whose moniker is "Woodpecker" (who Banks knows as Jeremy, last name unknown).

8. That on 07/23/98, Det. Thowsen and your Declarant interviewed Crystal Bradley. Bradley confirmed the details of the three-way telephone conversation between herself, Banks and Nasby as well as the conversation between Nasby and herself as related by Banks. Bradley said that Nasby said that the group went to and from the scene in "Woodpecker's" car. Bradley said that Nasby killed Beasley because Beasley was trying to take away Nasby's "stripes". Bradley said that all the suspects that were at the scene do smoke. Bradley also said that there was a vote conducted amongst members of LA Crazy Ridas that determined Beasley's death, prior to taking Beasley to his fate.

9. That the conversations between Bradley and Nasby, as well as the mentioned three-way conversation, occurred before any media reports about the murder in general aired. The specifics regarding the caliber of weapon, the location and the exact number of shots fired were never made public knowledge. Three fresh 9mm shell casings were recovered at the scene. Beasley was shot once in the back with that shot exiting the neck area and once in the head. The recovered bullets appeared to be consistent with 9mm caliber. These two bullet wounds, along with the near-miss impact crater discovered adjacent to Beasley's head would account for three shots being fired into or at Beasley.

10. That on 08/01/98, at approximately 2320 hours, Brittny Adams went to Tanesha Banks residence and attacked Banks causing injuries to Banks face. In doing so, Adams said "this is for Blue." There were some other people present and they tried to drag Banks

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 3

EVENT: 980717-0541

towards the open door of Adams vehicle. On 08/04/98, Adams was arrested for the attack and attempt kidnapping of Banks. Adams told us that "Blue" was the driver of her car during this incident.

11. That on 08/03/98, a search warrant was executed at Brendan Nasby's residence which is located at 4509 Switchback Street in North Las Vegas. The search warrant produced a Browning 9mm handgun bearing serial number 4CH1969 and the gun was reported stolen from North Las Vegas. Nasby admitted that the gun had been used to kill Michael Beasley, that he had gotten the gun from "Sugarbear" who he identifies as Damien Von Lewis. Brendan Nasby was arrested for his involvement in the murder of Michael Beasley.

12. On 08/04/98, Det. Thowsen and your Declarant located Tommie Burnside and Jotee Burnside. Tommie and Jotee voluntarily accompanied us to the Detective Bureau so that we could speak with them. Your Declarant spoke with Tommie Burnside and he told me the following: "Sugarbear" and "Woodpecker" picked up Michael Beasley in "Woodpecker's" burgundy colored Cougar. The three then went to "Blue's" house and met with "Blue", Jotee and Tommie Burnside. He said that they went to the "field". Everybody but Tommie and Jotee exited the car, meaning "Blue", "Sugarbear", "Woodpecker", and Beasley. He said that he heard two gunshots and shortly thereafter a third gunshot. "Sugarbear", "Blue", and "Woodpecker" got back into the car, "Sugarbear" said "the nigger's dead" and kept referring to Beasley as a "bitch". Tommie said that "Woodpecker" was laughing. "Sugarbear" had approached Tommie and asked him if he thought that Beasley should die. Tommie Burnside said that they shot him with a 9mm handgun. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damian Von Lewis. Tommie said that "Woodpecker" moved to California.

13. That Det. Thowsen spoke to Jotee Burnside and he told Det. Thowsen the following: They went over to Mike's house and picked him up in "Woodpecker's" car. They then went to "Blue's" house, picked him up and they went to the desert looking for places to shoot. They stopped at a place near a cliff. Everyone got out of the car except Jotee and Tommie Burnside. Jotee said that "Sug" (Sugarbear) shot Beasley and then shot him again. Jotee said that "Sug" then got into the car and then got out again and shot Beasley one more time. He said that in total, three shots were fired from a 9 mm handgun. They then left in "Woodpecker's" car. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damien. Jotee said that "Woodpecker" moved to California.

14. That Sgt. J. Owens of LVMPD's Gang Investigation Section was able to identify "Woodpecker" as Jerimiah John Deskin, DOB 101479, SS# 570692527, ADD 6205 Burnt Hills Drive, North Las Vegas 89030. Sgt. Owens spoke to Deskin's father (Mike Deskin) and learned that Deskin moved to California. Deskin's vehicle is registered to his father and is a burgundy 1991 Mercury Cougar bearing Nevada license plates 399HME. Sgt

AS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 4

EVENT: 980717-0541

Owens also supplied me with a Polaroid photograph of Jerimiah Deskin which was maintained by the Gang Investigation Section. On 08/13/98, I contacted Tommie Burnside at the Stewart/Mojave Center and showed him the photo. Burnside identified the photo as that of Jerimiah, who he also knows as "Woodpecker".

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect JERIMIAH JOHN DESKIN on a charge of MURDER WITH A DEADLY WEAPON.

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

Executed on this 12TH day of AUGUST, 1998.

DECLARANT: James J. Buey, L

WITNESS: J. Thomas

DATE: 08/13/98

CLARK COUNTY INTAKE QUESTIONNAIRE AND FINANCIAL AFFIDAVIT

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Defendant: DESKIN, JERIMIAH JOHN		
Arrest Date: 10/12/98	Arraign. Date:	
S.S.N.: 570-69-2527	I.D.: 1519995	
D.R. #: NO NCIC	D.O.B. 10/14/79	
M J Charge: MURDER WDW	WA 98F11168B JC-3	Bail: NO BAIL
M J Charge: CONSP MURDER WDW	" "	Bail: NO BAIL
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M J Charge:		Bail:

BASED ON _____ VERIFIED POINTS THIS DEFENDANT HAS RECEIVED, AND THE INFORMATION GATHERED BY INTAKE SERVICES, THE FOLLOWING RECOMMENDATION IS MADE:

_____ Supervised Release with Conditions as Directed by Intake Services: _____

_____ Bail Reduction To: _____

_____ Not Recommended for an O/R Release or Bail Reduction Because: _____

Release Granted: _____ Date: _____

Bail Reduction To: _____

Release Denied: _____ Date: _____

RESIDENCY

Defendant:

Deash, Jeremiah

1519995

Present Address: 6205 Bunt Hills	Apt. #:	Phone #: 657-6814
How Long: 7 mos	Living With: Michael & Susan Deash	Relationship: Parents
Prior Address: 5527 Crimson Ridge	Apt. #:	Phone #: Same
How Long: 2-3 yrs	Living With: Same	Relationship:
Clark County Resident: _____ Weeks _____ Months 3 1/2 Years	Visiting: <input type="checkbox"/> Yes <input type="checkbox"/> No	How Long:
State of Residency (address) If Less Than 5 Years: NV-3 1/2 yrs CA-14 yrs		
Marital Status: <u>Single</u> Married Divorced Separated	# of Children: 1 wd	Education: 12

EMPLOYMENT

Are You Employed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. If no, means of support:	How Much:
Cash on hand or in bank (including spouse): 0	Spouse's Income:
Property (including spouse): 0	
Rent: 0 Mortgage: Other Debts:	
Total Monthly Payments: 500	
Present Employer: Dore's Dry Clean	Address:
How Long: 3 yrs	Occupation: Delivery #
Supervisor:	Net Income: \$ 9 hr <input type="checkbox"/> Shift <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly
Prior Employer: Unemployed	Address:
How Long: never	Occupation:
Supervisor: worked permanent	Reason for Leaving:

BACKGROUND

Family Not Living With Defendant:

Name: Michael Deash	Address:	Work: Cellular
Relationship: Parents	Address:	Phone: Res: 218-5991
Name:	Address:	Work:
Relationship:	Address:	Phone: Res:

Character References: 0

Name:	Address:	Work: Phone: Res:
Name:	Address:	Work: Phone: Res:

List all prior convictions/pending charges other than in Clark County: 0

Charge	Conviction Date	Where	Disposition
1.			
2.			

I, the undersigned defendant, under penalty of perjury, declare that the above facts are true and correct.

I have Interviewed

Defendant

Subscribed and sworn to before me this 12 day of Oct, 1998.

Colleen

Notary Public

Circle One: P.D. N.A. (P.A.) Name: Chad Holcomb Esq. Interview Date: 10-16-98 Time: _____



Amwest Surety Insurance Company

Court Division
P.O. Box 4500
Woodland Hills, CA 91365
TEL 800 423-2245

3600100
1519995
10/21/98
Ln

Oct 20 2 17 PM '98

Justice
Municipal, Justice, Judicial District
Las Vegas Clark County
(City, Township, County)

STATE OF NEVADA

ABACO BAIL BONDS

3285 Las Vegas Blvd. North
Las Vegas, NV 89115-0514
(702) 474-6100

State of Nevada

Plaintiff

vs.

Jerimiah John Daskin

Defendant

BOND No. X15-6-00146971

(POWER OF ATTORNEY WITH THIS NUMBER MUST BE ATTACHED)
(BOND NOT VALID IF MORE THAN ONE (1) POWER OF ATTORNEY HAS
BEEN ATTACHED)

An order having been made on the 20 day of October, 19 98,
by Justice of the Peace
(Municipal Judge, Justice of the Peace, District Judge)
Las Vegas, Clark County, State of Nevada,
(of the City of, Township of, in and for the County of)
that DEFENDANT be held to answer (or for examination)
upon a charge of MURDER w/ DEADLY WEAPON - CONSP. MURDER w/ DEADLY WEAPON
98F11168B
upon which he/she has been duly admitted to bail in
the sum of Ten Thousand dollars.

Now we, AMWEST SURETY INSURANCE COMPANY, a Nebraska corporation, as Surety, duly authorized to transact business as Surety in the State of Nevada, hereby undertake that the above-named defendant will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render him/herself amenable to the orders and the process of the Court, and if convicted, shall appear for judgement and render him/herself in execution thereof, or if he/she fails to perform any of these conditions, that we will pay to the State of Nevada the sum of \$ 10,000.00.

Defendant notified to appear:

A.M.

Date _____ @ _____ P.M.

Approved by me this _____

day of OCT 20 1998, 19 _____

[Signature]
Municipal Judge, District Judge, Justice of the Peace

City, Township

AMWEST SURETY INSURANCE COMPANY

By [Signature]

Attorney-in-Fact

[Signature]
NOTARY PUBLIC
County of Clark, State of Nevada
ALICE BENNETT-MORAN
No. 96-4177-1
My Appointment Expires Aug. 28, 2000

NOTE: The purpose of this bond is to guarantee appearance of the defendant at all proper legal hearings, and cannot be construed as a guarantee for failure to provide payments, or back alimony payments, or fines or wage claims.

NOTE: This is not an appeal bond and only guarantees the appearance of the defendant in trial court.



AMWEST SURETY INSURANCE COMPANY

P.O. BOX 4500, WOODLAND HILLS, CA 91365-4500 (818) 871-3400 (800) 423-2245 04A400

POWER OF ATTORNEY

THIS POWER VOID IF NOT USED BY:

7-31-99

POWER NO.

X15-6-00146971

KNOW ALL MEN BY THESE PRESENTS that Amwest Surety Insurance Company, a corporation duly organized and existing under the laws of the State of Nebraska, and by the authority of the Resolution adopted by the Board of Directors at a meeting duly called and held on December 15, 1975, for said Resolution has not been amended or rescinded, does constitute and appoint and by these presents does make, constitute and appoint John E. Savage by

ABACO Bail Bonds

its true and lawful Attorney-in-Fact or Agent for it and in its name, place and stead to execute, seal and deliver for and on its behalf and as its act and deed as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Immigration Bonds. This Power void if altered or erased, void if used with other powers of this company or any other surety company power, void if used to furnish bail in excess of the stated face amount of this Power, and can only be used once. Return Power only to Amwest Surety Insurance Company. Provided that the authority of such Attorney-in-Fact to bind the Company shall not exceed the sum of

***** NOT TO EXCEED THE SUM OF FIFTEEN THOUSAND DOLLARS *****

and provided this Power of Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power of Attorney the name of the person on whose behalf this bond was given. IT IS UNLAWFUL TO PRINT THIS FORM WITHOUT WRITTEN CONSENT OF AMWEST SURETY INSURANCE COMPANY, HOME OFFICE.

IN WITNESS WHEREOF, AMWEST SURETY INSURANCE COMPANY has caused these presents to be signed by its duly authorized Attorney-in-Fact, proper

for the purpose and its corporate seal to be hereunto affixed this date 10/20/98, State Executed Nevada

DEFENDANT Deskin Jerimiah John
LAST NAME FIRST MIDDLE

APPEARANCE DATE _____ COURT Justice CITY Las Vegas
COURT CODE _____

CASE NO. 98F11168B CHARGES Murder w/ Deadly Weapon - Consp. Murder w/ Deadly
Weapon

BOND AMOUNT \$ 10,000.-

PREMIUM \$ 1000.-



By John E. Savage
John E. Savage
Attorney-in-Fact

86 2 2 98


ABACO BAIL BONDS
3285 Las Vegas Blvd. North
Las Vegas, NV 89115-0514
(702) 474-8100

ORIGINAL

FILED

MOT
CHAD M. GOLIGHTLY, ESQ.
Nevada Bar No. 5331
CHAD M. GOLIGHTLY, LTD.
714 East Sahara Avenue, Ste. 250
Las Vegas, NV 89104
(702)388-9969

OCT 7 4 07 PM '98

JUSTICE COURT
LAS VEGAS, NEVADA
BY  DEPUTY

Attorney for Defendant
JERIMIAH JOHN DESKIN

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN JAMES NASBY and
JERIMIAH JOHN DESKIN,

Defendants

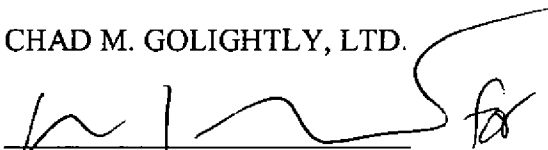
CASE NO: 98F11168A-B
DEPT NO: _____
DOCKET NO: _____

**MOTION TO PLACE ON CALENDAR TO CONFIRM COUNSEL,
RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR
IN THE ALTERNATIVE, TO SET BAIL**

Upon application of the above-named Defendant, JERIMIAH JOHN DESKIN, by and through his undersigned counsel, CHAD M. GOLIGHTLY, ESQ. of the Law Offices of Chad M. Golightly, Ltd., it is hereby requested that the above-entitled matter be placed on calendar to CONFIRM COUNSEL, RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR IN THE ALTERNATIVE, TO SET BAIL.

DATED this 7 day of October, 1998.

CHAD M. GOLIGHTLY, LTD.


CHAD M. GOLIGHTLY, ESQ.

Nevada Bar No. 5331
714 E. Sahara Ave., Ste. 250
Las Vegas, NV 89104
Attorney for Defendant
JERIMIAH JOHN DESKIN

NP

1 The above-entitled matter is to be placed on Calendar on the 9 day of October,
2 1998, at 8:00 o'clock A m. in Justice Court, Department 3.

3 COURT CLERK

4 By: Barbara Olson

5
6
7 **RECEIPT OF COPY**

8 A RECEIPT OF COPY of the foregoing MOTION TO PLACE ON CALENDAR is hereby
9 acknowledged this 7 day of October, 1998.

10 Tamara Schmedt
11 DISTRICT ATTORNEY
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ORIGINAL

FILED

MOT
CHAD M. GOLIGHTLY, ESQ.
Nevada Bar No. 5331
CHAD M. GOLIGHTLY, LTD.
714 East Sahara Avenue, Ste. 250
Las Vegas, NV 89104
(702)388-9969

OCT 8 4 26 PM '98

JUDICIAL CLERK
LAS VEGAS NEVADA
BY _____ DEPUTY

Attorney for Defendant
JERIMIAH JOHN DESKIN

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN JAMES NASBY and
JERIMIAH JOHN DESKIN,

Defendants

CASE NO: 98F11168A-B

DEPT NO: 3

DOCKET NO:

10/09/98

8:00 AM


Wendy Redfield

**AMENDED MOTION TO PLACE ON CALENDAR TO CONFIRM COUNSEL,
RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR
IN THE ALTERNATIVE, TO SET BAIL**

COMES NOW Defendant, JERIMIAH JOHN DESKIN, by and through his attorney, CHAD M. GOLIGHTLY, ESQ. of the Law Offices of Chad M. Golightly, Ltd., and hereby files this amended motion requesting this Court release JERIMIAH JOHN DESKIN on his own recognizance, or in the alternative, that the Court set reasonable bail, or house arrest, or a combination of bail and house arrest.

DATED this 8th day of October, 1998.

CHAD M. GOLIGHTLY, LTD.


CHAD M. GOLIGHTLY, ESQ.
Nevada Bar No. 5331
714 E. Sahara Ave., Ste. 250
Las Vegas, NV 89104
Attorney for Defendant
JERIMIAH JOHN DESKIN

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TO: STEWART BELL, Plaintiff's Attorney:

CHAD M. GOLIGHTLY, LTD.

POINTS AND AUTHORITIES

According to the information contained in the police affidavit filed by Detective James D. Buczek (attached hereto as Defendant's Exhibit A), Defendant DESKIN is an alleged suspect/participant in the apparent homicide of Mr. Michael Beasley which was alleged to have occurred on or about July 17, 1998. According to Detective Buczek's affidavit, Defendant DESKIN was apparently one of five or six other individuals who went with Mr. Beasley to a location in Clark County, Nevada where Mr. Beasley was apparently murdered. According to the police affidavit, Co-Defendant BRANDON NESBY apparently told two girls, one by the name of Crystal Bradley and another by the name of Tanesha Banks that he had shot Mr. Michael Beasley as an effort to increase his position in a criminal gang known as the "L.A. Ridaz." Defendant Buczek then interviewed two other individuals who were apparently present at the shooting that night who stated that a gentleman by the name of Damien Von Lewis (also known as "Sugarbear") shot and killed Mr. Beasley.

2

1 and killed Mr. Beasley nor is there any indication anywhere in the affidavit that Defendant DESKIN
2 was involved in the planning and/or carrying out of this alleged murder either. Detective Buczek
3 executed this affidavit on the 12th day of August, 1998; however, it was not witnessed by another
4 individual until August 13, 1998.

5 Defendant DESKIN was subsequently arrested on or about September 12, 1998 in San
6 Bernardino, California. He was taken before a judge in San Bernardino County and waived
7 extradition on September 18, 1998. However as of today's date, the State of Nevada has apparently
8 made no effort to drive the three hours necessary to transport Defendant DESKIN and to extradite
9 him to Nevada since the waiving of this extradition on September 18, 1998.

10 LEGAL ARGUMENTS

11 NRS 178.4853 provides the pertinent considerations of a person without bail and that the
12 Court should consider when allowing bail, which provide:

- 13 1. The length of his residence in the community;
- 14 2. The status and history of his employment;
- 15 3. His relationships with his spouse and children, parents or other family and with his
16 close friends;
- 17 4. His reputation, character and mental condition;
- 18 5. His prior criminal record, including any record of his appearing or failing to appear
19 after release on bail or without bail;
- 20 6. The identity of responsible members of the community who would vouch for the
21 Defendant's reliability;
- 22 7. The nature of the offense which he is charged, the apparent probability of conviction
23 and a likely sentence, in so far as these factors relate to the risk of his not appearing;
- 24 8. The nature and seriousness of the danger to any person or the community that would
25 be posed by the person's release;
- 26 9. The likelihood of more criminal activity by the person after he is released; and
- 27 10. Any other factors concerning his ties to the community or bearing on the risk that he
28 may willfully fail to appear.

22 In the instant case, the Defendant has resided in the State of Nevada, County of Clark for
23 approximately five years with his mother, father and older brother. He recently moved to California
24 in July of 1998 to be with his girlfriend and stay with family there as he had recently become father
25 to a newborn infant. Prior to leaving the State of Nevada, he had worked closely with his father in
26 his father's construction business permanently since 1989.

1 Attached hereto as Defendant's Exhibit "B" is a letter from Defendant DESKIN's parents,
2 Michael and Susan Deskin. Within that letter, they state their love for their children.. They also state
3 that when their son Jeremiah had worked with his father, he had become a partner. Mr. and Mrs.
4 Deskin also state they wish that they would have had the opportunity to voluntarily surrender their
5 son to the courts and would gladly have done so. However as they state in their letter, the special
6 agent from the F.B.I. by the name of John Sweet told Michael Deskin that he wanted Defendant
7 DESKIN to help him with the police investigation. Agent Sweet told them this rather than just tell
8 Mr. and Mrs. Deskin that there was an arrest warrant for their son. If Agent Sweet had told Mr.
9 Deskin the truth, he would have arranged for Jerimiah to come to the State of Nevada and surrender
10 himself.

11 Defendant DESKIN's prior record is before this Court; however, it should be pointed
12 out to the court that Defendant DESKIN has never failed to appear in court for any matters and his
13 only prior criminal record involves two misdemeanor incidences which occurred approximately two
14 years ago while he was a juvenile. In both incidents, he accepted responsibility for his actions and
15 fulfilled the terms and conditions of sentencing, never missing a court appearance.

16 Additionally attached hereto as Defendant Exhibit "C," are letters from other family members
17 and responsible members of the community who will vouch for Defendant DESKIN's reliability
18 and good character.

19 ...

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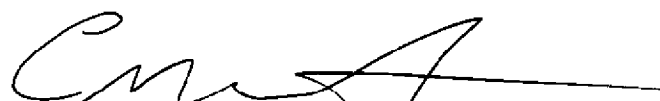
1 CONCLUSION

2 Wherefore, Defendant DESKIN would request that this court release him on his own
3 recognizance pending the final outcome in this matter. In the alternative, Defendant DESKIN would
4 request that this Court set a reasonable bail, one in which his family would be able to afford to insure
5 his court appearance in this matter. As a final alternative, Defendant DESKIN would request that
6 he have the opportunity to be placed on house arrest and reside with his family here in Clark County,
7 Nevada or a combination of bail and house arrest as the court so shall fashion.

8 DATED this 8th day of October, 1998.

9 Respectfully submitted:

10 CHAD M. GOLIGHTLY, LTD.

11 

12 CHAD M. GOLIGHTLY, ESQ.

13 Nevada Bar No. 5331

14 714 E. Sahara Ave., Ste. 250

Las Vegas, NV 89104

Attorney for Defendant

15 JERIMIAH JOHN DESKIN

16
17 RECEIPT OF COPY

18 A RECEIPT OF COPY of the foregoing AMENDED MOTION TO PLACE ON
19 CALENDAR is hereby acknowledged this 8 day of October, 1998.

20 
21 DISTRICT ATTORNEY
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EXHIBIT

A

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106)
(N.R.S. 53 amended 07/13/93)**

EVENT: 980717-0541

**STATE OF NEVADA) JERIMIAH JOHN DESKIN
) ss:
COUNTY OF CLARK)**

DETECTIVE JAMES J. BUCZEK, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 9 1/2 years, assigned to investigate the crime of MURDER WITH A DEADLY WEAPON committed on or about 07/17/98, which investigation has developed JERIMIAH JOHN DESKIN as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

1. That on 07/17/98, at 0745 hrs, Jeffrey Craig telephoned the Las Vegas Metropolitan Police Department's Communications Center and reported that he and Robert Gilmore were riding their ATV's in the desert northwest of Alexander and Jensen, which is located in Clark County, and they found a males dead body.
2. That Las Vegas Metropolitan Police Department Homicide Detectives Thowsen, your Declarant, and Sgt Hefner responded to the scene and initiated an investigation into the death of the unknown victim.
3. That on 07/18/98, at approximately 1000 hours, Dr. R. Jordan of the Clark County Coroner and Medical Examiner's Office conducted an autopsy on the victim and determined that the cause of death was gunshot wounds to the head and back and that the manner of death was homicide.
4. That on 07/20/98, your Declarant learned that the victim's true name was Michael Lamont Beasley, LVMPD ID# 1516882.
5. That on 07/21/98, Detective Thowsen and Declarant spoke to Jomeka Beavers, Michael Beasley's aunt. Beavers told us that Beasley lived with her and her mother at 3327 Outlook Point Street in North Las Vegas. Beaver's said that she last saw Beasley on 07/16/98 at approximately 10:30 PM. She said that Beasley received a telephone call and that he asked her to watch his baby for approximately 30 minutes, while he was gone. Beavers said that he never returned.
6. That on 07/21/98, Detective Thowsen and Declarant spoke to Tanesha Banks, who has a child in common with Beasley, who related the following: On 07/17/98, between 1030

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION

Page 2

EVENT: 980717-0541

and 1100 hours, she was having a telephone conversation with Crystal Bradley which turned into a three-way telephone conversation with Banks, Bradley and a male called "Blue". Banks knows Blue as Brendan Nasby. Nasby said that Beasley had been tripping for the last several weeks and wanted to get out of their gang called the LA Ridaz. Beasley wanted Nasby to arrange for the gang to beat him out of the gang. Banks told Nasby and Bradley that Beasley had been by that morning to pick up the baby. Nasby responded in a panicked tone "what do you mean this morning?". Banks then explained that she meant last night (07/16/98). Nasby then tells Bradley that he needs to talk to Bradley by herself. Banks then hangs up on her end of the three-way telephone conversation.

7. That approximately ten minutes later, Bradley recalls Banks and says that Nasby told her that he killed Beasley with his new 9mm gun. Nasby told Bradley that he and other LA Ridaz members lured Beasley out to the desert with them to shoot the new gun. He told Bradley that he first shot Beasley in the neck. Beasley asked Nasby why he shot him and Nasby replied "you need to know who's runnin' shit nigger." Beasley fell to the ground and Nasby shot him in the head. The group started to leave when Nasby came back to Beasley and shot him in the head again. Banks asked Bradley who else was there when Beasley was shot and Bradley said "T-Bone" (who Banks knows as Tommie Burnside), his little brother, "Little Wee-gee" (who Banks knows as Jotee Burnside), and a white male whose moniker is "Woodpecker" (who Banks knows as Jeremy, last name unknown).

8. That on 07/23/98, Det. Thowsen and your Declarant interviewed Crystal Bradley. Bradley confirmed the details of the three-way telephone conversation between herself, Banks and Nasby as well as the conversation between Nasby and herself as related by Banks. Bradley said that Nasby said that the group went to and from the scene in "Woodpecker's" car. Bradley said that Nasby killed Beasley because Beasley was trying to take away Nasby's "stripes". Bradley said that all the suspects that were at the scene do smoke. Bradley also said that there was a vote conducted amongst members of LA Crazy Ridas that determined Beasley's death, prior to taking Beasley to his fate.

9. That the conversations between Bradley and Nasby, as well as the mentioned three-way conversation, occurred before any media reports about the murder in general aired. The specifics regarding the caliber of weapon, the location and the exact number of shots fired were never made public knowledge. Three fresh 9mm shell casings were recovered at the scene. Beasley was shot once in the back with that shot exiting the neck area and once in the head. The recovered bullets appeared to be consistent with 9mm caliber. These two bullet wounds, along with the near-miss impact crater discovered adjacent to Beasley's head would account for three shots being fired into or at Beasley.

10. That on 08/01/98, at approximately 2320 hours, Brittny Adams went to Tanesha Banks residence and attacked Banks causing injuries to Banks face. In doing so, Adams said "this is for Blue." There were some other people present and they tried to drag Banks

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 3

EVENT: 980717-0541

towards the open door of Adams vehicle. On 08/04/98, Adams was arrested for the attack and attempt kidnapping of Banks. Adams told us that "Blue" was the driver of her car during this incident.

11. That on 08/03/98, a search warrant was executed at Brendan Nasby's residence which is located at 4509 Switchback Street in North Las Vegas. The search warrant produced a Browning 9mm handgun bearing serial number 4CH1969 and the gun was reported stolen from North Las Vegas. Nasby admitted that the gun had been used to kill Michael Beasley, that he had gotten the gun from "Sugarbear" who he identifies as Damien Von Lewis. Brendan Nasby was arrested for his involvement in the murder of Michael Beasley.

12. On 08/04/98, Det. Thowsen and your Declarant located Tommie Burnside and Jotee Burnside. Tommie and Jotee voluntarily accompanied us to the Detective Bureau so that we could speak with them. Your Declarant spoke with Tommie Burnside and he told me the following: "Sugarbear" and "Woodpecker" picked up Michael Beasley in "Woodpecker's" burgundy colored Cougar. The three then went to "Blue's" house and met with "Blue", Jotee and Tommie Burnside. He said that they went to the "field". Everybody but Tommie and Jotee exited the car, meaning "Blue", "Sugarbear", "Woodpecker", and Beasley. He said that he heard two gunshots and shortly thereafter a third gunshot. "Sugarbear", "Blue", and "Woodpecker" got back into the car, "Sugarbear" said "the nigger's dead" and kept referring to Beasley as a "bitch". Tommie said that "Woodpecker" was laughing. "Sugarbear" had approached Tommie and asked him if he thought that Beasley should die. Tommie Burnside said that they shot him with a 9mm handgun. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damian Von Lewis. Tommie said that "Woodpecker" moved to California.

13. That Det. Thowsen spoke to Jotee Burnside and he told Det. Thowsen the following: They went over to Mike's house and picked him up in "Woodpecker's" car. They then went to "Blue's" house, picked him up and they went to the desert looking for places to shoot. They stopped at a place near a cliff. Everyone got out of the car except Jotee and Tommie Burnside. Jotee said that "Sug" (Sugarbear) shot Beasley and then shot him again. Jotee said that "Sug" then got into the car and then got out again and shot Beasley one more time. He said that in total, three shots were fired from a 9 mm handgun. They then left in "Woodpecker's" car. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damien. Jotee said that "Woodpecker" moved to California.

14. That Sgt. J. Owens of LVMPD's Gang Investigation Section was able to identify "Woodpecker" as Jerimiah John Deskin, DOB 101479, SS# 570692527, ADD 6205 Burnt Hills Drive, North Las Vegas 89030. Sgt. Owens spoke to Deskin's father (Mike Deskin) and learned that Deskin moved to California. Deskin's vehicle is registered to his father and is a burgundy 1991 Mercury Cougar bearing Nevada license plates 399HME. Sgt

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 4

EVENT: 980717-0541

Owens also supplied me with a Polaroid photograph of Jerimiah Deskin which was maintained by the Gang Investigation Section. On 08/13/98, I contacted Tommie Burnside at the Stewart/Mojave Center and showed him the photo. Burnside identified the photo as that of Jerimiah, who he also knows as "Woodpecker".

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect JERIMIAH JOHN DESKIN on a charge of MURDER WITH A DEADLY WEAPON.

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

Executed on this 12TH day of AUGUST, 1998.

DECLARANT:

James J. Buey

WITNESS:

J. Houser

DATE:

08/13/98



October 6, 1998

To Whom This May Concern:

Our names are Michael & Susan Deskin, we are the parents of Jerimiah Deskin. We have another child, and his name is Tony O'Malley and is 24 years old. Both Jerimiah and Tony have been raised in a two parent environment with us as their parents all their lives. Like most children they grew up playing sports, loved music and had a lot of friends. We are an extremely close family and never had problems talking with our children, they always new they could come to us for anything and they have. We feel we have done the best for our children as parents and taught them right from wrong so that they would grow up and become responsible adults. We disciplined our children like most parents would and praised them when they did good. Our vacations were always with our children and sometimes we would bring their friends, we knew all their friends most of the time. We always felt if they didn't feel comfortable with certain friends they would never bring them over to meet us. We were very critical on some of their friends we felt may not be a good influence on either. It is very difficult to judge people without knowing them, so we gave them always a chance. Tony completed 12 years of schooling in Apple Valley, California and Jerimiah completed his G.E.D. 2 years ago here in Las Vegas.

Jerimiah has had several jobs with various fast food restaurants and decided to work with his father in the Drywall Company he has just became a partnership in. On July 3, 1998, Jerimiah became a father so he moved down to Apple Valley, California to be with his girlfriend and son. We are very proud to say and see that he has become a responsible father to his new family, just they way he was brought up.

Around the middle of September, we received a few phone calls on our voice mail from a gentleman by the name of John Sweet, whom identified himself as an F.B.I. agent here in Las Vegas. We phoned him back and asked what he needed. He said that he needed to get in touch with Jerimiah, we said why and was he in trouble. He replied "no" he only wanted him to look at some photos of someone who robbed a bank. We told him we would get this message to him. Jerimiah called us from Apple Valley and we asked him if he could help John, he said yes. We then called John on Sunday or Monday, September 14th, and Jerimiah agreed to meet an agent from San Bernadino on Wednesday, September 16th at our parents place of business. On Tuesday, September 17th, Apple Valley police department pulled Jerimiah over for a missing license plate in the front of his car. They ran a check on him and arrested him for a fugitive warrant. We called John on Tuesday and he didn't have his cellular phone turned on, so we left a voice mail asking him why he lied to us about the bank robbery pictures and didn't tell us the real reason for his call. He called us on Wednesday and apologized to us, that it was just a fluke that he was pulled over and that he would of arrested him on Wednesday when the agent met with him. His apology was accepted by us, however, we told him that all he had to do was to tell us the truth and we would have personally brought Jerimiah in ourselves. He

continued to explain that most parents would not do this, but hide them instead. He said he believed we would have brought him in. And may we add that yes, we would have turned him over.

Jerimiah is now 18 years of age, as parents we needed to let him grow up and allow him to make his own choices and friends, this may or may not have been a good choice on his part. We can only pray to God that he will see him through this ordeal. He has never been in such trouble and as parents you want to protect your child, but you must also take the good and the bad. We know that Jerimiah will tell the truth and that he will be responsible for his actions if any.

Our children are our lives, and we love them very much. May the good Lord keep watching over them and guide them to be good people that they have become.


Michael & Susan Deskin

EXHIBIT

C

October 6, 1998

To Whom It May Concern:

My name is Tony O'Malley and I am Jeremiah Deskin's older brother. I am 5 years older than Jeremiah, but we have always been very close. He has followed me around since we were little. Jeremiah always wanted to do what I was, whether it was playing my keyboard, drawing, or just sitting and listening to music. Jeremiah is a very loving, giving person and always tries to make people smile. He has always tried to help people who have less than he does. I believe that my younger brother is a good person that would never think of hurting anyone.



Tony O'Malley

FROM : BUALEY TOURS

PHONE NO. : 6192435570

OCT. 05 1998 04:57PM P1

October 5, 1998

To Whom It May Concern:

My name is Joan Deskin, I am the grandmother of Jermiah Deskin.

I have lived within a few blocks of Jermiah since he was born, until his family moved to Las Vegas in 1994. And, since Las Vegas is not very far from Victorville we have seen him at least once a month for the past ^{FIVE} years.

Since the time Jermiah was a very little boy he has always been a loving and caring child. It was Jermiah that would get a book and hop up in his grandfathers lap and mine and ask us to read with him.

As a small boy he was active in sports including Little League and football.

His Mother and Father were parents that were always with their two boys. On weekends when they could afford it they went camping, swimming, and took trips to various parts of the Southwest, such as Zion National Park and Lake Powell. He was always encouraged to bring along a friend. He really loved the out-of-doors.

I often took Jermiah with me on tours, one that I will long remember, to see the whales run near the Channel Islands. Never did I have a problem with behavior or any kind of smart talk.

Parents today must work to own a home and just get by. That was the case with Jermiah's parents...but they spent their free time with him.

He was close to his other set of grandparents as well. Many times Jermiah would hlep us with yard work and chores that needed to be done.

As he grew up, and as most teenagers, he seemed to beocme more remote. In my time it was called growing pains. I am sure that has not changed.

He found a beautiful young lady that we are all very proud of. She will continue with higher education and become a nurse.

And to this union was born a beautiful son that is adored by both his father and his mother. Jermiah, came into full bloom when this child was born on July 3, 1998. It was if he had a meaning for his life. He is the one that carries the chid, he is the one that makes sure the car seat is set properly. I know that Jermiah loves this little boy with all of his heart and that his intention was to be a good father.

He had a good example set for him by his father. During school years he worked with his dad in the drywall business. After school, weekends and finally full time.

Jermiah is a good boy, I say this not as his Grandmother, but as an observer of his life. Yes, he has been in the wrong places sometimes, and who hasn't. I know that he will become a responsible adult if just given the chance. He has a lot to live for and to do for.

Sincerely,

Joan Deskin
Joan Deskin

October 6, 1998

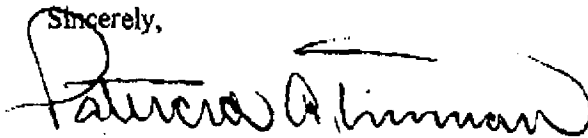
To Whom It May Concern:

I am Patricia A. Tinman, an associate with Susan Deskin at Bank of America where both of us are employed. Susan is the mother of Jerimiah Deskin, and I have had the pleasure of meeting Jerimiah on numerous occasions during the lunch hour. I have had the opportunity to visit with Jerimiah many times while he was visiting his mother or having lunch with her in the bank's employee lounge during this break time.

Jerimiah has always been extremely polite and well mannered each time that he visited our place of employment, which was often. I took notice that Jerimiah and his mother definitely have a close relationship and that he can trust her. I have also had the pleasure of meeting Jerimiah's girlfriend, Daffine, and their new son, Demitrius. His caring for his son and girlfriend was very noticeable and loving.

Although I am not part of their family, I can only say that I observed during the times Jerimiah visited the bank that he surely was and is very respectable and loving to his mother. Jerimiah definitely is a young man whom I can see has manners and was always very cordial.

Sincerely,



Patricia A. Tinman
589 Canlite Street
Henderson, NV 89015

To whom it may concern:

October 7, 1998

This Letter is regarding Jeremiah Deskin.

I am very proud of my relationship to him. We have a three month old son together and we have been together for over a year and a half. I just would like for us to spend time together as a family. It's hard when you start your family, and then have to be taken away from the people you love. It may not seem like a long time to some people, but to the people who love you it seems like an eternity. Because they suffer the loss of being without you. I know that our child is still young but we have a bond, and I have a bond to Jeremiah. So when I feel connected to him, he feels the loss of his father, and the three of us, feel the separation from each other. Our love is pure for each other. And Jeremiah is the kindest and lovable man that I know. I'm raising a child with good morals and self respect and respect for others. I feel that Jeremiah has big role to play in all of his learning about life. I feel that Jeremiah is a wonderful father, and a great teacher for his son. He is a caring person who doesn't deserve to be away from his family and the people who care. Which I do. I don't know very much about law. I do know that we are regular people who try to do the right thing, and that everyone deserves a second chance at least once in their lifetime and I feel that if given the chance Jeremiah can prove that he deserves that one chance.

FROM : DWALEY TOURS

PHONE NO. : 6192435570

If not for himself, Then for the people
who care for him. Thank You for taking
time to read thiss letter

Sincerely,
Daffine L. Yancy



ORIGINAL

MOT
CHAD M. GOLIGHTLY, ESQ.
Nevada Bar No. 5331
CHAD M. GOLIGHTLY, LTD.
714 East Sahara Avenue, Ste. 250
Las Vegas, NV 89104
(702)388-9969

OCT 13 12 39 PM '98
JUSTICE COURT
LAS VEGAS, NEVADA
BY

Attorney for Defendant
JERIMIAH JOHN DESKIN

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN JAMES NASBY and
JERIMIAH JOHN DESKIN,

Defendants

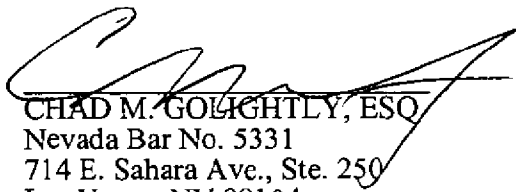
CASE NO: 98F11168A-B
DEPT NO: 3
DOCKET NO:

**MOTION TO REPLACE ON CALENDAR TO RELEASE DEFENDANT
ON HIS OWN RECOGNIZANCE, OR IN THE ALTERNATIVE, TO SET BAIL**

Upon application of the above-named Defendant, JERIMIAH JOHN DESKIN, by and through his undersigned counsel, CHAD M. GOLIGHTLY, ESQ. of the Law Offices of Chad M. Golightly, Ltd., it is hereby requested that the above-entitled matter be replaced on calendar to RELEASE DEFENDANT ON HIS OWN RECOGNIZANCE, OR IN THE ALTERNATIVE, TO SET BAIL.

DATED this 13 day of October, 1998.

CHAD M. GOLIGHTLY, LTD.


CHAD M. GOLIGHTLY, ESQ.
Nevada Bar No. 5331
714 E. Sahara Ave., Ste. 250
Las Vegas, NV 89104
Attorney for Defendant
JERIMIAH JOHN DESKIN

1 The above-entitled matter is to be placed on Calendar on the 15 day of Oct,
2 1998, at 8:00 o'clock A m. in Justice Court, Department 9.

3 COURT CLERK

4 By [Signature]
5
6

7 **RECEIPT OF COPY**

8 A RECEIPT OF COPY of the foregoing MOTION TO PLACE ON CALENDAR is hereby
9 acknowledged this 13 day of October, 1998.

10 [Signature]
11 DISTRICT ATTORNEY
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26
27
28

ORIGINAL

FILED

Nov 9 12 58 PM '98

Loretta Brown

CLERK

1 **INFO**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 11/24/98
10 8:30 A.M.
11 L. Duffy/J. Sciscento

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 BRENDAN JAMES NASBY,
16 #1517690

17 Defendant.

Case No. C
Dept. No. III
Docket E

154293

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

22 That BRENDAN JAMES NASBY, the Defendant(s) above named, having committed the
23 crimes of **CONSPIRACY TO COMMIT MURDER (Felony - NRS 199.480, 200.010,**
24 **200.030) and MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)**
25 **(Felony - NRS 200.010, 200.030, 193.165),** on or about the 17th day of July, 1998, within the
26 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases
27 made and provided, and against the peace and dignity of the State of Nevada,

28 COUNT I - CONSPIRACY TO COMMIT MURDER

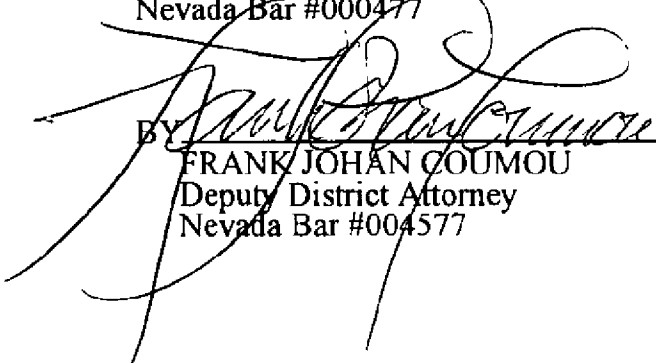
Defendants did then and there meet with each other or unknown individuals and between
themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and
agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did

1 commit the acts as set forth in Count II, said acts being incorporated by this reference as though
2 fully set forth herein.

3 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

4 Defendants did then and there wilfully, feloniously, without authority of law, and with
5 premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a
6 human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon,
7 to-wit: a firearm, in the following manner, to-wit: by said Defendants and an unknown
8 individual acting pursuant to a conspiracy to commit murder, aiding or abetting each other by
9 counsel and encouragement by entering into a course of conduct whereby Defendants and an
10 unknown individual drove said MICHAEL BEASLEY into the desert, lured said MICHAEL
11 BEASLEY out of the vehicle whereby Defendant BRENDAN JAMES NASBY repeatedly shot
12 said MICHAEL BEASLEY with said firearm while Defendants JERIMIAH JOHN DESKIN,
13 TOMMIE C. BURNSIDE JR., JOTEE BURNSIDE and JERIMIAH JOHN DESKIN acted as
14 lookouts and fled the scene together.

15 STEWART L. BELL
16 DISTRICT ATTORNEY
Nevada Bar #000477

17
18 BY 
19 FRANK JOHAN COUMOU
20 Deputy District Attorney
21 Nevada Bar #004577

22 Names of witnesses known to the District Attorney's Office at the time of filing this
23 Information are as follows:

24 <u>NAME</u>	<u>ADDRESS</u>
25 Thowsen, Thomas	LVMPD P#1467
26 Cabrales, Allen	LVMPD P#2045
27 Hefner, Kenneth	LVMPD P#2185
28 McGhie, Gordon	LVMPD P#2883

1	<u>NAME</u>	<u>ADDRESS</u>
2	Falvey, Darlene	LVMPD P#3176
3	Carroll, James	LVMPD P#3656
4	Buczek, James	LVMPD P#3702
5	Smith, David	LVMPD P#4124
6	Giersdorf, Daniel	LVMPD P#4521
7	Sams, Jessie	LVMPD P#4793
8	Neil, Kelly	LVMPD P#5410
9	Norman, Sheree	LVMPD P#3110
10	McPhail, R.	LVMPD P#3326
11	Johnson, Torrey	LVMPD P#
12	Crait, Jeffrey	4409 Twin PeaksDr., NLV, Nv 89030
13	Gilmore, Robert	5910 Fannine Way, Las Vegas, Nv 89130
14	Beavers, Jomeka	3327 Outlook Point St., NLV, Nv 89030
15	Banks, Tanesha	2651 Napa Drive, Las Vegas, NV 89115
16	Bradley, Crystal	6666 w Washington #541, Las Vegas, NV 89107
17	Jones, Helen	3327 Outlook Point St., NLV, Nv 89030
18	Beasley, Velma	8519 S Main St. #2, Los Angeles, CA 90003
19	Jordan, Robert	1704 Pinto Lane, Las Vegas, NV 89106
20	Deskin, Jerimia	714 E Sahara Ave, #203, Las Vegas, NV 89104
21	Torres, Sgt. Rod	San Bernardino Co. Sheriff's Dept., Apple Valley Sta.
22	VonLewis, Damian	Unknown
23	Burnside, Tommie	Unknown
24	Burnside, Jotee	Unknown
25		
26		
27	DA#98F11168A/msr	
28	LVMPD EV#9807170541	
	CONSP MURD; MURD W/W - F	
	(TK 3)	

ORIGINAL

FILED IN OPEN COURT

NOV 12 1998

19

LORETTA BOWMAN, CLERK

BY Paula Goodell

PAULA GOODELL Deputy

1 ANAG
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JERIMIAH JOHN DESKIN,

12
13 Defendant.
14

Case No.
Dept. No.
Docket

C 154293
III
E

15 AGREEMENT TO TESTIFY

16 IT IS HEREBY AGREED by and between the State of Nevada, by the Clark County
17 District Attorney and through the undersigned deputy, FRANK JOHAN COUMOU, and
18 JERIMIAH JOHN DESKIN, by and through his undersigned defense attorney, CHAD M.
19 GOLIGHTLY, ESQ.

20 1. JERIMIAH JOHN DESKIN will cooperate voluntarily with the Clark County District
21 Attorney's Office and the Las Vegas Metropolitan Police Department in the investigation and
22 prosecution in Case No. C , State of Nevada vs. BRENDAN JAMES NASBY, concerning
23 the Conspiracy to Commit Murder and Murder With Use of a Deadly Weapon (Open Murder)
24 of MICHAEL BEASLEY which occurred on July 17, 1998.

25 2. JERIMIAH JOHN DESKIN will cooperate voluntarily by providing true information
26 and by testifying fully and truthfully in all court proceedings in the above referenced case
27 against the co-defendant BRENDAN JAMES NASBY and possibly future charged Defendants
28 who may be implicated.

1 3. The full terms of the plea agreement are set forth in the document styled Guilty Plea
2 Memorandum, a copy of which is attached hereto and incorporated herein by reference.
3 JERIMIAH JOHN DESKIN shall receive the benefits described in this agreement subject his
4 to compliance with all of the terms and conditions contained in this document.

5 4. It is further understood that as a result of entering this agreement, JERIMIAH JOHN
6 DESKIN is waiving all appeal rights with respect to the entry of plea, speedy trial rights, and
7 any other right to appeal any issue as a result of his prosecution in Case No. C

8 OBLIGATION TO BE TRUTHFUL

9 OVERRIDING ALL ELSE, it is understood that this agreement requires from JERIMIAH
10 JOHN DESKIN an obligation to do nothing other than to tell the truth. It is understood between
11 all the parties to this agreement that JERIMIAH JOHN DESKIN, at all times, shall tell the truth,
12 both during the investigation and while testifying on the witness stand. JERIMIAH JOHN
13 DESKIN shall tell the truth, no matter who asks the questions, including but not limited to
14 investigators, prosecutors, judges and defense attorneys.

15 It is further understood that this entire agreement shall become null and void and
16 JERIMIAH JOHN DESKIN shall lose the benefits of this agreement for any deviation from the
17 truth, for failure to answer any question that is the subject matter of this investigation, for
18 purposely withholding information regarding this investigation, for providing evasive answers
19 to questions asked by law enforcement officers investigating this case, for providing false
20 information at any time on any matter concerning this investigation. Further, JERIMIAH JOHN
21 DESKIN shall be subject to prosecution for perjury for any intentional false statement which
22 occurs while he is on the witness stand.

23 The parties agree that the trial court shall determine if JERIMIAH JOHN DESKIN
24 complied with his obligation of truthfulness for purposes of this agreement.

25 ADDITIONAL CONDITIONS

26 1. It is further agreed that if this agreement is declared null and void as a result of
27 violation of the terms and conditions by JERIMIAH JOHN DESKIN, the District Attorney will
28 use any statements made by JERIMIAH JOHN DESKIN regarding this investigation against

1 him, in any subsequent criminal trial/prosecution arising in Case No. C.

2 2. It is agreed that no interviews or communication with JERIMIAH JOHN DESKIN
3 shall be conducted by the District Attorney or its agents unless defense counsel CHAD M.
4 GOLIGHTLY, ESQ. has been notified and CHAD M. GOLIGHTLY, ESQ. agrees to expressly
5 waive his right to be present.

6 3. Any failure by the District Attorney's Office and its agents to comply with the above
7 requirements shall render this Agreement null and void and may result in JERIMIAH JOHN
8 DESKIN taking any action which would otherwise be available to him, including but not limited
9 to refusing to testify based on his Fifth Amendment right or seeking to withdraw from the plea
10 agreement in Case No. C.

11 4. All parties realize and understand their obligations and duties under this Agreement.
12 Each party enters this Agreement with full knowledge of the meaning and effect of such
13 Agreement.

14 5. JERIMIAH JOHN DESKIN has discussed this matter fully with his attorney. The
15 parties realize and understand that there are no terms to this Agreement other than what is
16 contained herein and in the Guilty Plea Memorandum. JERIMIAH JOHN DESKIN fully and
17 voluntarily accepts all the terms and conditions of this agreement and understands the
18 consequences of entering into this agreement.

19 10-21-98
20 DATE


JERIMIAH JOHN DESKIN
Defendant

21
22 10-21-98
23 DATE


CHAD M. GOLIGHTLY, ESQ.
Attorney for Defendant

24
25 10-19-98
26 DATE


FRANK JOHAN COUMOU
Deputy District Attorney

27
28 msr

ORIGINAL

1 **GMEM**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT

NOV 12 1998 19
LORETTA BOWMAN, CLERK
BY *Shula Goodell*
RETTA GOODELL Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JERIMIAH JOHN DESKIN,

12 Defendant.
13
14

Case No. C
Dept. No. III
Docket E

154293

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: ACCESSORY TO MURDER (Category C Felony -
17 NRS 195.030, 195.040, 200.030, 200.010), as more fully alleged in the charging document
18 attached hereto as Exhibit "1".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The Defendant has agreed to testify truthfully in the State's case against his co-defendant
22 BRENDAN JAMES NASBY and possibly the Burnside boys, and will give a statement to the
23 police. If the Defendant cooperates fully and completely as agreed, the State will have no
24 opposition to probation at the time of sentencing.

25 **CONSEQUENCES OF THE PLEA**

26 I understand that by pleading guilty I admit the facts which support all the elements of
27 the offense(s) to which I now plead as set forth in Exhibit "1".

28 I understand that as a consequence of my plea of guilty the Court must sentence me to

3397

1 imprisonment in the Nevada State Prison for a minimum term of not less than One (1) year(s)
2 and a maximum term of not more than Five (5) years. The minimum term of imprisonment may
3 not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may
4 also be fined up to \$1,000.00. I understand that the law requires me to pay an Administrative
5 Assessment Fee.

6 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
7 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
8 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
9 State of Nevada for any expenses related to my extradition, if any.

10 I understand that I am eligible for probation for the offense to which I am pleading guilty.
11 I understand that, except as otherwise provided by statute, the question of whether I receive
12 probation is in the discretion of the sentencing judge.

13 I understand that if more than one sentence of imprisonment is imposed and I am eligible
14 to serve the sentences concurrently, the sentencing judge has the discretion to order the
15 sentences served concurrently or consecutively.

16 I also understand that information regarding charges not filed, dismissed charges, or
17 charges to be dismissed pursuant to this agreement may be considered by the judge at
18 sentencing.

19 I have not been promised or guaranteed any particular sentence by anyone. I know that
20 my sentence is to be determined by the Court within the limits prescribed by statute. I
21 understand that if my attorney or the State of Nevada or both recommend any specific
22 punishment to the Court, the Court is not obligated to accept the recommendation.

23 I understand that the Division of Parole and Probation will prepare a report for the
24 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
25 sentencing, including my criminal history. This report may contain hearsay information
26 regarding my background and criminal history. My attorney and I will each have the
27 opportunity to comment on the information contained in the report at the time of sentencing.
28 Unless the District Attorney has specifically agreed otherwise, then the District Attorney may

1 also comment on this report.

2 WAIVER OF RIGHTS

3 By entering my plea of guilty, I understand that I am waiving and forever giving up the
4 following rights and privileges:

5 1. The constitutional privilege against self-incrimination, including the right to refuse to
6 testify at trial, in which event the prosecution would not be allowed to comment to the jury
7 about my refusal to testify.

8 2. The constitutional right to a speedy and public trial by an impartial jury, free of
9 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
10 assistance of an attorney, either appointed or retained. At trial the State would bear the burden
11 of proving beyond a reasonable doubt each element of the offense charged.

12 3. The constitutional right to confront and cross-examine any witnesses who would
13 testify against me.

14 4. The constitutional right to subpoena witnesses to testify on my behalf.

15 5. The constitutional right to testify in my own defense.

16 6. The right to appeal the conviction, with the assistance of an attorney, either appointed
17 or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other
18 grounds that challenge the legality of the proceedings and except as otherwise provided in
19 subsection 3 of NRS 174.035.

20 VOLUNTARINESS OF PLEA

21 I have discussed the elements of all of the original charge(s) against me with my attorney
22 and I understand the nature of the charge(s) against me.

23 I understand that the State would have to prove each element of the charge(s) against me
24 at trial.

25 I have discussed with my attorney any possible defenses, defense strategies and
26 circumstances which might be in my favor.

27 All of the foregoing elements, consequences, rights, and waiver of rights have been
28 thoroughly explained to me by my attorney.

1 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
2 that a trial would be contrary to my best interest.

3 I am signing this agreement voluntarily, after consultation with my attorney, and I am not
4 acting under duress or coercion or by virtue of any promises of leniency, except for those set
5 forth in this agreement.

6 I am not now under the influence of any intoxicating liquor, a controlled substance or
7 other drug which would in any manner impair my ability to comprehend or understand this
8 agreement or the proceedings surrounding my entry of this plea.

9 My attorney has answered all my questions regarding this guilty plea agreement and its
10 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

11 DATED this 27 day of October, 1998.

12

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15

16 AGREED TO BY:

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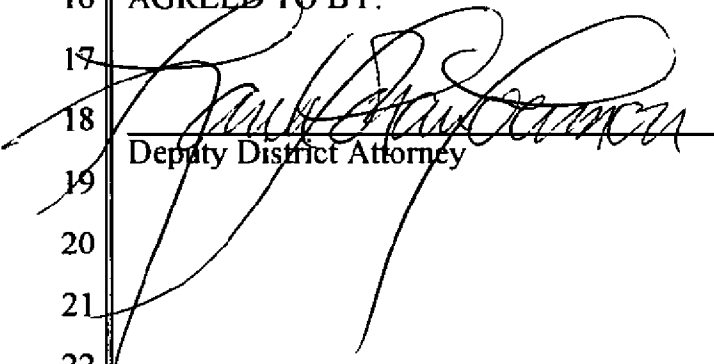
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JERIMIAH JOHN DESKIN
Defendant


Deputy District Attorney

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution that
7 the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 26 day of October, 1998.

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ATTORNEY FOR DEFENDANT

msr

1 **INFO**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 10/27/98
10 8:30 A.M.
11 C. Golightly

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

15 -vs-

16 JERIMIAH JOHN DESKIN,
17
18 Defendant.

Case No. C
Dept. No. III
Docket E

INFORMATION

19 STATE OF NEVADA }
20 COUNTY OF CLARK } ss:

21 STEWART L. BELL, District Attorney within and for the County of Clark, State of
22 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

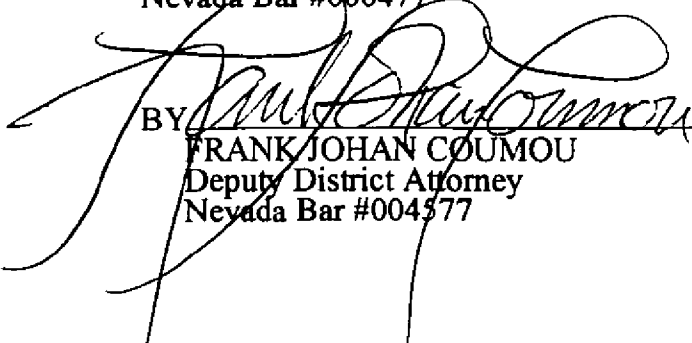
23 That JERIMIAH JOHN DESKIN, the Defendant(s) above named, having committed the
24 crime of **ACCESSORY TO MURDER (Felony - NRS 195.030, 195.040, 200.030, 200.010)**,
25 on or about the 17th day of July, 1998, within the County of Clark, State of Nevada, contrary
26 to the form, force and effect of statutes in such cases made and provided, and against the peace
27 and dignity of the State of Nevada, did wilfully, unlawfully, and feloniously harbor, conceal or
28 aid BRENDAN JAMES NASBY, to-wit: by acting as the driver of the getaway car, taking the
car out of the jurisdiction and concealing evidence, with intent that the said BRENDAN JAMES
NASBY might avoid or escape from arrest, trial, conviction or punishment having knowledge

///

///

1 that the said BRENDAN JAMES NASBY had committed a felony, to-wit: Murder, and was
2 liable to arrest therefore.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577
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26 DA#98F11168B/msr
27 LVMPD EV#9807170541
28 ACC MURD - F
(TK 3)

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Justice Court, Las Vegas Township
CLARK COUNTY, NEVADA

FILED
NOV 13 9 43 AM '98
CLERK

THE STATE OF NEVADA,

Plaintiff,

District Court Case No. C154293

—vs—

Justice Court Case No. 98F11168 A

BRENDAN JAMES NASBY

Defendant.

I, hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

WITNESS my hand this 10th day of NOVEMBER, 19 98.

Manley R B
Justice of the Peace of Las Vegas Township

CE42



Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

BRENDAN JAMES NASBY

Defendant.

Case No. 98F11168 A

COMMITMENT and ORDER TO APPEAR

An Order having been made this day by me, that

BRENDAN JAMES NASBY

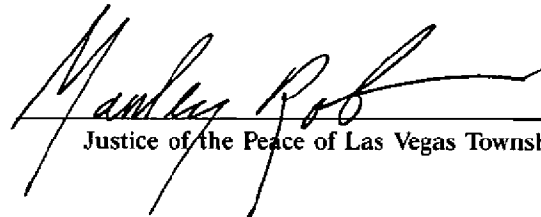
be held to answer upon the charge of SECOND AMENDED COMPLAINT
COUNT I - CONSPIRACY TO COMMIT MURDER
COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Committed in said Township and County, on or about the 17th day of JULY, 19 98.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive _____
_____ HIM _____ into custody, and detain _____ HIM _____ until HE be legally discharged, and
that HE be admitted to bail in the sum of \$150,000/150,000/300,000 TOTAL BAIL Dollars, and be
committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant _____ is/are commanded to appear in
Department 3 of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 8:30 A.M.,
on the 24th day of NOVEMBER, 19 98, for arraignment and further proceedings on the within charge S.

DATED this 10th day of NOVEMBER, 19 98.


Justice of the Peace of Las Vegas Township

Justice Court, Las Vegas Township

STATE VS. NASBY, BRENDAN JAMES CASE NO. 98F11168 A
PAGE THREE

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

<p>NOVEMBER 5, 1998 M. VILLANI FOR #3 F. COUMOU, DA J. SCISCENTO, ESQ AND J. DUFFY, ESQ A. CAMPAGNA, CR M. MCCREARY, CLK</p>	<p>TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY MOTION BY DEFENSE TO EXCLUDE WITNESSES - MOTION GRANTED STATE'S WITNESSES JERIMIAH DESKIN - WITNESS IDENTIFIES DEFENDANT DR. ROBERT JORDAN CRYSTAL BRADLEY - WITNESS IDENTIFIES DEFENDANT JAMES BUCZEK - WITNESS IDENTIFIES DEFENDANT</p>	<p>11-24-98 8:30 #3 DISTRICT COURT</p>
	<p>STATE'S PROPOSED EXHIBITS 1- PHOTOGRAPH - OFFERED - ADMITTED 2 - PHDOTOGRAPH - OFFERED - ADMITTED 3 - PHOTOGRAPH - OFFERED - ADMITTED 4 - PHOTOGRAPH - OFFERED - OBJECTION BY DEFENSE - REJECTED 5 - PHOTOGRAPH - OFFERED - ADMITTED STATE'S PROPOSED EXHIBIT 4 RETURNED TO F. COUMOU, DA STATE RESTS</p>	
	<p>DEFENDANT WAIVES RIGHT TO MAKE SWORN OR UNSWORN STATEMENT DEFENSE RESTS MOTION BY DEFENSE TO DISMISS - DENIED DEFENDANT BOUND OVER AS CHARGED IN DISTRICT COURT ON SECOND AMENDED COMPLAINT APPEARANCE DATE SET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF</p>	<p>NOV 13 1998 CLERK OF COURT mm</p>

Justice Court, Las Vegas Township

STATE VS. NASBY, BRENDAN JAMES

CASE NO. 98F11168X

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

AUGUST 6, 1998
T. ABBATANGELO
W. KEPHART, DA
O. FUMO, ESQ
(confirms)
L. GALLEGOS, CR
M. McCREARY, CLK

TIME SET FOR SEVENTY TWO HOUR HEARING
DEFENDANT PRESENT IN COURT *IN CUSTODY*
PASSED BY STATE FOR STATUS CHECK FOR FILING OF COMPLAINT

DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF

8-13-98 8:00 #3

mb

8-11-98

CRIMINAL COMPLAINT FILED
COUNT I - CONSPIRACY TO COMMIT MURDER
COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

mb

8-11-98

MOTION TO SET A REASONABLE BAIL FILED

mb

AUGUST 12, 1998
T. ABBATANGELO
F. COUMOU, DA
O. FUMO, ESQ
D. ANTONACCI, CR
M. McCREARY, CLK

INITIAL ARRAIGNMENT
DEFENDANT PRESENT IN COURT *IN CUSTODY* COUNT II
DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT
MOTION BY DEFENSE TO REDUCE BAIL AND/OR O/R RELEASE
COURT RESERVES RULING
PASSED BY COURT FOR BAIL MOTION TO BE HEARD
PRELIMINARY HEARING DATE SET
DEFENSE WAIVES 15 DAY RULE

8-13-98 8:00 #3

10-21-98 9:00 #3
(P/H DATE)

NO BAIL POSTED COUNT I
DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF COUNT II

mb

AUGUST 13, 1998
T. ABBATANGELO
F. COUMOU, DA
O. FUMO, ESQ
D. ANTONACCI, CR
M. McCREARY, CLK

DEFENDANT PRESENT IN COURT *IN CUSTODY* COUNT II
MOTION BY DEFENSE TO SET BAIL - OBJECTION BY STATE
MOTION GRANTED
COURT ORDERED DEFT REMANDED PER COUNT I
BAIL SET 150,000/150,000/300,000 PER COUNT
PRELIMINARY HEARING DATE STANDS

DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF

mb

8-24-98

NOTICE TO PLACE ON CALENDAR FILED

mb

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 98F11168A-D

5 -vs-

6 BRENDAN JAMES NASBY #1517690,
7 JERIMIAH JOHN DESKIN,
8 TOMMIE C. BURNSIDE JR. #1591598,
9 JOTEE BURNSIDE,

10 Defendants.

SECOND AMENDED
CRIMINAL COMPLAINT

11 The Defendants above named having committed the crimes of CONSPIRACY TO
12 COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE
13 OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in
14 the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998,
15 at and within the County of Clark, State of Nevada,

16 COUNT I - CONSPIRACY TO COMMIT MURDER

17 Defendants did then and there meet with each other or unknown individuals and between
18 themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and
19 agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did
20 commit the acts as set forth in Count II, said acts being incorporated by this reference as though
21 fully set forth herein.

22 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

23 Defendants did then and there wilfully, feloniously, without authority of law, and with
24 premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a
25 human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon,
26 to-wit: a firearm, in the following manner, to-wit: by said Defendants and an unknown
27 individual acting pursuant to a conspiracy to commit murder, aiding or abetting each other by
28 counsel and encouragement by entering into a course of conduct whereby Defendants and an

1 unknown individual drove said MICHAEL BEASLEY into the desert, lured said MICHAEL
2 BEASLEY out of the vehicle whereby Defendant BRENDAN JAMES NASBY repeatedly shot
3 said MICHAEL BEASLEY with said firearm while Defendants JERIMIAH JOHN DESKIN,
4 TOMMIE C. BURNSIDE JR., JOTEE BURNSIDE and an unknown individual acted as
5 lookouts and fled the scene together.

6 All of which is contrary to the form, force and effect of Statutes in such cases made and
7 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
8 declaration subject to the penalty of perjury.

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26 98F11168A-D/rad
27 LVMPD EV#9807170541
28 CONSP, MWDW - F
(TK3)

AUG 27 1998

M. DeLeon
Court Clerk

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. 98F11168A-B

-vs-

BRENDAN JAMES NASBY #1517690,
JERIMIAH JOHN DESKIN,

Defendants.

A M E N D E D

CRIMINAL COMPLAINT

The Defendants above named having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998, at and within the County of Clark, State of Nevada,

COUNT I - CONSPIRACY TO COMMIT MURDER

Defendants did then and there meet with each other or unknown individuals and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Count II, said acts being incorporated by this reference as though fully set forth herein.

COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Defendants did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon, to-wit: a firearm, in the following manner, to-wit: by the Defendant and unknown individual or individuals acting pursuant to a conspiracy to commit murder whereby Defendant and/or unknown individuals drove MICHAEL BEASLEY into the desert, lured MICHAEL BEASLEY out of the vehicle, then one or more of the Defendants shot MICHAEL BEASLEY with a

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1 firearm while unknown individuals acted as lookouts throughout; or one or more of the unknown
2 individuals shot MICHAEL BEASLEY with a firearm while Defendants acted as lookout
3 throughout, Defendants and unknown individuals then fled the crime together.

4 All of which is contrary to the form, force and effect of Statutes in such cases made and
5 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
6 declaration subject to the penalty of perjury.

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27 98F11168A-B/jgw
28 LVMPD EV#9807170541
CONSP, MWDW - F
(TK3)

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 98F11168X

5 -vs-

6 BRENDAN JAMES NASBY #1517690,

7 Defendant.

CRIMINAL COMPLAINT

8
9 The Defendant above named having committed the crimes of CONSPIRACY TO
10 COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE
11 OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in
12 the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998,
13 at and within the County of Clark, State of Nevada,

14 COUNT I - CONSPIRACY TO COMMIT MURDER

15 Defendant did then and there meet with an unknown individual or individuals and
16 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
17 conspire and agree to commit the crime of murder, and in furtherance of said conspiracy,
18 Defendant did commit the acts as set forth in Count II, said acts being incorporated by this
19 reference as though fully set forth herein.

20 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

21 did then and there wilfully, feloniously, without authority of law, and with premeditation
22 and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a human being, by
23 shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon, to-wit: a
24 firearm, in the following manner, to-wit: by the Defendant and unknown individual or
25 individuals acting pursuant to a conspiracy to commit murder whereby Defendant and/or
26 unknown individuals drove MICHAEL BEASLEY into the desert, lured MICHAEL BEASLEY
27 out of the vehicle, then the Defendant shot MICHAEL BEASLEY with a firearm while unknown
28 individuals acted as lookouts throughout; or one or more of the unknown individuals shot

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1 MICHAEL BEASLEY with a firearm while Defendant acted as lookout throughout, Defendant
2 and unknown individuals then fled the crime together.

3 All of which is contrary to the form, force and effect of Statutes in such cases made and
4 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
5 declaration subject to the penalty of perjury.

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98F11168X/rad
LVMPD EV#9807170541
CONSP, MUR WDW - F
(TK3)

CHARGE/BAIL REVIEW REQUEST

ID NUMBER: 1517690 CASE NUMBER: 98F11168X
 DEFENDANT NAME: NASBY, BRENDAN JAMES
 CASE NAME: NASBY, BRENDAN JAMES

DEFENDANT CUSTODY STATUS AS OF 08/11/1998 AT 10:40 AM CCDC 7F23

COUNT	CHARGE	BAIL/REVIEW
1	CONSP MURDER WITH A DEADLY WEAPON	0
ADDED	_____/_____/_____	PC REVIEW
2	MURDER WITH A DEADLY WEAPON	0
	MURDER WITH A DEADLY WEAPON	0
	_____/_____/_____	IN CUSTODY

BY JUDGE _____

VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

I.D. #: 1517690

True Name: NASBY, BRENDAN JAMES Date of Arrest: 8-4-98 Time of Arrest: 0730

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department), Clark County, Nevada, being so employed for a period of 9 1/2 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of MURDER W/DW at the location of 2.1 MILES NW OF ALEXANDER AND JENSEN and that the offense occurred at approximately _____ hours on the _____ day of _____, 19____.

DETAILS FOR PROBABLE CAUSE:

*** SEE ARREST REPORT ***

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.

James J. Buczek
Declarant's Signature
J. BUCZEK
Print Declarant's Name

3702
P #

ARREST REPORT

98F11168X/3

☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat X1

ID/EVENT# 1517690	ARRESTEE'S NAME NASBY, BRENDAN JAMES (Last, First, Middle)		S.S.#	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code)				
CHARGES: MURDER WITH A DEADLY WEAPON- NRS 200.030 (NO BAIL)				
OCCURRED:	DATE	DAY OF WEEK	TIME	LOCATION OF ARREST (Number, Street, City, State, Zip Code)
RACE	SEX	D.O.B.	HT	WT
HAIR		EYES	PLACE OF BIRTH	

CIRCUMSTANCES OF ARREST

On 071798, at approximately 0745 hrs, the body of Michael Lamont Beasley, was discovered by a jogger and ATV riders in the desert area west of Lone Mountain. This discovery was reported to the police and patrol units were dispatched.

Upon arrival, patrol officers determined Beasley was dead from apparent gun shot wounds. They requested Homicide Detectives respond to begin an investigation.

Upon our arrival, I observed Beasley's body, which had two separate apparent gun shot wounds. Another apparent bullet impact crater was observed in the ground next to the victim's head. In close proximity, we found three, apparently new, 9 mm cases, several apparently fresh cigarette butts and footwear impressions.

On 072198, Det. Thowsen and I spoke to Tanesha Banks, who has a child in common with Beasley, who related the following; On 071798, between 10:30 and 1100 hrs, she was having a telephone conversation with Crystal Bradley, which turned into a three-way phone conversation with Banks, Bradley, and a male called "Blue". Banks knows Blue as Brandon Nasby. Nasby said that Beasley had been tripping for the last several weeks and wanted to get out of their gang, called the LA Ridaz. Beasley wanted Nasby to arrange for the gang to beat him out of the gang. Banks told Nasby and Bradley that Beasley had just been by to pick up the baby. Nasby responded in a panicked tone, "What do you mean this morning?" Banks then explained that she meant last night (071698). Nasby then tells Bradley that he needs to talk to Bradley by herself. Banks hangs up on her end of the three way phone conversation. Approximately 10 minutes later, Bradley recalls Banks and says that Nasby told her that he killed Beasley with his new .9 mm gun. Nasby told Bradley that he and other LA Ridaz members lured Beasley to come out into the desert to shoot the new gun. He also told Bradley that he first shot Beasley in the neck. Beasley asked Nasby why he shot him and Nasby replied, "He need to know whose running shit nigger". Beasley fell to the ground and Nasby shot him in the head. The group started to leave when Nasby came back to Beasley and shot him in the head again.

ARRESTING OFFICER(S) DET. JAMES BUCZEK	P# 3702	APPROVED BY	CONNECTING RPTS. (Type or Event Number) 980717-0541
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CONTINUATION REPORT

ID/Event Number: 1517690

Page 2 of 3

Banks asked Bradley who else was there when Beasley was shot and Bradley said, Tbone (who Banks knows as Tommie Burnside), his little brother Little Weegie (who Banks knows as Jote Burnside) and a white male whose moniker is Woodpecker (who Banks knows as Jeremy, last name unknown).

On 072398, Det. Thowsen and I interviewed Crystal Bradley. Bradley confirmed the details of the three-way phone conversation between herself, Banks and Nasby, as well as the conversation between Nasby and herself as related by Banks. Bradley told us that Nasby related the group went to and from the scene in Woodpecker's car. Bradley said that Nasby joed Beasley because Beasley was trying to take away Nasby's stripes (challenge him for leadership in the gang). Bradley related all the suspects at the scene do smoke.

The conversation between Bradley and Nasby, as well as the mentioned three-way conversation occurred before any media reports about the murder in general aired. The specifics regarding the caliber of weapon used and the location and exact number of shots were never made public knowledge. There was no mention as to shell casings being recovered at the scene.

During Beasley's autopsy, it was determined he was shot once in the back with that shot exiting the neck area and once in the head. The recovered bullets appeared to be consistent with 9 mm caliber. These two bullet wounds along with the near miss impact crater discovered adjacent to Beasley's head would account for three shots being fired into or at Beasley.

Nasby was arrested at 0730 hrs on 080498 and charged with the MURDER of Michael Beasley. A search warrant was executed at Nasby's residence and place of arrest, which is 4509 Switchback St. in North Las Vegas. Prior to placing Nasby in my vehicle, I read to him the rights of person arrested card, which informs him of his rights per Miranda. Nasby said that he understood what I read to him and that he wanted to talk to me. Detective Moran was present during the reading and acknowledgment. I asked him where the gun was and he said that it was at his cousin Tommy's house. Nasby said that the gun at Tommy's was a .25 caliber. That the .9 mm was not there. We never mentioned that we were looking for a .9 mm handgun.

As we were driving to the jail, Nasby told me to return to the house and he would direct me to where the gun was. Nasby directed us to his bedroom and said that it was in a bag under his bed. The bag was located and inside was a Browning .9 mm handgun, bearing serial #4CH1969, along with a SKS 7.62 x 39 rifle with folding stock and a Winchester 12 gauge shotgun, bearing serial #L3173410 was found beneath the bed. Nasby told me that he purchased the .9 mm handgun after the murder of Michael Beasley from "Sugarbear." Nasby said that prior to the murder he handled a .9 mm handgun, it's magazine and each individual round of ammunition. Nasby said that he knew who was trying to put this murder on him, that it was Tanesha Banks. Nasby said that his "home girl" went over to Banks house the other night, "knocked her ass out." This is true, as Brittny Adams went

CONTINUATION REPORT

ID/Event Number: 1517690

Page 3 of 3

to Banks home and lured her outside. Brittny also known as BK and some other suspects beat banks until she was unconscious. They also attempted to kidnap Banks by dragging her unconscious body towards the car and luckily Banks' parents came outside and interceded.

We arrived at the Detective Bureau and Det. Thowsen joined me in questioning Nasby. I told Nasby that he was telling people that he killed Beasley and that they told us. Nasby said that he "was only joking, to see who he could trust." Shortly thereafter, Nasby requested to place a telephone call to his attorney. We allowed Nasby to call his attorney and he left a message with the secretary. At this point, Nasby chose not to speak to us anymore.

I then transported Nasby to CCDC. Buckle slabs were obtained from Nasby pursuant to the search warrant. Nasby was then booked into CCDC accordingly.

JB/all (12)

Job #52713

Dict: 080498/1024 hrs

Tran: 080498/1105 hrs

ORIGINAL

1 **MOT**

2 OSVALDO E. FUMO, ESQ.
3 Nevada Bar No. 5956
4 SAVAGE, FUMO & FISH, LTD.
5 504 E. Bonneville Avenue
6 Las Vegas, NV 89101
7 704-474-7554
8 **Attorney for Defendant**

AUG 11 12 17 PM '93
JUDGE [Signature]
LAS VEGAS
BY [Signature]

9
10 **LAS VEGAS TOWNSHIP JUSTICE COURT**
11 **CLARK COUNTY, NEVADA**
12

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 BRANDON NASBY,

17 Defendant.

) CASE NO. 98F11168X

) DEPT. NO. 3

18 **MOTION TO SET A REASONABLE BAIL**

19 COMES NOW, Defendant BRANDON NASBY, by and through his undersigned
20 counsel, and respectfully submits the foregoing Motion to set a reasonable bail. This Motion is
21 made and based upon the pleadings and papers on file herein, the attached Memorandum of
22 Points and Authorities, together with such other oral or
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1 documentary evidence which may be presented to the Court at the time of the hearing of this
2 matter.

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5 DATED this 1st day of August 1998.

6
7 Respectfully submitted,

8 SAVAGE, FUMO & FISH, LTD.
9

10
11
12 BY 

13 OSVALDO E. FUMO, ESQ.
14 Nevada Bar No. 5956
15 515 E. Bonneville Avenue
16 Las Vegas, Nevada 89101
17 (702) 474-7554
18 Attorney for Defendant
19 **BRANDON NASBY**

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 Defendant BRANDON NASBY stands before the Court accused of a serious crime. The
22 court, however, has discretion to consider a reasonable bail under the circumstances. Given Mr.
23 Nasby's ties to community and his family background, a reasonable bail of \$100,000.00 would
24 be appropriate. Moreover, the court is free to combine bail with a condition or set of conditions
25 which will insure the Defendant's presence at scheduled court appearances and prevent any issue
26 coming about as to danger to the community.
27
28

1 The defense offers the following:

2 1. The Defendant has been a resident of Clark County for three (3) years. He is a high
3 school graduate and is currently enrolled in college.

4
5 2. The Defendant has family ties in Las Vegas, Clark County, Nevada. Furthermore,
6 Mr. Nasby has very strong ties to the Las Vegas community. Mr. Nasby lives in
7 North Las Vegas with his parents, young daughter and his fiancée. His parents are
8 both outstanding well respected members of the community. If granted a reasonable
9 bail they are able to ensure Mr. Nasby's presence at all of his court dates and can
10 vouch for his reliability.
11

12 3. The court can order, as an additional condition of bail that the Defendant be on house
13 arrest, electronic monitoring, or intensive supervision with Clark County Pretrial
14 Services.
15

16 4. Although Mr. Nasby is new to the criminal justice system, he has never missed a
17 court date. Mr. Nasby has one juvenile conviction where he not only successfully completed
18 probation but he was honored by Clark County Family & Youth Services on June 4, 1997, as an
19 individual who has shown improvement in his life.(SEE EXHIBIT A). The Fact that he did so
20 well on probation shows that Mr. Nasby does well in a structured Environment.
21

22 Articles One and Six of the Constitution of the State of Nevada provides that excessive
23 bail shall not be required. In reaching a conclusion as to what is a reasonable bail, a court should
24 consider that the object of bail is simply to assure the presence of the accused for court
25 appearances and trial; also, the nature of the offense charged, the penalty which may be inflicted,
26
27
28

1 the probability of the appearance of the accused, his pecuniary condition, his character and
2 reputation, and the circumstances surrounding the case relative to the likelihood of conviction.

3
4 There are those who deem it proper to fix the bonds of all persons charged with crime in a
5 sum so great as to preclude its being given, but it was the obviation of such a consequence that
6 prompted the provision in our Constitution against excessive bail. In other words, the idea was
7 that the punishment, if there is to be any, should follow conviction, and not both precede and
8 follow it, or be inflicted in spite of possible acquittal. See, In the Matter of Jagles, 44 Nev.
9 370, 195 P. 808, 808-809 (1921). See also, Ex Parte Wheeler, 81 Nev. 495, 406 P.2d 713
10 (1965) at 81 Nev. 500; State v. Teeter, 65 Nev. 584, 200 P.2d 657 (1948).

12 NRS 178.498 provides that the amount of bail shall be set by the magistrate and shall be
13 such as will in his judgment insure the presence of the defendant, having regard to (1) the nature
14 and circumstances of the charged offense, (2) the financial ability of the defendant to give bail
15 and (3) the character of the defendant.

17 The bail should not be prohibitory in amount but the accused is not to be judged on his
18 ability to give bail or whether the amount is excessive. Ex parte Malley, 50 Nev. 248, 256
19 P.512 (1927), overruled on other grounds, Ex parte Wheeler, 81 Nev. 495, 406 P.2d 713 (1965).
20 Cf. Fish v. Sheriff, 89 Nev. 250, 510 P.2d 1370 (1973).

22 Articles One and Seven of the Nevada Constitution provide: "All persons shall be
23 bailable by sufficient sureties; unless for capital offenses when the proof is evident, or the
24 presumption great."

26 NRS 178.484 (1) and (2) provide: "A person arrested for an offense other than murder of
27 the first degree shall be admitted to bail. A person arrested for murder of the first degree may be
28

1 admitted to bail unless the proof is evident or presumption great by any competent court or
2 magistrate authorized by law to do so in the exercise of discretion, giving due weight to the
3 evidence and to the nature and circumstances of the offense." Where bail is discretionary, the
4 District Attorney must have reasonable notice of the application for bail. NRS 178.486. See also
5 EDCR 3.20(d).
6

7 In the case at bar, neither is the presumption of guilt Evident or the presumption so great
8 that Mr. Nasby should be denied any bail. Mr. Nasby was not arrested until nearly 3 weeks after
9 the shooting, and at the time set for arraignment the state was not ready to proceed because they
10 still had tests to complete on the victim and weapon. Accordingly, a bail in an amount of
11 \$100,000.00 is sufficient, along with other restrictions the court deems necessary to ensure Mr.
12 Nasby's appearance.
13

14
15 **CONCLUSION**

16 WHEREFORE, Defendant respectfully requests that this Court grant him bail not more
17 than \$100,000.00 under such conditions as this Court deems appropriate.
18

19 DATED this 10 day of August 1998.

20 Respectfully submitted,

21 SAVAGE, FUMO & FISH, LTD.

22
23 BY 

24 OSVALDO E. FUMO, ESQ.
25 Nevada Bar No. 5956
26 504 E. Bonneville Avenue
27 Las Vegas, Nevada 89101
28 (702) 474-7554
Attorney for Defendant
BRANDON NASBY

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TO: STEWART BELL, DISTRICT ATTORNEY

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION FOR OR RELEASE OR IN THE ALTERNATIVE, BAIL REDUCTION** on for hearing on the 13 day of August, 1997 at 8:00 A.M., or as soon thereafter as counsel may be heard, in Department 3 of the above-entitled Court.

DATED this 10 day of August 1998.

SAVAGE, FUMO & FISH, LTD.

BY OSVALDO E. FUMO, ESQ.
Nevada Bar No. 5956

1 **MOT**

2 OSVALDO E. FUMO, ESQ.

3 Nevada Bar No. 5956

4 SAVAGE, FUMO & FISH, LTD.

5 504 E. Bonneville Avenue

6 Las Vegas, NV 89101

7 704-474-7554

8 **Attorney for Defendant**

9 **LAS VEGAS TOWNSHIP JUSTICE COURT**

10 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 BRANDO NASBY,

15 Defendant.

16 **CASE NO. 98F11168X**

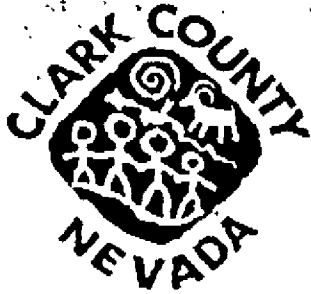
17 **DEPT. NO. 3**

18 **RECEIPT OF COPY**

19 **RECEIPT OF COPY** of the foregoing **MOTION FOR OR RELEASE OR IN THE**
20 **ALTERNATIVE, BAIL REDUCTION**, is hereby acknowledged this 11 day of August 1998.

21 STEWART BELL
22 DISTRICT ATTORNEY

23 BY T. and Schmidt
24 Deputy District Attorney
25 200 South Third Street
26 Las Vegas, Nevada 89101
27
28



Family & Youth Services

KIRBY L. BURGESS
DIRECTOR1420 E. BONANZA RD
LAS VEGAS NV 89101-2417
(702) 455-5380

May 16, 1997

Brenda Nasby
4509 Switchback Street
North Las Vegas, Nevada 89030

Dear Brenda Nasby;

We are hosting an Awards Ceremony for those individuals that have shown improvement in their lives, Brand Nasby is one of these individuals and we would like to invite you and your family to join us, on Wednesday June 4, 1997, at the Northwest Probation Center, located at, 1024 W. Owens Ave. in the Nucleus Business Plaza, time: 3:00 p.m.

It is important to notice when someone has accomplished a positive achievement. We will be recognizing those individuals that have done just that.

We feel that parental support on this occasion is very important. Please join us on this occasion to honor your child.

We will be serving refreshments after the Ceremony.

Sincerely,

Winnie Cooper,
Supervisor
Northwest Probation Center

RSVP - 455-7200 by May 28, 1997.

COMMISSIONERS

VICTOR W. ALKIN (CLAYTON) • CINDY • PAUL J. CHRISTENSEN, Vice Chairman
JAY BINGHAM • LORRAINE BUNT • JOHN KENNY • MYRNA WILLIAMS • DEUCE E. WOODHURST
DORRIS L. • CAROL STALMY, County Manager

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

CASE NO. 98F11168X

4 Plaintiff,

DEPT. NO. 3

5 -vs-

6 NASBY, BRENDAN
#1517690

7 Defendant(s).
8

9 NOTICE TO PLACE ON CALENDAR

10 Upon the application of STEWART L. BELL, Clark County District Attorney, it is hereby
11 requested that the above entitled matter be placed on the arraignment calendar on the 27th day
12 of August, 1998, for the purpose of filing amended criminal complaint.

13 DATED this 24th day of August, 1998.

14 STEWART L. BELL
District Attorney
15 Nevada Bar #000477

STEVEN MORRIS, *Court Administrator, Clerk*

16
17 BY *J. Bummer* /ng
Deputy District Attorney

BY *Steven Morris*
Deputy Clerk

18
19
20 ☐ NOTIFIED O. FUMO, ESQ.

21 OR

22 ☐ RECEIPT OF COPY of the above Notice to Place on Calendar is acknowledged this
23 ____ day of _____, 1998.

24 ATTORNEY FOR DEFENDANT

25
26 BY _____
27
28

NP

1 ORD
2 OSVALDO E. FUMO, ESQ.
3 Nevada Bar No. 5956
4 OSVALDO FUMO, CHTD.
5 515 E. Bonneville Avenue
6 Las Vegas, NV 89101
7 (702) 474-7554
8 Attorneys for Plaintiff

OCT 12 9 16 AM '98

JUSTICE COURT
LAS VEGAS, NEVADA
BY _____

9 JUSTICE COURT
10 CLARK COUNTY, STATE OF NEVADA

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 BRENDAN NASBY,


15 Defendant.

Case No.: 98F11168X A
Dept. No.: 3

16 ORDER

17 IT IS HEREBY ORDERED THAT the Clark County Detention Center permit a
18 single contact visit by Ms. Brenda Nasby with the defendant, Brendan Nasby I.D. #1517690, on
19 or before October 15, 1998.

20 DATED this 9 of October, 1998.

21 
22 TONY ABBATANGELO
23 JUSTICE COURT JUDGE
24
25
26
27
28

CLARK COUNTY INTAKE QUESTIONNAIRE AND FINANCIAL AFFIDAVIT

Defendant: NASBY, BRENDAN JAMES		
Arrest Date: 8-04-98	Arraign. Date:	
S.S.N.: 568-99-8429	I.D.: 1517690	
D.R. #: <i>NON CIC</i>	D.O.B. 5-09-79	
M J Charge: MURDER W/DW	98F11168X TK-3	Bail: <i>sic</i>
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
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M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:

BASED ON _____ VERIFIED POINTS THIS DEFENDANT HAS RECEIVED, AND THE INFORMATION GATHERED BY INTAKE SERVICES, THE FOLLOWING RECOMMENDATION IS MADE:

_____ Supervised Release with Conditions as Directed by Intake Services: _____

_____ Bail Reduction To: _____

_____ Not Recommended for an O/R Release or Bail Reduction Because: _____

Release Granted: _____ Date: _____

Bail Reduction To: _____

Release Denied: _____ Date: _____

Defendant:

NASBY, Brendan James

Also his G. friend
Colleen Warner

RESIDENCY

Present Address: 4509 Switchbacks St	Apt. #:	Phone #: 631-4858
How Long: 3yr	Living With: Brenda Nasby	Relationship: mom
Prior Address: Fontana CA	Apt. #:	Phone #: (909) 823-2424
How Long: 9yr	Living With: Brenda & Michael N	Relationship: DAD
Clark County Resident: Weeks Months 3 Years	Visiting: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	How Long:
State of Residency (address) If Less Than 5 Years: NV-3yrs full time student		
Marital Status: Single Married Divorced Separated	# of Children: 1 yd	Education: CCCC

EMPLOYMENT

Are You Employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If no, means of support: <u>Over 6000?</u>	How Much: <u>about 200 BL weekly</u>
Cash on hand or in bank (including spouse):	Spouse's Income: Blockbusters	
Property (including spouse): None		
Rent: <u>0</u> lives with mom	Mortgage:	Other Debts: LV
Total Monthly Payments: <u>0</u>	his mom pays all bills & rent	
Present Employer: <u>Unemp</u>	Address:	
How Long: 3yrs	Occupation:	Phone:
Supervisor:	Net Income: \$?	<input type="checkbox"/> Shift <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly
Prior Employer: <u>K Mart</u>	Address:	
How Long: 2 1/2 mo	Occupation: Clerk	Phone:
Supervisor:	Reason for Leaving: FIRED	

BACKGROUND

Family Not Living With Defendant:

Name: <u>Tommy Burnside</u>	Address: <u>NV</u>	Work: ?
Relationship:		Res:
Name:		Work:
Relationship:		Res:

Character References:

Name:	Address:	Phone:	Work:
			Res:
Name:	Address:	Phone:	Work:
			Res:

List all prior convictions/pending charges other than in Clark County:

Charge	Conviction Date	Where	Disposition
1.			
2.			

I the undersigned defendant, under penalty of perjury, declare that the above facts are true and correct.

X Brendan Nasby
Defendant

Subscribed and sworn to before me this 4 day of Aug, 19 98

Oswaldo Funes
474-7554

[Signature]
Notary Public

Circle One: P.D. N.A. P.A. Name: Interview Date: 8/4 Time: 7:18 pm

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168X

NAME: NASBY, BRENDAN

ID #: 1517690

CHARGE(S): MURDER WDW

CURRENT BAIL: NO BAIL

VERIFIED: Local Address: 4509 SWITCHBACK ST

Out Of State Address: _____

With Whom/How Long: MOTHER/3 YRS NV 3 YRS CA 9 YRS

VERIFIED: Employment: _____ Unemployed: _____ Disabled: _____ Student: XX

VERIFIED: Relatives: Local _____ Not Local _____

Felony Convictions: -0-

Misdemeanor Convictions:

Fail To Appear -0- Traffic _____ Misdemeanor _____ Felony _____

Pending Charges/Holds/Comments: _____

RECOMMENDATION: Release On Recognizance NO - DUE TO NATURE OF CHARGE

Bail Reduction _____

House Arrest _____

Indigent

Non-Indigent

PD Recommended

8-6-98

Date

Sh

INTAKE SERVICES

3 10/21

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168X

NAME: NASBY, BRENDAN

ID #: 1517690

CHARGE(S): MURDER WDW CONSP MURDER WDW

CURRENT BAIL: 150,000 150,000

VERIFIED: Local Address: 4509 SWITCHBACK ST

Out Of State Address: _____

With Whom/How Long: MOTHER/3 YRS NV 3 YRS CA 9 YRS

VERIFIED: Employment: _____ Unemployed: _____ Disabled: _____ Student: XX

VERIFIED: Relatives: Local _____ Not Local _____

Felony Convictions: -0-

Misdemeanor Convictions:

Fail To Appear -0- Traffic _____ Misdemeanor _____ Felony _____

Pending Charges/Holds/Comments: _____

RECOMMENDATION: Release On Recognizance NO - DUE TO NATURE OF CHARGE

Bail Reduction _____

House Arrest _____

Indigent

Non-Indigent

PD Recommended

10-20-98
Date

SH
INTAKE SERVICES

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168X

NAME: NASBY, BRENDAN JAMES ID #: 1517690

CHARGE(S): MURDER WDW CONSP MURDER WDW

CURRENT BAIL: 150,000 150,000

VERIFIED: Local Address: 4509 SWITHCBACK ST

Out Of State Address: _____

With Whom/How Long: 3YRS W/MOTHER NV 3YRS PRIOR CA 97RS

VERIFIED: Employment: _____ Unemployed: _____ Disabled: _____ Student: XX

VERIFIED: Relatives: Local _____ Not Local _____

Felony Convictions: -0-

Misdemeanor Convictions:

Fail To Appear -0- Traffic _____ Misdemeanor _____ Felony _____

Pending Charges/Holds/Comments: NIC PENDING CASE 98F10496X THEFT 11-17-98 9AM JC-2

RECOMMENDATION: Release On Recognizance _____

Bail Reduction _____

House Arrest _____

Indigent _____ Non-Indigent _____ PD Recommended _____

11-4-98

Date

INTAKE SERVICES

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD

I.D. #: 1517690 Event #: 180717-1

DATE OF ARREST: 080498 TIME OF ARREST: 0730 I.D. ESTAB. BY:

INTAKE NAME (AKA, ALIAS, ETC.) Last First Middle TRUE NAME Last First Middle
NASBY, BRENDAN JAMES Nasby Brendon James

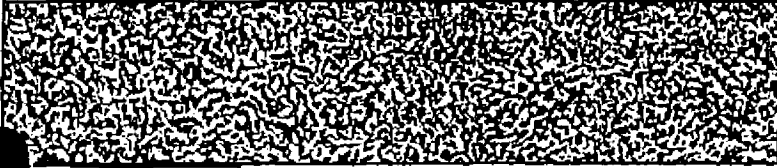
ADDRESS NUMBER & STREET BLDG./APT. # CITY STATE ZIP
4509 SWITCHBACK ST NLV NV 89031

DATE OF BIRTH RACE SEX HEIGHT WEIGHT HAIR EYES SOCIAL SECURITY # PLACE OF BIRTH
050979 B M 5'9 140 BLK BRO 568 99 8429 FONTANA, CA.

LOCATION OF CRIME (# - Street - City - State - Zip) CC Citizen Arrest LOCATION OF ARREST PCN #
2.1 MILES NW OF ALEXANDER/JENSEN LV Y (N) 4509 SWITCHBACK ST

BKG. CODE	CHARGE ORD / NRS #	M	GM	F	ARR TYPE*	EVENT NUMBER	WARR / NCIC NUMBER	LV	JC	DC	OTHER
0045	MURDER W/DW 200.030	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PC	980717-054		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Nobail - Sig.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			98F111688	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			TK3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GJI - GRAND JURY IND. OTHER COURT:



T. THOWSEN T. THOWSEN 1467
James J. Buzek / J. BUZEK / 3702 / LVMPD
Arresting Officer's Signature (Print Name) P # Agency
James J. Buzek / J. BUZEK / 3702 / LVMPD
Transporting Officer's Signature (Print Name) P # Agency

APPROVAL CONTROL # FOR ADDITIONAL CHARGES:

Time Stamp at BOOKING
LVMPD USE RECORDS
P #:

☒ FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.
☐ BENCH WARRANT SERVED ON _____
☐ WARRANT SERVED ON _____
☐ GRAND JURY INDICTMENT SERVED _____
AUG TYPE OF I.D. FOR VERIFICATION _____

FIRST APPEARANCE: DATE: AUG 5 1998 TIME: 7:30am
an 8/6/98
COURT ☒ STANDARD BAIL
☒ JUSTICE ☐ O.R. RELEASE
☐ MUNICIPAL ☒ PROBABLE CAUSE
☐ JUVENILE ☐ I.A.D.

JUDGE: Tony Abbato Angelo
TONY ABBATANGELO

ORIGINAL

FILED

DEC 3 11 52 AM '98

Loetta L. Lamm
CLERK

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 12/10/98
10 8:30 A.M.
11 PD/SPEC. PD

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

15 -vs-

16 TOMMIE C. BURNSIDE, JR. #1591598,
17 JOTEE BURNSIDE,

18 Defendant.

Case No. C154293C,D
Dept. No. III
Docket E

INFORMATION

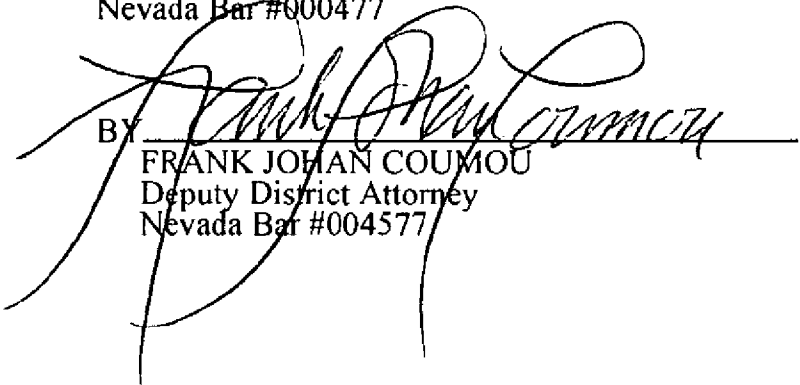
19 STATE OF NEVADA }
20 COUNTY OF CLARK }ss:

21 STEWART L. BELL, District Attorney within and for the County of Clark, State of
22 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

23 That TOMMIE C. BURNSIDE, JR. and JOTEE BURNSIDE, the Defendant(s) above
24 named, having committed the crime of **ACCESSORY TO MURDER (Felony - NRS 195.030,**
25 **195.040, 200.030, 200.010)**, on or about the 17th day of July, 1998, within the County of Clark,
26 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
27 provided, and against the peace and dignity of the State of Nevada, Defendants did wilfully,
28 unlawfully, and feloniously harbor, conceal or aid BRENDAN JAMES NASBY, to-wit: by both
Defendants informing Las Vegas Metropolitan Police Department Detectives of a false version
of the facts leading to the death of Michael Beasley, and by stating that someone named
"Sugarbear" actually was the killer when knowing that that version was false, with intent that
the said BRENDAN JAMES NASBY might avoid or escape from arrest, trial, conviction or

1 punishment having knowledge that the said BRENDAN JAMES NASBY had committed a
2 felony, to-wit: Murder, and was liable to arrest therefore.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577
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26 DA#98F11168C,D/msr
27 LVMPD EV#9807170541
28 ACC MURD - F
(TK3)

FILED

DEC 4 10 01 AM '98

Justice Court, Las Vegas Township

CLERK

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

TOMMIE C. BURNSIDE, JR.
JOTEE BURNSIDE

Defendant.

District Court Case No. C154293

Justice Court Case No. 98F11168C,D

12-10

I, hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

WITNESS my hand this 3RD day of DECEMBER, 1998.

Tony Alabado

Justice of the Peace of Las Vegas Township



Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

TOMMIE C. BURNSIDE, JR.
JOTEE BURNSIDE

Defendant.

Case No. 98F11168C,D

COMMITMENT and ORDER TO APPEAR

An Order having been made this day by me, that

TOMMIE C. BURNSIDE, JR.
JOTEE BURNSIDE

be held to answer upon the charge of

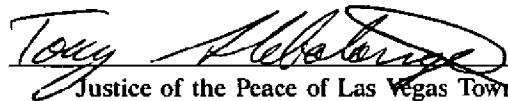
COUNT I - CONSPIRACY TO COMMIT MURDER
COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Committed in said Township and County, on or about the 17TH day of JULY, 19 98.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive _____
_____ them into custody, and detain _____ them until they be legally discharged, and
that they be admitted to bail in the sum of 0/0/0 PER COUNT PER DEFENDANT Dollars, and be
committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant s _____ are commanded to appear in
Department III of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 8:30 A.M.,
on the 10TH day of DECEMBER, 19 98, for arraignment and further proceedings on the within charge s _____.

DATED this 3RD day of DECEMBER, 19 98.


Justice of the Peace of Las Vegas Township

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 98F11168A-D

5 -vs-

6 BRENDAN JAMES NASBY #1517690,
7 JERIMIAH JOHN DESKIN,
8 TOMMIE C. BURNSIDE JR. #1591598,
9 JOTEE BURNSIDE,

10 Defendants.

SECOND AMENDED

CRIMINAL COMPLAINT

11 The Defendants above named having committed the crimes of CONSPIRACY TO
12 COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE
13 OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in
14 the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998,
15 at and within the County of Clark, State of Nevada,

16 COUNT I - CONSPIRACY TO COMMIT MURDER

17 Defendants did then and there meet with each other or unknown individuals and between
18 themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and
19 agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did
20 commit the acts as set forth in Count II, said acts being incorporated by this reference as though
21 fully set forth herein.

22 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

23 Defendants did then and there wilfully, feloniously, without authority of law, and with
24 premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a
25 human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon,
26 to-wit: a firearm, in the following manner, to-wit: by said Defendants and an unknown
27 individual acting pursuant to a conspiracy to commit murder, aiding or abetting each other by
28 counsel and encouragement by entering into a course of conduct whereby Defendants and an

COPY

1 unknown individual drove said MICHAEL BEASLEY into the desert, lured said MICHAEL
2 BEASLEY out of the vehicle whereby Defendant BRENDAN JAMES NASBY repeatedly shot
3 said MICHAEL BEASLEY with said firearm while Defendants JERIMIAH JOHN DESKIN,
4 TOMMIE C. BURNSIDE JR., JOTEE BURNSIDE and an unknown individual acted as
5 lookouts and fled the scene together.

6 All of which is contrary to the form, force and effect of Statutes in such cases made and
7 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
8 declaration subject to the penalty of perjury.

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10 N. V. V.
11 8/18/98
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27 98F11168A-D/rad
28 LVMPD EV#9807170541
CONSP, MWDW - F
(TK3)

AUG 27 1998

Michael Beasley
Court Clerk

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY #1517690,
JERIMIAH JOHN DESKIN,

Defendants.

CASE NO. 98F11168A-B

A M E N D E D

CRIMINAL COMPLAINT

The Defendants above named having committed the crimes of CONSPIRACY TO COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998, at and within the County of Clark, State of Nevada,

COUNT I - CONSPIRACY TO COMMIT MURDER

Defendants did then and there meet with each other or unknown individuals and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit the crime of murder, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Count II, said acts being incorporated by this reference as though fully set forth herein.

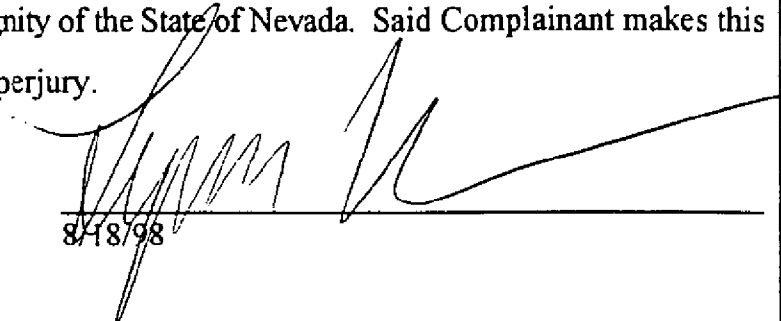
COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Defendants did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a human being, by shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon, to-wit: a firearm, in the following manner, to-wit: by the Defendant and unknown individual or individuals acting pursuant to a conspiracy to commit murder whereby Defendant and/or unknown individuals drove MICHAEL BEASLEY into the desert, lured MICHAEL BEASLEY out of the vehicle, then one or more of the Defendants shot MICHAEL BEASLEY with a

LB

1 firearm while unknown individuals acted as lookouts throughout; or one or more of the unknown
2 individuals shot MICHAEL BEASLEY with a firearm while Defendants acted as lookout
3 throughout, Defendants and unknown individuals then fled the crime together.

4 All of which is contrary to the form, force and effect of Statutes in such cases made and
5 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
6 declaration subject to the penalty of perjury.

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8/18/98

98F11168A-B/jgw
LVMPD EV#9807170541
CONSP, MWDW - F
(TK3)

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 98F11168X

5 -vs-

6 BRENDAN JAMES NASBY #1517690,

7 Defendant.

CRIMINAL COMPLAINT

8
9 The Defendant above named having committed the crimes of CONSPIRACY TO
10 COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030) and MURDER WITH USE
11 OF A DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165), in
12 the manner following, to-wit: That the said Defendant, on or about the 17th day of July, 1998,
13 at and within the County of Clark, State of Nevada,

14 COUNT I - CONSPIRACY TO COMMIT MURDER

15 Defendant did then and there meet with an unknown individual or individuals and
16 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
17 conspire and agree to commit the crime of murder, and in furtherance of said conspiracy,
18 Defendant did commit the acts as set forth in Count II, said acts being incorporated by this
19 reference as though fully set forth herein.

20 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

21 did then and there wilfully, feloniously, without authority of law, and with premeditation
22 and deliberation, and with malice aforethought, kill MICHAEL BEASLEY, a human being, by
23 shooting at and into the body of MICHAEL BEASLEY, with a deadly weapon, to-wit: a
24 firearm, in the following manner, to-wit: by the Defendant and unknown individual or
25 individuals acting pursuant to a conspiracy to commit murder whereby Defendant and/or
26 unknown individuals drove MICHAEL BEASLEY into the desert, lured MICHAEL BEASLEY
27 out of the vehicle, then the Defendant shot MICHAEL BEASLEY with a firearm while unknown
28 individuals acted as lookouts throughout; or one or more of the unknown individuals shot

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1 MICHAEL BEASLEY with a firearm while Defendant acted as lookout throughout, Defendant
2 and unknown individuals then fled the crime together.

3 All of which is contrary to the form, force and effect of Statutes in such cases made and
4 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
5 declaration subject to the penalty of perjury

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28 CONSP, MUR WDW - F
(TK3)

Justice Court, Las Vegas Township

STATE VS. BURNSIDE, TOMMIE C. CASE NO. 98F11168(C)

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

10-29-98	NOTICE TO PLACE ON CALENDAR FILED	mb
NOVEMBER 2, 1998 T. ABBATANGELO W. KEPHART, DA M. COOK, CR M. McCREARY, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* OTHER CHARGES MOTION BY STATE TO FILE 2ND AMENDED COMPLAINT IN COURT MOTION GRANTED COUNT I - CONSPIRACY TO COMMIT MURDER COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT ARREST WARRANT ISSUED AND SIGNED IN COURT	11-4-98 8:00 #3
	DEFT BOOKED ON ARREST WARRANT MOTION BY DEFT TO SET BAIL - MOTION DENIED COURT ORDERS CONTINUED FOR DEFT TO SECURE OWN COUNSEL DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF	Mb
NOVEMBER 4, 1998 T. ABBATANGELO F. COUMOU, DA A. CAMPAGNA, CR M. BAUMAN, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* PRELIMINARY HEARING DATE SET COURT APPOINTS SPECIAL PUBLIC DEFENDER TO REPRESENT THE DEFT NOTIFY SPD'S OFFICE/mb DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	11-18-98 9:00 #3 mb
NOVEMBER 18, 1998 M. ROBINSON FOR #3 F. COUMOU, DA D. FIGLER, SPD D. ANTONACCI, CR M. MCCREARY, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY CONTINUED BY STIPULATION OF COUNSEL PRELIMINARY HEARING DATE RESET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	12-2-98 9 AM #3 nm
DECEMBER 2, 1998 T. ABBATANGELO F. COUMOU, DA & C. CLAUS, DA D. FIGLER, SPD D. ANTONACCI, CR M. BAUMAN, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT *IN CUSTODY* PER NEGOTIATIONS: DEFENDANT UNCONDITIONALLY WAIVES HIS RIGHT TO A PRELIMINARY HEARING DEFENDANT BOUND OVER TO DISTRICT COURT AS CHARGED APPEARANCE DATE SET STATE'S PROPOSED EXHIBIT MARKED AND RETURNED PRIOR TO COURT 1. PHOTOGRAPH DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	12-10-98 8:30 #3 DISTRICT COURT DEC 4 1998 CLERK'S OFFICE mb

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA	)	CASE NO: 98F11168C
)	
PLAINTIFF	)	DEPT. NO: 3
VS.)	
	)	AGENCY: METRO-HOMICIDE
TOMMIE C BURNSIDE)	
ID# 01591598)	
)	
	)	ARREST WARRANT
DEFENDANT)	-----

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER
IN THIS STATE:

A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID
BEFORE ME ACCUSING TOMMIE C BURNSIDE, OF THE CRIME(S) :

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
1	CONSP MURDER WITH A DE	NO BAIL		
1	MURDER WITH A DEADLY W	NO BAIL		

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED
DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP,
COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO
ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 2ND DAY OF ~~NOVEMBER~~, 1998.

Tony Abbatangelo

JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
TONY L ABBATANGELO

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE 2 DAY OF NOV, 1998, AND SERVED THE SAME BY
ARRESTING THE WITHIN DEFENDANT, Tommie Burnside, AND
BRINGING 2 him INTO COURT THIS 2nd DAY OF
Nov, 1998.

JERRY KELLER, SHERIFF, CLARK COUNTY, NEVADA

BY: *A. Jackson* 2879, DEPUTY

11/18/98
PHH
9:00
AZ

DEFENDANT BURNSIDE, TOMMIE C JR

DEFENDANT ID# 01591598

CASE NO: 98F11168C

DEPARTMENT JCRT3

JUDGE TONY L ABBATANGELO

AGENCY: METRO-HOMICIDE

ORI

VRI

NAME BURNSIDE, TOMMIE C JR

DOB 082079

SOC 562575223

SID

RAC B SEX M HGT 600

WGT 160

HAI BLK

EYE BRO

-----WARRANT-----

HOI

COI

WNM BURNSIDE, TOMMIE C JR

NOC 05582

AOC

OFC F FTF

TRF

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DSO

DOW 110298

OCA 9807170541

CCN 98F11168C BAIL NO BAIL

TRA

MIS

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#:

NAME:

COUNTS


CHARGE

1 CONSP MURDER WITH A DEADLY WEAPON

1 MURDER WITH A DEADLY WEAPON

Nov 24 25 11:29

* REBOOKING *

Page ____ of ____		LAS VEGAS METROPOLITAN POLICE DEPARTMENT		I.D. #: 1591598		Event #:	
DATE OF ARREST: 11-2-98		TIME OF ARREST: 1600		I.D. ESTAB. BY:			
INTAKE NAME (AKA, ALIAS, ETC.)		Last		First		Middle	
ADDRESS		NUMBER & STREET		BLDG./APT. #		CITY	
DATE OF BIRTH		RACE		SEX		HEIGHT	
WEIGHT		HAIR		EYES		SOCIAL SECURITY #	
LOCATION OF CRIME (# - Street - City - State - Zip)		<input type="checkbox"/> CC <input type="checkbox"/> LV		Citizen Arrest Y (N)		LOCATION OF ARREST	
BKG. CODE		CHARGE ORD / NRS #		M GM F		ARR TYPE	
EVENT NUMBER		WARR / NCIC NUMBER		LV JC DC OTHER		COURT	
5045C		Cnsp Murder		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		RM WA	
5045		MWDW		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		RM WA	
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		TIA 11-4-98		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
		@0900 JC#3		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
ARREST TYPE:		PC - PROBABLE CAUSE		BS - BONDSMAN SURRENDER		BW - BENCH WARRANT	
		WA - WARRANT		RM - REMAND		GJI - GRAND JURY IND.	
		Arresting Officer's Signature		(Print Name)		P # Agency	
		Transporting Officer's Signature		(Print Name)		P # Agency	
Time Stamp at BOOKING 50 NOV -3 P 4:13		APPROVAL CONTROL # FOR ADDITIONAL CHARGES:					
P #:		FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.		FIRST APPEARANCE: DATE: TIME:			
		BENCH WARRANT SERVED ON		COURT			
		WARRANT SERVED ON		<input type="checkbox"/> JUSTICE			
		GRAND JURY INDICTMENT SERVED ON		<input type="checkbox"/> MUNICIPAL			
		TYPE OF I.D. FOR VERIFICATION		<input type="checkbox"/> JUVENILE			
				<input type="checkbox"/> STANDARD BAIL			
				<input type="checkbox"/> O.R. RELEASE			
				<input type="checkbox"/> PROBABLE CAUSE			
				<input type="checkbox"/> I.A.D.			
				JUDGE:			

JC 3

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA	)	CASE NO. 98F11168C
)	
PLANTIFF)	
VS.)	
)	
Tommie C Burnside Jr)	
ID NO. 1591598)	
)	
	)	REQUEST FOR ARREST WARRANT
DEFENDANT.)	-----
_____)	

COMES NOW, STEWART L. BELL, DISTRICT ATTORNEY,
AND REQUESTS THAT A WARRANT OF ARREST BE ISSUED
FOR THE ABOVE NAMED DEFENDANT PURSUANT TO
NRS 171.106 AND THE COMPLAINT AND/OR AFFIDAVIT(S)
ATTACHED HERETO AND INCORPORATED HEREIN BY
THIS REFERENCE.

STEWART L. BELL
DISTRICT ATTORNEY
NEVADA BAR NO. 000477

PROBABLE CAUSE FOUND: ✓ BAIL: *STC*
PROBABLE CAUSE NOT FOUND: _____ *STC*

Tony Melendez
JUSTICE OF THE PEACE,
LAS VEGAS TOWNSHIP

1 Karen for
2 Nancy

JUSTICE COURT, LAS VEGAS TOWNSHIP

3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

CASE NO. 98F11168A-D

5 Plaintiff,

DEPT. NO. 3

6 -vs-

NASBY, BRENDAN JAMES #1517690

7 DESKIN, JERIMIAH JOHN

BURNSIDE, TOMMIE C. #1591598

8 BURNSIDE, JOTEE

Defendant(s).

9 NOTICE TO PLACE ON CALENDAR

10 Upon the application of STEWART L. BELL, Clark County District Attorney, it is hereby
11 requested that the above entitled matter be placed on the arraignment calendar on the 2ND day
12 of NOVEMBER, 1998, for the purpose of filing a (2nd) second amended criminal complaint.

13 DATED this 29th day of October, 1998.

14 STEWART L. BELL
15 District Attorney
16 Nevada Bar #000477

STEVEN MORRIS, *Court Administrator, Clerk*

17 BY Alexandra Chigentis/km
18 Deputy District Attorney

BY [Signature]
Deputy Clerk

19
20 ☒ NOTIFIED BY TELEPHONE ON: 10/29/98 - Deft. A - Ozzie Fumo, Esq.

21 OR 10/29/98 - Deft. C,D - No Attorney

22 ☐ RECEIPT OF COPY of the above Notice to Place on Calendar is acknowledged this
23 ____ day of ____, 1998.

24 ATTORNEY FOR DEFENDANT

25
26 BY Ozzie Fumo, Esq
27
28

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106)
(N.R.S. 53 amended 07/13/93)**

EVENT: 980717-0541

**STATE OF NEVADA) TOMMIE C. BURNSIDE JR.
) ss: JOTEE BURNSIDE
COUNTY OF CLARK)**

DETECTIVE JAMES J. BUCZEK, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 9 1/2 years, assigned to investigate the crime of MURDER WITH A DEADLY WEAPON committed on or about 07/17/98, which investigation has developed TOMMIE C.BURNSIDE JR. and JOTEE BURNSIDE (a minor) as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

1. That on 07/17/98, at 0745 hrs, Jeffrey Craig telephoned the Las Vegas Metropolitan Police Department's Communications Center and reported that he and Robert Gilmore were riding their ATV's in the desert northwest of Alexander and Jensen, which is located in Clark County, and they found a males dead body.
2. That Las Vegas Metropolitan Police Department Homicide Detectives Thowsen, your Declarant, and Sgt Hefner responded to the scene and initiated an investigation into the death of the unknown victim.
3. That on 07/18/98, at approximately 1000 hours, Dr. R. Jordan of the Clark County Coroner and Medical Examiner's Office conducted an autopsy on the victim and determined that the cause of death was gunshot wounds to the head and back and that the manner of death was homicide.
4. That on 07/20/98, your Declarant learned that the victim's true name was Michael Lamont Beasley, LVMPD ID# 1516882.
5. That on 07/21/98, Detective Thowsen and Declarant spoke to Jomeka Beavers, Michael Beasley's aunt. Beavers told us that Beasley lived with her and her mother at 3327 Outlook Point Street in North Las Vegas. Beaver's said that she last saw Beasley on 07/16/98 at approximately 10:30 PM. She said that Beasley received a telephone call and that he asked her to watch his baby for approximately 30 minutes, while he was gone. Beavers said that he never returned.
6. That on 07/21/98, Detective Thowsen and Declarant spoke to Tanesha Banks, who has a child in common with Beasley, who related the following: On 07/17/98, between 1030

AS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 2

EVENT: 980717-0541

and 1100 hours, she was having a telephone conversation with Crystal Bradley which turned into a three-way telephone conversation with Banks, Bradley and a male called "Blue". Banks knows Blue as Brendan Nasby. Nasby said that Beasley had been tripping for the last several weeks and wanted to get out of their gang called the LA Ridaz. Beasley wanted Nasby to arrange for the gang to beat him out of the gang. Banks told Nasby and Bradley that Beasley had been by that morning to pick up the baby. Nasby responded in a panicked tone "what do you mean this morning?". Banks then explained that she meant last night (07/16/98). Nasby then tells Bradley that he needs to talk to Bradley by herself. Banks then hangs up on her end of the three-way telephone conversation.

7. That approximately ten minutes later, Bradley recalls Banks and says that Nasby told her that he killed Beasley with his new 9mm gun. Nasby told Bradley that he and other LA Ridaz members lured Beasley out to the desert with them to shoot the new gun. He told Bradley that he first shot Beasley in the neck. Beasley asked Nasby why he shot him and Nasby replied "you need to know who's runnin' shit nigger." Beasley fell to the ground and Nasby shot him in the head. The group started to leave when Nasby came back to Beasley and shot him in the head again. Banks asked Bradley who else was there when Beasley was shot and Bradley said "T-Bone" (who Banks knows as Tommie Burnside), his little brother, "Little Wee-gee" (who Banks knows as Jotee Burnside), and a white male whose moniker is "Woodpecker" (who Banks knows as Jeremy, last name unknown).

8. That on 07/23/98, Det. Thowsen and your Declarant interviewed Crystal Bradley. Bradley confirmed the details of the three-way telephone conversation between herself, Banks and Nasby as well as the conversation between Nasby and herself as related by Banks. Bradley said that Nasby said that the group went to and from the scene in "Woodpecker's" car. Bradley said that Nasby killed Beasley because Beasley was trying to take away Nasby's "stripes". Bradley said that all the suspects that were at the scene do smoke. Bradley also said that there was a vote conducted amongst members of LA Crazy Ridas that determined Beasley's death, prior to taking Beasley to his fate.

9. That the conversations between Bradley and Nasby, as well as the mentioned three-way conversation, occurred before any media reports about the murder in general aired. The specifics regarding the caliber of weapon, the location and the exact number of shots fired were never made public knowledge. Three fresh 9mm shell casings were recovered at the scene. Beasley was shot once in the back with that shot exiting the neck area and once in the head. The recovered bullets appeared to be consistent with 9mm caliber. These two bullet wounds, along with the near-miss impact crater discovered adjacent to Beasley's head would account for three shots being fired into or at Beasley.

10. That on 08/01/98, at approximately 2320 hours, Brittny Adams went to Tanesha Banks residence and attacked Banks causing injuries to Banks face. In doing so, Adams said "this is for Blue." There were some other people present and they tried to drag Banks

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 3

EVENT: 980717-0541

towards the open door of Adams vehicle. On 08/04/98, Adams was arrested for the attack and attempt kidnapping of Banks. Adams told us that "Blue" was the driver of her car during this incident.

11. That on 08/03/98, a search warrant was executed at Brendan Nasby's residence which is located at 4509 Switchback Street in North Las Vegas. The search warrant produced a Browning 9mm handgun bearing serial number 4CH1969 and the gun was reported stolen from North Las Vegas. Nasby admitted that the gun had been used to kill Michael Beasley, that he had gotten the gun from "Sugarbear" who he identifies as Damien Von Lewis. Brendan Nasby was arrested for his involvement in the murder of Michael Beasley.

12. On 08/04/98, Det. Thowsen and your Declarant located Tommie Burnside and Jotee Burnside (age 15). Tommie and Jotee voluntarily accompanied us to the Detective Bureau so that we could speak with them. Your Declarant spoke with Tommie Burnside and he told me the following: "Sugarbear" and "Woodpecker" picked up Michael Beasley in "Woodpecker's" burgundy colored Cougar. The three then went to "Blue's" house and met with "Blue", Jotee and Tommie Burnside. He said that they went to the "field". Everybody but Tommie and Jotee exited the car, meaning "Blue", "Sugarbear", "Woodpecker", and Beasley. He said that he heard two gunshots and shortly thereafter a third gunshot.

"Sugarbear", "Blue", and "Woodpecker" got back into the car, "Sugarbear" said "the nigger's dead" and kept referring to Beasley as a "bitch". Tommie said that "Woodpecker" was laughing. "Sugarbear" had approached Tommie and asked him if he thought that Beasley should die. Tommie Burnside said that they shot him with a 9mm handgun. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damian Von Lewis. Tommie said that "Woodpecker" moved to California.

13. That Det. Thowsen spoke to Jotee Burnside and he told Det. Thowsen the following: They went over to Mike's house and picked him up in "Woodpecker's" car. They then went to "Blue's" house, picked him up and they went to the desert looking for places to shoot. They stopped at a place near a cliff. Everyone got out of the car except Jotee and Tommie Burnside. Jotee said that "Sug" (Sugarbear) shot Beasley and then shot him again. Jotee said that "Sug" then got into the car and then got out again and shot Beasley one more time. He said that in total, three shots were fired from a 9 mm handgun. They then left in "Woodpecker's" car. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damien. Jotee said that "Woodpecker" moved to California.

14. That Sgt. J. Owens of LVMPD's Gang Investigation Section was able to identify "Woodpecker" as Jerimiah John Deskin, DOB 101479, SS# 570692527, ADD 6205 Burnt Hills Drive, North Las Vegas 89030. Sgt. Owens spoke to Deskin's father (Mike Deskin) and learned that Deskin moved to California. Deskin's vehicle is registered to his father and is a burgundy 1991 Mercury Cougar bearing Nevada license plates 399HME. Sgt

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
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Owens also supplied me with a Polaroid photograph of Jerimiah Deskin which was maintained by the Gang Investigation Section. On 08/13/98, I contacted Tommie Burnside at the Stewart/Mojave Center and showed him the photo. Burnside identified the photo as that of Jerimiah, who he also knows as "Woodpecker".

15. That on 08/25/98, Torrey Johnson, a Criminalist with the Las Vegas Metropolitan Police Department, determined that the projectiles recovered from inside Beasley's shirt and from Beasley's skull, were fired from the Browning (Inglis) Hi-power 9mm semi-automatic pistol, bearing serial number 4CH1969, that was recovered pursuant to a search warrant at Brendan Nasby's residence.

16. That on 09/15/98, Sgt. R. Torres of the San Bernadino County Sheriff's Department was on patrol and effected a traffic stop of Jerimiah Deskin's 1991 Mercury Cougar bearing Nevada license plates 399HME. Sgt. Torres identified the driver as Jerimiah Deskin and arrested him for the confirmed outstanding arrest warrant charging Deskin with murder w/ a deadly weapon. Deskin waived extradition and was transported to the Clark County Detention Center, where he is currently housed.

17. That on 10/19/98, Det T. Thowsen and your Declarant met with Jerimiah Deskin and his attorney, Chad Golightly, at the Clark County Detention Center. Pursuant to negotiations with Deputy District Attorney Frank Coumou, Deskin was to provide us with an accurate and truthful statement. Deskin read his rights per Miranda aloud from a Rights of Person's Card. Deskin told us that on 07/16/98, he was at Nasby's home along with Tommie Burnside, Jotee Burnside, and Brendan Nasby. A telephone call was made to Beasley, telling him that they were going to go shooting, and told him to bring his gun. Beasley said that his gun, a .25 semi-automatic, was broken. Deskin did not know who placed the call to Beasley. Deskin, Tommie Burnside, and Nasby were in the garage. Nasby said something to the effect of "tonight it is going to happen." Tommie Burnside said something to the effect of "dome him." Deskin said that meant to shoot Beasley in the head. Deskin then drove the Burnside brothers over to Beasley's home. They followed another car through the gates. They went inside and Beasley showed them his infant son. They all got into Deskin's car and returned to Nasby's home, picking up Nasby. They then drove to the desert area west of the dead end of Alexander Road. Deskin drove down a dirt road to an area near a large power pole. They exited the car and started looking for things to shoot at. Deskin had left the headlights on and angled his car so that it illuminated the area beyond the cliff. Deskin said that Nasby then walked up to Beasley and shot him in the back. Beasley fell to the ground gasping and Nasby stood over him and shot him in the head. They all got into the car and Nasby quickly got out and returned to the body of Beasley and shot at him again. Deskin said that the gun was a Browning Hi-Power 9mm pistol and that it was black and somewhat rusty. Deskin then drove the Burnsides and Nasby back to Nasby's home. Deskin said that "Sugarbear", aka Charles Von Lewis, was not present at Beasley's murder nor did he have any involvement.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 5

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18. That Deskin said that a meeting was held approximately 2-4 weeks prior to Beasley's murder. Nasby asked certain member's of the L.A. Crazy Ridas if Beasley should die. Deskin said that he heard Tommie Burnside say that he was not sure and that other members had said no.

19. That Deskin said that he was present in Nasby's garage when, Nasby purchased the gun used to kill Beasley, from an individual named "Dave". Deskin said that Nasby paid \$50 or \$100 for the gun and that "Dave" told Nasby that he could get more guns if he wanted them.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspects Tommie C. Burnside Jr. and Jotee Burnside (a minor) on a charge of MURDER WITH A DEADLY WEAPON.

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

Executed on this 21st day of October, 1998.

DECLARANT:

James J. Buzy

WITNESS:

J. J. Thomas

DATE:

10/21/98

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168C

NAME: BURNSIDE, TOMMIE

ID #: 1591598

CHARGE(S): MURDER WDW CONSP MURDER WDW

CURRENT BAIL: -0-

-0-

VERIFIED: Local Address: _____

Out Of State Address: _____

With Whom/How Long: _____

VERIFIED: Employment: _____ Unemployed: _____ Disabled: _____ Student: _____

VERIFIED: Relatives: Local _____ Not Local _____

Felony Convictions: _____

Misdemeanor Convictions: _____

Fail To Appear -2- Traffic X Misdemeanor _____ Felony X

Pending Charges/Holds/Comments: PENDING 98F11420X CCW 12-2-98 DC 16 & 97F17211X ATT
PSP 12-10-98 DC 3 F/SENTENCING . HAS 1 RUNAWAY & 5 JUVENILE EVENTS

RECOMMENDATION: Release On Recognizance _____

Bail Reduction _____

House Arrest _____

Indigent

Non-Indigent

PD Recommended

11-26-98

Date

Sh

INTAKE SERVICES

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168C

NAME: BURNSIDE, TOMMIT C JR ID #: 1591598

CHARGE(S): CONSP MURDER W/DEADLY WEAPON, MURDER W/DEADLY WEAPON

CURRENT BAIL: NO BAIL THIS CASE

VERIFIED: Local Address: 1341 TYLER ST

Out Of State Address: _____

With Whom/How Long: W/MOTHER 4 YRS NV 4 YRS/CA 15 YRS

VERIFIED: Employment: T/START Unemployed: _____ Disabled: _____ Student: _____

VERIFIED: Relatives: Local _____ Not Local _____

Felony Convictions: -0-

Misdemeanor Convictions:

Fail To Appear² _____ Traffic _____ Misdemeanor _____ Felony _____

Pending Charges/Holds/Comments: DEFT HS 5 JUVENILE ENVENTS ON RAP SHEET, PENDING CASES
98F17211X PSP 12-10-98 DC-3M 98F11420X CCW 12-2-98 DC-16

RECOMMENDATION: Release On Recognizance _____

Bail Reduction _____

House Arrest _____

Indigent

Non-Indigent

PD Recommended

11-13-98

Date

INTAKE SERVICES

Justice Court, Las Vegas Township

STATE VS. BURNSIDE, JOTEE CASE NO. 98F11168(D)

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

10-29-98	NOTICE TO PLACE ON CALENDAR FILED	mb
NOVEMBER 2, 1998 T. ABBATANGELO W. KEPHART, DA M. COOK, CR M. McCREARY, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* OTHER CHARGES MOTION BY STATE TO FILE 2ND AMENDED COMPLAINT IN COURT MOTION GRANTED COUNT I - CONSPIRACY TO COMMIT MURDER COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT ARREST WARRANT ISSUED AND SIGNED IN COURT	11-4-98 8:00 #3
	DEFT BOOKED ON ARREST WARRANT COURT ORDERS CONTINUED FOR DEFT TO SECURE OWN COUNSEL DEFENDANT REMANDED TO CUSTODY OF THE SHERIFF	mb
NOVEMBER 4, 1998 T. ABBATANGELO F. COUMOU, DA H. BROOKS, PD A. CAMPAGNA, CR M. BAUMAN, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* COURT APPOINTS PUBLIC DEFENDER TO REPRESENT THE DEFT PRELIMINARY HEARING DATE SET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	11-18-98 9 AM #3 mb
NOVEMBER 18, 1998 M. ROBINSON FOR #3 F. COUMOU, DA H. BROOKS, PD D. ANTONACCI, CR M. MCCREARY, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY CONTINUED BY STIPULATION OF COUNSEL PRELIMINARY HEARING DATE RESET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	12-2-98 9 AM #3 mm
DECEMBER 2, 1998 T. ABBATANGELO F. COUMOU, DA & C. CLAUS, DA H. BROOKS, PD D. ANTONACCI, CR M. BAUMAN, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT *IN CUSTODY* PER NEGOTIATIONS: DEFENDANT UNCONDITIONALLY WAIVES HIS RIGHT TO A PRELIMINARY HEARING DEFENDANT BOUND OVER TO DISTRICT COURT AS CHARGED APPEARANCE DATE SET STATE'S PROPOSED EXHIBIT MARKED AND RETURNED PRIOR TO COURT 1. PHOTOGRAPH DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	12-10-98 8:30 #3 DISTRICT COURT DEC 4 1998 mb

CLARK COUNTY NEVADA

ARREST WARRANT

BY: Det Jackson, DEPUTY

DEFENDANT BURNSIDE, JOTEE

DEFENDANT ID# 01520352

CASE NO: 98F11168D

DEPARTMENT JCRT3

JUDGE TONY L ABBATANGELO

AGENCY: METRO-HOMICIDE

ORI	VRI	NAME	BURNSIDE, JOTEE
DOB 022583	SOC	SID	
RAC B SEX M HGT 511		WGT 155	HAI BLK EYE BRO

-----WARRANT-----

HOI	COI	WNM BURNSIDE, JOTEE
NOC 05582	AOC	OFC F FTF TRF JUV DSO DOW 110298
OCA 9807170541	CCN 98F11168D	BAIL NO BAIL
TRA	MIS	

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#: NAME:

COUNTS	CHARGE
1	CONSP MURDER WITH A DEADLY WEAPON
1	MURDER WITH A DEADLY WEAPON

Nov 2 4 26 PM '99

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA	)	CASE NO. 98F11168D
)	
PLANTIFF)	
VS.)	
)	
Jotee Burnside)	
ID NO. X0038484)	
)	
DEFENDANT.	)	REQUEST FOR ARREST WARRANT
)	-----

COMES NOW, STEWART L. BELL, DISTRICT ATTORNEY,
AND REQUESTS THAT A WARRANT OF ARREST BE ISSUED
FOR THE ABOVE NAMED DEFENDANT PURSUANT TO
NRS 171.106 AND THE COMPLAINT AND/OR AFFIDAVIT(S)
ATTACHED HERETO AND INCORPORATED HEREIN BY
THIS REFERENCE.

STEWART L. BELL
DISTRICT ATTORNEY
NEVADA BAR NO. 000477

PROBABLE CAUSE FOUND: ✓ BAIL: 5th
PROBABLE CAUSE NOT FOUND: _____ SDC

Tony McCalister
JUSTICE OF THE PEACE,
LAS VEGAS TOWNSHIP

Page 122

1 Karen for
2 Nancy

JUSTICE COURT, LAS VEGAS TOWNSHIP

3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

CASE NO. 98F11168A-D

5 Plaintiff,

DEPT. NO. 3

-vs-

6 NASBY, BRENDAN JAMES #1517690

7 DESKIN, JERIMIAH JOHN

BURNSIDE, TOMMIE C. #1591598

BURNSIDE, JOTEE

8 Defendant(s).

9 NOTICE TO PLACE ON CALENDAR

10 Upon the application of STEWART L. BELL, Clark County District Attorney, it is hereby
11 requested that the above entitled matter be placed on the arraignment calendar on the 2ND day
12 of NOVEMBER, 1998, for the purpose of filing a (2nd) second amended criminal complaint.

13 DATED this 29th day of October, 1998.

14 STEWART L. BELL
15 District Attorney
16 Nevada Bar #000477

STEVEN MORRIS, *Court Administrator, Clerk*

17 BY Alexandra Chirguthis/km
18 Deputy District Attorney

17 BY [Signature]
18 Deputy Clerk

19
20 ☒ NOTIFIED BY TELEPHONE ON: 10/29/98 - Deft. A - Ozzie Fumo, Esq.

21 OR

10/29/98 - Deft. C,D - No Attorney

22 ☐ RECEIPT OF COPY of the above Notice to Place on Calendar is acknowledged this
23 ____day of ____, 1998.

24 ATTORNEY FOR DEFENDANT

25
26 BY Ozzie Fumo, Esq.
27
28

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF WARRANT/SUMMONS

(N.R.S. 171.106)

(N.R.S. 53 amended 07/13/93)

EVENT: 980717-0541

STATE OF NEVADA) TOMMIE C. BURNSIDE JR.
) ss: JOTEE BURNSIDE
COUNTY OF CLARK)

DETECTIVE JAMES J. BUCZEK, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 9 1/2 years, assigned to investigate the crime of MURDER WITH A DEADLY WEAPON committed on or about 07/17/98, which investigation has developed TOMMIE C. BURNSIDE JR. and JOTEE BURNSIDE (a minor) as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

1. That on 07/17/98, at 0745 hrs, Jeffrey Craig telephoned the Las Vegas Metropolitan Police Department's Communications Center and reported that he and Robert Gilmore were riding their ATV's in the desert northwest of Alexander and Jensen, which is located in Clark County, and they found a males dead body.
2. That Las Vegas Metropolitan Police Department Homicide Detectives Thowsen, your Declarant, and Sgt Hefner responded to the scene and initiated an investigation into the death of the unknown victim.
3. That on 07/18/98, at approximately 1000 hours, Dr. R. Jordan of the Clark County Coroner and Medical Examiner's Office conducted an autopsy on the victim and determined that the cause of death was gunshot wounds to the head and back and that the manner of death was homicide.
4. That on 07/20/98, your Declarant learned that the victim's true name was Michael Lamont Beasley, LVMPD ID# 1516882.
5. That on 07/21/98, Detective Thowsen and Declarant spoke to Jomeka Beavers, Michael Beasley's aunt. Beavers told us that Beasley lived with her and her mother at 3327 Outlook Point Street in North Las Vegas. Beaver's said that she last saw Beasley on 07/16/98 at approximately 10:30 PM. She said that Beasley received a telephone call and that he asked her to watch his baby for approximately 30 minutes, while he was gone. Beavers said that he never returned.
6. That on 07/21/98, Detective Thowsen and Declarant spoke to Tanesha Banks, who has a child in common with Beasley, who related the following: On 07/17/98, between 1030

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION

Page 2

EVENT: 980717-0541

and 1100 hours, she was having a telephone conversation with Crystal Bradley which turned into a three-way telephone conversation with Banks, Bradley and a male called "Blue". Banks knows Blue as Brendan Nasby. Nasby said that Beasley had been tripping for the last several weeks and wanted to get out of their gang called the LA Ridaz. Beasley wanted Nasby to arrange for the gang to beat him out of the gang. Banks told Nasby and Bradley that Beasley had been by that morning to pick up the baby. Nasby responded in a panicked tone "what do you mean this morning?". Banks then explained that she meant last night (07/16/98). Nasby then tells Bradley that he needs to talk to Bradley by herself. Banks then hangs up on her end of the three-way telephone conversation.

7. That approximately ten minutes later, Bradley recalls Banks and says that Nasby told her that he killed Beasley with his new 9mm gun. Nasby told Bradley that he and other LA Ridaz members lured Beasley out to the desert with them to shoot the new gun. He told Bradley that he first shot Beasley in the neck. Beasley asked Nasby why he shot him and Nasby replied "you need to know who's runnin' shit nigger." Beasley fell to the ground and Nasby shot him in the head. The group started to leave when Nasby came back to Beasley and shot him in the head again. Banks asked Bradley who else was there when Beasley was shot and Bradley said "T-Bone" (who Banks knows as Tommie Burnside), his little brother, "Little Wee-gee" (who Banks knows as Jotee Burnside), and a white male whose moniker is "Woodpecker" (who Banks knows as Jeremy, last name unknown).

8. That on 07/23/98, Det. Thowsen and your Declarant interviewed Crystal Bradley. Bradley confirmed the details of the three-way telephone conversation between herself, Banks and Nasby as well as the conversation between Nasby and herself as related by Banks. Bradley said that Nasby said that the group went to and from the scene in "Woodpecker's" car. Bradley said that Nasby killed Beasley because Beasley was trying to take away Nasby's "stripes". Bradley said that all the suspects that were at the scene do smoke. Bradley also said that there was a vote conducted amongst members of LA Crazy Ridaz that determined Beasley's death, prior to taking Beasley to his fate.

9. That the conversations between Bradley and Nasby, as well as the mentioned three-way conversation, occurred before any media reports about the murder in general aired. The specifics regarding the caliber of weapon, the location and the exact number of shots fired were never made public knowledge. Three fresh 9mm shell casings were recovered at the scene. Beasley was shot once in the back with that shot exiting the neck area and once in the head. The recovered bullets appeared to be consistent with 9mm caliber. These two bullet wounds, along with the near-miss impact crater discovered adjacent to Beasley's head would account for three shots being fired into or at Beasley.

10. That on 08/01/98, at approximately 2320 hours, Brittney Adams went to Tanesha Banks residence and attacked Banks causing injuries to Banks face. In doing so, Adams said "this is for Blue." There were some other people present and they tried to drag Banks

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 3

EVENT: 980717-0541

towards the open door of Adams vehicle. On 08/04/98, Adams was arrested for the attack and attempt kidnapping of Banks. Adams told us that "Blue" was the driver of her car during this incident.

11. That on 08/03/98, a search warrant was executed at Brendan Nasby's residence which is located at 4509 Switchback Street in North Las Vegas. The search warrant produced a Browning 9mm handgun bearing serial number 4CH1969 and the gun was reported stolen from North Las Vegas. Nasby admitted that the gun had been used to kill Michael Beasley, that he had gotten the gun from "Sugarbear" who he identifies as Damien Von Lewis. Brendan Nasby was arrested for his involvement in the murder of Michael Beasley.

12. On 08/04/98, Det. Thowsen and your Declarant located Tommie Burnside and Jotee Burnside (age 15). Tommie and Jotee voluntarily accompanied us to the Detective Bureau so that we could speak with them. Your Declarant spoke with Tommie Burnside and he told me the following: "Sugarbear" and "Woodpecker" picked up Michael Beasley in "Woodpecker's" burgundy colored Cougar. The three then went to "Blue's" house and met with "Blue", Jotee and Tommie Burnside. He said that they went to the "field". Everybody but Tommie and Jotee exited the car, meaning "Blue", "Sugarbear", "Woodpecker", and Beasley. He said that he heard two gunshots and shortly thereafter a third gunshot.

"Sugarbear", "Blue", and "Woodpecker" got back into the car, "Sugarbear" said "the nigger's dead" and kept referring to Beasley as a "bitch". Tommie said that "Woodpecker" was laughing. "Sugarbear" had approached Tommie and asked him if he thought that Beasley should die. Tommie Burnside said that they shot him with a 9mm handgun. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damian Von Lewis. Tommie said that "Woodpecker" moved to California.

13. That Det. Thowsen spoke to Jotee Burnside and he told Det. Thowsen the following: They went over to Mike's house and picked him up in "Woodpecker's" car. They then went to "Blue's" house, picked him up and they went to the desert looking for places to shoot. They stopped at a place near a cliff. Everyone got out of the car except Jotee and Tommie Burnside. Jotee said that "Sug" (Sugarbear) shot Beasley and then shot him again. Jotee said that "Sug" then got into the car and then got out again and shot Beasley one more time. He said that in total, three shots were fired from a 9 mm handgun. They then left in "Woodpecker's" car. He names "Woodpecker" as Jerimiah, "Blue" as Brendan Nasby, and "Sugarbear" as Damien. Jotee said that "Woodpecker" moved to California.

14. That Sgt. J. Owens of LVMPD's Gang Investigation Section was able to identify "Woodpecker" as Jerimiah John Deskin, DOB 101479, SS# 570692527, ADD 6205 Burnt Hills Drive, North Las Vegas 89030. Sgt. Owens spoke to Deskin's father (Mike Deskin) and learned that Deskin moved to California. Deskin's vehicle is registered to his father and is a burgundy 1991 Mercury Cougar bearing Nevada license plates 399HME. Sgt

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 4

EVENT: 980717-0541

Owens also supplied me with a Polaroid photograph of Jerimiah Deskin which was maintained by the Gang Investigation Section. On 08/13/98, I contacted Tommie Burnside at the Stewart/Mojave Center and showed him the photo. Burnside identified the photo as that of Jerimiah, who he also knows as "Woodpecker".

15. That on 08/25/98, Torrey Johnson, a Criminalist with the Las Vegas Metropolitan Police Department, determined that the projectiles recovered from inside Beasley's shirt and from Beasley's skull, were fired from the Browning (Inglis) Hi-power 9mm semi-automatic pistol, bearing serial number 4CH1969, that was recovered pursuant to a search warrant at Brendan Nasby's residence.

16. That on 09/15/98, Sgt. R. Torres of the San Bernadino County Sheriff's Department was on patrol and effected a traffic stop of Jerimiah Deskin's 1991 Mercury Cougar bearing Nevada license plates 399HME. Sgt. Torres identified the driver as Jerimiah Deskin and arrested him for the confirmed outstanding arrest warrant charging Deskin with murder w/ a deadly weapon. Deskin waived extradition and was transported to the Clark County Detention Center, where he is currently housed.

17. That on 10/19/98, Det T. Thowsen and your Declarant met with Jerimiah Deskin and his attorney, Chad Golightly, at the Clark County Detention Center. Pursuant to negotiations with Deputy District Attorney Frank Coumou, Deskin was to provide us with an accurate and truthful statement. Deskin read his rights per Miranda aloud from a Rights of Person's Card. Deskin told us that on 07/16/98, he was at Nasby's home along with Tommie Burnside, Jotee Burnside, and Brendan Nasby. A telephone call was made to Beasley, telling him that they were going to go shooting, and told him to bring his gun. Beasley said that his gun, a .25 semi-automatic, was broken. Deskin did not know who placed the call to Beasley. Deskin, Tommie Burnside, and Nasby were in the garage. Nasby said something to the effect of "tonight it is going to happen." Tommie Burnside said something to the effect of "dome him." Deskin said that meant to shoot Beasley in the head. Deskin then drove the Burnside brothers over to Beasley's home. They followed another car through the gates. They went inside and Beasley showed them his infant son. They all got into Deskin's car and returned to Nasby's home, picking up Nasby. They then drove to the desert area west of the dead end of Alexander Road. Deskin drove down a dirt road to an area near a large power pole. They exited the car and started looking for things to shoot at. Deskin had left the headlights on and angled his car so that it illuminated the area beyond the cliff. Deskin said that Nasby then walked up to Beasley and shot him in the back. Beasley fell to the ground gasping and Nasby stood over him and shot him in the head. They all got into the car and Nasby quickly got out and returned to the body of Beasley and shot at him again. Deskin said that the gun was a Browning Hi-Power 9mm pistol and that it was black and somewhat rusty. Deskin then drove the Burnsides and Nasby back to Nasby's home. Deskin said that "Sugarbear", aka Charles Von Lewis, was not present at Beasley's murder nor did he have any involvement.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 5

EVENT: 980717-0541

18. That Deskin said that a meeting was held approximately 2-4 weeks prior to Beasley's murder. Nasby asked certain member's of the L.A. Crazy Ridas if Beasley should die. Deskin said that he heard Tommie Burnside say that he was not sure and that other members had said no.

19. That Deskin said that he was present in Nasby's garage when, Nasby purchased the gun used to kill Beasley, from an individual named "Dave". Deskin said that Nasby paid \$50 or \$100 for the gun and that "Dave" told Nasby that he could get more guns if he wanted them.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspects Tommie C. Burnside Jr. and Jotee Burnside (a minor) on a charge of MURDER WITH A DEADLY WEAPON.

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

Executed on this 21st day of October, 1998.

DECLARANT: James J. Buckley

WITNESS: J. Thomas

DATE: 10/21/98

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168D

NAME: BURNSIDE, JOTEE ID #: 1520352

CHARGE(S): COSP MURDER WDW MURDER WDW

CURRENT BAIL: NO BAIL THIS CASE

VERIFIED: Local Address: PARADISE RESORT APT #229

Out Of State Address: _____

With Whom/How Long: 1MO W/MOTHER NV 4½YRS PRIOR CA 11YRS

VERIFIED: Employment: NEVER Unemployed: _____ Disabled: _____ Student: _____

VERIFIED: Relatives: Local Not Local _____

Felony Convictions: -0-

Misdemeanor Convictions:

Fail To Appear -0- Traffic Misdemeanor Felony

Pending Charges/Holds/Comments: DEFT HAS 10 JUVENILE EVENTS

RECOMMENDATION: Release On Recognizance NO, DUE TO NATURE OF THE CHARGES

Bail Reduction _____

House Arrest _____

Indigent Non-Indigent PD Recommended

11-4-98

Date

INTAKE SERVICES

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168D

NAME: BURNSIDE, JOTEE

ID #: 1520352

CHARGE(S): MURDER WDW CONSP. MURDER WDW

CURRENT BAIL: -0-

-0-

VERIFIED:

Local Address: _____

Out Of State Address: _____

With Whom/How Long: _____

VERIFIED:

Employment: _____

Unemployed: _____

Disabled: _____

Student: _____

VERIFIED:

Relatives: _____

Local _____

Not Local _____

Felony Convictions: _____

Misdemeanor Convictions: _____

Fail To Appear _____

Traffic _____

Misdemeanor _____

Felony _____

Pending Charges/Holds/Comments: HAS 2 JUVENILE B/Ws, 1 RUNAWAY AND 10 JUVENILE EVENTS

RECOMMENDATION:

Release On Recognizance _____

Bail Reduction _____

House Arrest _____

Indigent

Non-Indigent

PD Recommended

11-26-98

Date

gh

INTAKE SERVICES

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

INTAKE SERVICES INFORMATION SHEET

CASE NO. 98F11168D

NAME: BURNSIDE, JOTEE ID #: 1520352

CHARGE(S): COSP MURDER WDW MURDER WDW

CURRENT BAIL: NO BAIL THIS CASE

VERIFIED: Local Address: PARADISE RESORT APT #229

Out Of State Address:

With Whom/How Long: 1MO W/MOTHER NV 4½YRS PRIOR CA 11YRS

VERIFIED: Employment: NEVER Unemployed: Disabled: Student:

VERIFIED: Relatives: Local Not Local

Felony Convictions: -0-

Misdemeanor Convictions:

Fail To Appear -0- Traffic Misdemeanor Felony

Pending Charges/Holds/Comments: DEFT HAS 10 JUVENILE EVENTS

RECOMMENDATION: Release On Recognizance NO, DUE TO NATURE OF THE CHARGES

Bail Reduction

House Arrest

Indigent Non-Indigent PD Recommended

11-14-98
amw
Date

11-4-98

INTAKE SERVICES

ORIGINAL

1 GMEM
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT
December 10 1998
LORETTA BOWMAN, CLERK
BY *Carol Green* Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 TOMMIE C. BURNSIDE, JR.,
12 #1591598

13 Defendant.
14

Case No. C154293C
Dept. No. III
Docket E

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: ACCESSORY TO MURDER (Category C Felony -
17 NRS 195.030, 195.040, 200.030, 200.010), as more fully alleged in the charging document
18 attached hereto as Exhibit "1".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State has agreed to retain the full right to argue at the time of sentencing and will take
22 no position as to concurrent or consecutive time with the Defendant's other District Court case
23 in Department ~~III~~ *II* *OTF*

24 CONSEQUENCES OF THE PLEA

25 I understand that by pleading guilty I admit the facts which support all the elements of
26 the offense(s) to which I now plead as set forth in Exhibit "1".

27 I understand that as a consequence of my plea of guilty the Court must sentence me to
28 imprisonment in the Nevada State Prison for a minimum term of not less than One (1) year(s)

CE37

1 and a maximum term of not more than Five (5) years. The minimum term of imprisonment may
2 not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may
3 also be fined up to \$1,000.00. I understand that the law requires me to pay an Administrative
4 Assessment Fee.

5 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
6 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
7 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
8 State of Nevada for any expenses related to my extradition, if any.

9 I understand that I am eligible for probation for the offense to which I am pleading guilty.
10 I understand that, except as otherwise provided by statute, the question of whether I receive
11 probation is in the discretion of the sentencing judge.

12 I understand that if more than one sentence of imprisonment is imposed and I am eligible
13 to serve the sentences concurrently, the sentencing judge has the discretion to order the
14 sentences served concurrently or consecutively.

15 I also understand that information regarding charges not filed, dismissed charges, or
16 charges to be dismissed pursuant to this agreement may be considered by the judge at
17 sentencing.

18 I have not been promised or guaranteed any particular sentence by anyone. I know that
19 my sentence is to be determined by the Court within the limits prescribed by statute. I
20 understand that if my attorney or the State of Nevada or both recommend any specific
21 punishment to the Court, the Court is not obligated to accept the recommendation.

22 I understand that the Division of Parole and Probation will prepare a report for the
23 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
24 sentencing, including my criminal history. This report may contain hearsay information
25 regarding my background and criminal history. My attorney and I will each have the
26 opportunity to comment on the information contained in the report at the time of sentencing.
27 Unless the District Attorney has specifically agreed otherwise, then the District Attorney may
28 also comment on this report.

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1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

5. The constitutional right to testify in my own defense.

VOLUNTARINESS OF PLEA

I understand that the State would have to prove each element of the charge(s) against me at trial.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

-3-

1 that a trial would be contrary to my best interest.

2 I am signing this agreement voluntarily, after consultation with my attorney, and I am not
3 acting under duress or coercion or by virtue of any promises of leniency, except for those set
4 forth in this agreement.

5 I am not now under the influence of any intoxicating liquor, a controlled substance or
6 other drug which would in any manner impair my ability to comprehend or understand this
7 agreement or the proceedings surrounding my entry of this plea.

8 My attorney has answered all my questions regarding this guilty plea agreement and its
9 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

10 DATED this 10 day of December, 1998.

11
12 Tommie C. Burnside
13 TOMMIE C. BURNSIDE, JR.
14 Defendant

15 AGREED TO BY:

16
17 Frank Ray Turner
18 Deputy District Attorney
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution that
7 the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This _____ day of December, 1998.

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ATTORNEY FOR DEFENDANT

msr

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 12/10/98
10 8:30 A.M.
11 PD/SPEC. PD

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 TOMMIE C. BURNSIDE, JR. #1591598,
16 JOTEE BURNSIDE,

17 Defendant.

Case No. C154293C,D
Dept. No. III
Docket E

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK }ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

22 That TOMMIE C. BURNSIDE, JR. and JOTEE BURNSIDE, the Defendant(s) above
23 named, having committed the crime of **ACCESSORY TO MURDER (Felony - NRS 195.030,**
24 **195.040, 200.030, 200.010)**, on or about the 17th day of July, 1998, within the County of Clark,
25 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
26 provided, and against the peace and dignity of the State of Nevada, Defendants did wilfully,
27 unlawfully, and feloniously harbor, conceal or aid BRENDAN JAMES NASBY, to-wit: by both
28 Defendants informing Las Vegas Metropolitan Police Department Detectives of a false version
of the facts leading to the death of Michael Beasley, and by stating that someone named
"Sugarbear" actually was the killer when knowing that that version was false, with intent that
the said BRENDAN JAMES NASBY might avoid or escape from arrest, trial, conviction or

1 punishment having knowledge that the said BRENDAN JAMES NASBY had committed a
2 felony, to-wit: Murder, and was liable to arrest therefore.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 

7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

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26 DA#98F11168C,D/msr
27 LVMPD EV#9807170541
28 ACC MURD - F
(TK3)

ORIGINAL

1 **GMEM**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT
December 10 1998
JANETTA BOWMAN, CLERK
Carol Green
Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JOTEE BURNSIDE,

12
13 Defendant.
14

Case No. C154293D
Dept. No. III
Docket E

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: ACCESSORY TO MURDER (Category C Felony -
17 NRS 195.030, 195.040, 200.030, 200.010), as more fully alleged in the charging document
18 attached hereto as Exhibit "I".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State has agreed to retain the full right to argue at the time of sentencing.

22 CONSEQUENCES OF THE PLEA

23 I understand that by pleading guilty I admit the facts which support all the elements of
24 the offense(s) to which I now plead as set forth in Exhibit "I".

25 I understand that as a consequence of my plea of guilty the Court must sentence me to
26 imprisonment in the Nevada State Prison for a minimum term of not less than One (1) year(s)
27 and a maximum term of not more than Five (5) years. The minimum term of imprisonment may
28 not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may

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1 also be fined up to \$1,000.00. I understand that the law requires me to pay an Administrative
2 Assessment Fee.

3 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
4 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
5 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
6 State of Nevada for any expenses related to my extradition, if any.

7 I understand that I am eligible for probation for the offense to which I am pleading guilty.
8 I understand that, except as otherwise provided by statute, the question of whether I receive
9 probation is in the discretion of the sentencing judge.

10 I understand that if more than one sentence of imprisonment is imposed and I am eligible
11 to serve the sentences concurrently, the sentencing judge has the discretion to order the
12 sentences served concurrently or consecutively.

13 I also understand that information regarding charges not filed, dismissed charges, or
14 charges to be dismissed pursuant to this agreement may be considered by the judge at
15 sentencing.

16 I have not been promised or guaranteed any particular sentence by anyone. I know that
17 my sentence is to be determined by the Court within the limits prescribed by statute. I
18 understand that if my attorney or the State of Nevada or both recommend any specific
19 punishment to the Court, the Court is not obligated to accept the recommendation.

20 I understand that the Division of Parole and Probation will prepare a report for the
21 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
22 sentencing, including my criminal history. This report may contain hearsay information
23 regarding my background and criminal history. My attorney and I will each have the
24 opportunity to comment on the information contained in the report at the time of sentencing.
25 Unless the District Attorney has specifically agreed otherwise, then the District Attorney may
26 also comment on this report.

27 WAIVER OF RIGHTS

28 By entering my plea of guilty, I understand that I am waiving and forever giving up the

1 following rights and privileges:

2 1. The constitutional privilege against self-incrimination, including the right to refuse to
3 testify at trial, in which event the prosecution would not be allowed to comment to the jury
4 about my refusal to testify.

5 2. The constitutional right to a speedy and public trial by an impartial jury, free of
6 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
7 assistance of an attorney, either appointed or retained. At trial the State would bear the burden
8 of proving beyond a reasonable doubt each element of the offense charged.

9 3. The constitutional right to confront and cross-examine any witnesses who would
10 testify against me.

11 4. The constitutional right to subpoena witnesses to testify on my behalf.

12 5. The constitutional right to testify in my own defense.

13 6. The right to appeal the conviction, with the assistance of an attorney, either appointed
14 or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other
15 grounds that challenge the legality of the proceedings and except as otherwise provided in
16 subsection 3 of NRS 174.035.

17 VOLUNTARINESS OF PLEA

18 I have discussed the elements of all of the original charge(s) against me with my attorney
19 and I understand the nature of the charge(s) against me.

20 I understand that the State would have to prove each element of the charge(s) against me
21 at trial.

22 I have discussed with my attorney any possible defenses, defense strategies and
23 circumstances which might be in my favor.

24 All of the foregoing elements, consequences, rights, and waiver of rights have been
25 thoroughly explained to me by my attorney.

26 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
27 that a trial would be contrary to my best interest.

28 I am signing this agreement voluntarily, after consultation with my attorney, and I am not

1 acting under duress or coercion or by virtue of any promises of leniency, except for those set
2 forth in this agreement.

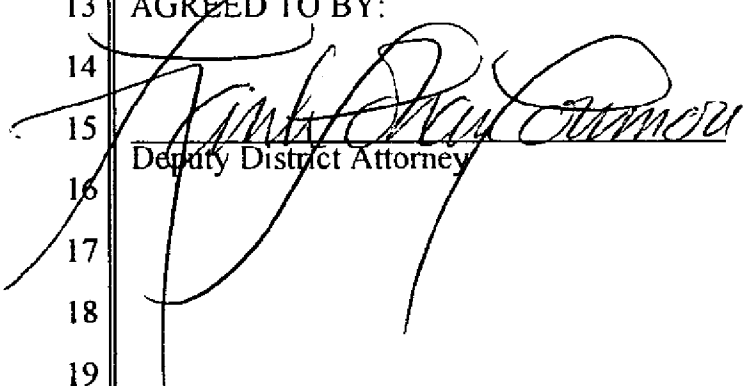
3 I am not now under the influence of any intoxicating liquor, a controlled substance or
4 other drug which would in any manner impair my ability to comprehend or understand this
5 agreement or the proceedings surrounding my entry of this plea.

6 My attorney has answered all my questions regarding this guilty plea agreement and its
7 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

8 DATED this 10 day of December, 1998.

9
10 X 
11 JOTEE BURNSIDE
12 Defendant

13 AGREED TO BY:

14 
15 Deputy District Attorney
16
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1 CERTIFICATE OF COUNSEL:

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12 guilty as provided in this agreement.

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14 voluntarily.

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16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 10 day of December, 1998.

19 

20 ATTORNEY FOR DEFENDANT

21
22
23
24
25
26
27
28 msr

1 **INFO**

2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 12/10/98
10 8:30 A.M.
11 PD/SPEC. PD

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 TOMMIE C. BURNSIDE, JR. #1591598,
16 JOTEE BURNSIDE,

17 Defendant.

Case No. C154293C,D
Dept. No. III
Docket E

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19 COUNTY OF CLARK }ss:

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23 named, having committed the crime of **ACCESSORY TO MURDER (Felony - NRS 195.030,**
24 **195.040, 200.030, 200.010)**, on or about the 17th day of July, 1998, within the County of Clark,
25 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
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27 unlawfully, and feloniously harbor, conceal or aid BRENDAN JAMES NASBY, to-wit: by both
28 Defendants informing Las Vegas Metropolitan Police Department Detectives of a false version
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3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 

7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

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26 DA#98F11168C,D/msr
27 LVMPD EV#9807170541
28 ACC MURD - F
(TK3)

1 0205
2 MORGAN D. HARRIS*
3 PUBLIC DEFENDER
4 NEVADA BAR #1879
5 309 South Third Street, Suite 226
6 Las Vegas, Nevada 89155
7 (702)455-4685
8 Attorney for the Defendant
9 Public Defender File No. F-98-7399

FILED

DEC 10 1 45 PM '98

Joetta Burnside
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)	
)	
10 Plaintiff,	)	CASE NO. C154293D
)	
11 v.	)	DEPT. NO. III
)	
12 JOTEE BURNSIDE,	)	Date of Hearing: 12-15-98
	)	Time of Hearing: 8:30 A.M.
13 Defendant.)	

MOTION FOR OWN RECOGNIZANCE RELEASE OR HOUSE ARREST

15 Defendant Jotee Burnside, by and through his attorney,
16 Deputy Public Defender Howard S. Brooks, moves this Honorable Court
17 for an order granting the defendant release from custody on his own
18 recognizance or house arrest release until his sentencing which is
19 currently scheduled in February, 1999.

20 This motion is based on the attached Declaration of
21 Counsel.

22 DATED December 10, 1998

CLARK COUNTY PUBLIC DEFENDER

By

Howard S. Brooks

Howard S. Brooks
DEPUTY PUBLIC DEFENDER
Nevada Bar 3374

MC

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DECLARATION

Howard S. Brooks, makes the following declaration

1. That I am an attorney duly licensed to practice law in the State of Nevada; that I am the Deputy Public Defender assigned to represent the defendant in the instant matter, and that I am familiar with the allegations and procedural history of the case.

2. On December 10, 1998, Mr. Burnside appeared in District Court, Department III, and pled guilty to accessory to commit murder, a one-to-five felony. The State retained the right to argue at the time of sentencing. The Court set a sentencing date of February 25, 1999.

3. The Defense now requests that the Court allow Mr. Burnside the opportunity to obtain an own recognizance release or house arrest pending his sentencing date.

4. I have spoken with Alice Burnside, the mother of Jotee Burnside, and she informs me of the following:

a. Jotee Burnside is 15 years old.

b. Jotee Burnside can live with his mother and brother at 4650 East Carey, Las Vegas Nevada. Their telephone number at that address is 643-5250.

c. Alice Burnside is currently employed as a teller at the Stratosphere. She believes she can afford the \$10 per day house arrest program if the Court deems that program necessary.


d. If released from custody, Jotee can help Janice Brooks in her business of computerizing embroidery. Also, Jotee will attempt to enroll

1 in school at Chapparrel High School. His grade
2 level at Chapparrel is currently 10th grade.
3 e. Ms. Burnside also states that she will ensure
4 that Jotee make any appointment with Parole &
5 Probation and also make his sentencing date.

6 5. The Defense ordered an Intake Services Report from the
7 jail on December 10, 1998.

8 I declare under penalty of perjury that the foregoing is
9 true and correct. (NRS 53.045).

10 EXECUTED ON December 10, 1998

11 
12 _____
13 Howard S. Brooks

14
15 RECEIPT OF COPY of the above and foregoing Motion is hereby
16 acknowledged this 10th day of December, 1998.

17 CLARK COUNTY DISTRICT ATTORNEY

18
19 By 
20 _____

21 (Mot/Burnside.OR)
22
23
24
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26
27
28

1 CASE NO. C154293
2 DEPARTMENT NO. 3
3 IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
4 COUNTY OF CLARK, STATE OF NEVADA

5
6 STATE OF NEVADA,
7
8 Plaintiff,
9 vs.
10 Branden JAMES NASBY,
11 Defendant.

CASE NO. 98F11168A

ORIGINAL

14 REPORTER'S TRANSCRIPT
15 OF
16 PRELIMINARY HEARING
17 BEFORE THE HONORABLE MICHAEL P. VILLANI
18 PRO TEMPORE
19 JUSTICE OF THE PEACE
20 THURSDAY, NOVEMBER 5, 1998
21 APPEARANCES:
22 For the State: FRANK J. COUMO, ESQ.
23 Deputy District Attorney
24 For the Defendant: JOSEPH S. SCISCENTO, ESQ.
25 JOHN L. DUFFY, ESQ.
26 Pro tempore
27 Reported by: Angela Campagna, CCR #495

Page 1

Page 2

1 INDEX
2 BY MR. COUMO: DIRECT REDIRECT
3 WITNESS: JEHRIMIAH DESKIN 4 58
4
5 BY MR. SCISCENTO: CROSS RE-CROSS
6 WITNESS: JEHRIMIAH DESKIN 24 62
7
8 BY MR. COUMO: DIRECT REDIRECT
9 WITNESS: DR. ROBERT JORDAN 64
10
11 BY MR. SCISCENTO: CROSS RE-CROSS
12 WITNESS: DR. ROBERT JORDAN 72
13
14 BY MR. COUMO: DIRECT REDIRECT
15 WITNESS: CRYSTAL BRADLEY 80 100
16
17 BY MR. DUFFY: CROSS RE-CROSS
18 WITNESS: CRYSTAL BRADLEY 87
19
20 BY MR. COUMO: DIRECT REDIRECT
21 WITNESS: JAMES BUCZEK 101
22
23 BY MR. SCISCENTO: CROSS RE-CROSS
24 WITNESS: JAMES BUCZEK 115
25

Page 3

Page 4

1 LAS VEGAS, NEVADA, NOVEMBER 5, 1998, 9:00 A.M.
2 * * * * *
3 THE COURT: Let's go ahead and start the
4 murder prelim. All right. Parties ready in the
5 Nasby matter?
6 MR. COUMO: Your Honor, state is ready.
7 MR. SCISCENTO: At this time we would invoke
8 the exclusionary rule.
9 THE COURT: Any witnesses on the Branden
10 Nasby matter are ordered to have a seat outside.
11 You are also not to discuss your testimony with
12 any other parties.
13 Is the state ready to proceed?
14 MR. COUMO: State is ready to proceed.
15 JEHRIMIAH DESKIN,
16 called as a witness, and having been first duly
17 sworn to testify to the truth, the whole truth,
18 and nothing but the truth, was examined and
19 testified as follows:
20 THE CLERK: Please be seated. State your
21 full name and spell your last name, please.
22 THE WITNESS: Jehrimiah Deskin, D-e-s-k-i-n.
23 Q. And how do you spell Jehrimiah?
24 A. J-e-h-r-i-m-i-a-h.
25 THE CLERK: Thank you.

1 DIRECT EXAMINATION
2 BY MR. COUMO:
3 Q. Mr. Deskin, I want to make sure
4 you speak into the microphone where everybody can
5 hear you, okay?
6 A. Okay.
7 Q. Are you aware of a L.A. group
8 called L.A. Crazy Riders?
9 A. Yes.
10 Q. And what kind of group is that?
11 A. It's a gang.
12 Q. And do you see anybody in court
13 here today that is a member of that gang?
14 A. Yes.
15 Q. Can you please point to him and
16 tell me what he is wearing today?
17 A. Blue.
18 Q. Okay. What is he wearing today?
19 A. Inmate.
20 Q. Jail clothing?
21 A. Yes.
22 Q. And where is, where exactly is he
23 seated?
24 A. With the defendant.
25 MR. COUMO: Judge, may the record reflect

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Page 5

Page 6

1 witness has identified the defendant.
 2 THE COURT: Could you point at him again.
 3 THE WITNESS: (Witness complies.)
 4 THE COURT: Record so show.
 5 BY MR. COUMO:
 6 Q. You know him as, what is his gang
 7 name?
 8 A. Blue.
 9 Q. Now, are you a member of this
 10 gang?
 11 A. No.
 12 Q. But you're friends, an associate,
 13 right?
 14 A. Yes.
 15 Q. And is there also an individual
 16 by the name of Tommy Burnside a member of this
 17 gang?
 18 A. Yes.
 19 Q. And how about a Jotee Burnside?
 20 A. Yes.
 21 Q. Now, I'm going to draw your
 22 attention Jehrimiah, to July 16th, 1998. On that
 23 particular date did you go over to visit Branden
 24 or Blue's home?
 25 A. Yes.

1 Q. And isn't his home located at,
 2 the exact address is 4509 Switchback?
 3 A. Yes.
 4 Q. Is that located here in Clark
 5 County, Nevada?
 6 A. Yes.
 7 Q. What were you doing or, first of
 8 all, what time did you arrive at his house?
 9 A. I'm not sure.
 10 Q. Was it morning time, evening
 11 time?
 12 A. Probably evening.
 13 Q. Who was there?
 14 A. Jotee and Tommy and Branden.
 15 Q. And anybody else besides
 16 yourself?
 17 A. Some of his cousins, little
 18 cousins, his mother and his girlfriend.
 19 Q. Did there come a point though
 20 that the four of you, I'm talking about the
 21 defendant, the two Burnside boys and yourself, got
 22 together and agreed to do something?
 23 A. Yes.
 24 Q. And what is that?
 25 A. To pick up Michael and go to the

Page 7

Page 8

1 desert.
 2 Q. Okay. Do you know Michael's last
 3 name?
 4 A. Beasley.
 5 Q. What was the purpose to pick up
 6 Michael?
 7 A. To kill him.
 8 Q. And whose idea was that?
 9 A. Branden's.
 10 Q. Do you know why Branden wanted to
 11 kill him?
 12 A. Gang reasons.
 13 Q. Could you explain what the gang
 14 reasons are?
 15 A. Someone, he felt threatened that
 16 Michael was going to take him off the gang in some
 17 way.
 18 Q. Did the Burnside boys, were they
 19 aware of what was happening?
 20 A. Yes.
 21 Q. So what did you do, what happened
 22 next then?
 23 A. Me, Tommy and Jotee went to
 24 Michael's house and picked up Michael.
 25 Q. In whose car?

1 A. My car.
 2 Q. And who was driving?
 3 A. I was.
 4 Q. And did Michael know that you
 5 guys were going to come and pick him up?
 6 A. Yes.
 7 Q. How was he informed or how was he
 8 made aware of this fact?
 9 A. Over the telephone.
 10 Q. Who called him?
 11 A. I believe it was Tommy.
 12 Q. And what was told to Michael, to
 13 your knowledge, what you guys were going to go do?
 14 A. Go smoke weed and go shooting.
 15 Q. So did you go and pick up
 16 Michael?
 17 A. Yes.
 18 Q. And what happened after you
 19 picked, what happened while you were at his home?
 20 Did anything happen in particular at his home, at
 21 Michael's home?
 22 A. We pulled up. He asked us to
 23 come inside. He showed us his son.
 24 Q. Michael's newborn son?
 25 A. Yes.

Page 9

Page 10

1 Q. Okay. And then what happened
2 next?
3 A. Then we had left.
4 Q. Where did you go from Michael's
5 house?
6 A. Branden's house.
7 Q. And when you got to Branden's
8 house what happened then?
9 A. We got out of the car. Branden
10 showed Michael his gun.
11 Q. Branden got into the car?
12 A. Yeah.
13 Q. Where exactly, where did Branden
14 sit?
15 A. I believe the front seat.
16 Q. What kind of gun did he show him?
17 A. A nine millimeter Browning.
18 MR. DUFFY: A Browning?
19 BY MR. COUMO:
20 Q. A Browning nine millimeter?
21 A. Yes.
22 Q. Who did Branden show this
23 Browning nine millimeter to?
24 A. Everybody and Michael.
25 Q. Had you seen that gun before?

1 A. Yes.
2 Q. When did you see that gun?
3 A. When he had purchased it, got
4 it.
5 MR. SCISCENTO: Can we explain who the
6 pronoun he is.
7 THE COURT: Who are you referring to?
8 THE WITNESS: Branden.
9 BY MR. COUMO:
10 Q. The defendant?
11 A. Yes.
12 Q. When did he purchase it in time
13 wise from this point on July 16th, when did he
14 purchase that gun?
15 A. Maybe a couple weeks prior, maybe
16 a month, can't really remember.
17 Q. So now that all five of you are
18 in the car, where did you go next, what did you do
19 next?
20 MR. SCISCENTO: Your Honor, five of them, can
21 you give me the names of the five?
22 THE COURT: Who was all in the car?
23 THE WITNESS: Jotce, Tommy, myself and
24 Branden and Michael.
25 ///

Page 11

Page 12

1 BY MR. COUMO:
2 Q. And where were you headed to, did
3 you drive off?
4 A. Yes.
5 Q. Where did you head to?
6 A. Craig to Alexander and out to the
7 desert.
8 Q. Was there a little path road that
9 you can drive up on?
10 A. Yes.
11 Q. Are you familiar with that area?
12 A. Yes.
13 Q. Okay. Where exactly did you go
14 up into the desert?
15 A. Say about a mile, mile and a
16 half. It would be west in the dirt.
17 Q. Okay.
18 A. To like a cliff.
19 Q. And what did you do when you got
20 to this cliff, what happened?
21 A. I parked the car, and I had left
22 the lights on. Everybody exited the car. They
23 were looking around for something to shoot,
24 pointed out some metal refrigerators and whatnot
25 down the cliff. They said that is was too dark to

1 see it. So they asked me to pull the car closer
2 to where the light was, would shine on it. I got
3 in the car and backed it up and pulled it forward
4 closer to the cliff to where there was more light.
5 Q. Let me stop you there for a
6 second. Where is Michael at this point?
7 A. He's outside the car looking
8 around for something to shoot. He had a two by
9 four or something in his hands.
10 Q. What?
11 A. He had a piece of wood or two by
12 four.
13 Q. And where was, where was the
14 defendant at?
15 A. He was off to my left.
16 Q. Close to the defendant, I mean
17 close to the victim?
18 A. About 10, 15 feet.
19 Q. So now you repositioned your car
20 so you could look down into this, into this wash,
21 correct?
22 A. Yes.
23 Q. What did you do at that point?
24 A. I left the lights on and I got
25 out. And as I was getting out Michael had walked

Page 13

Page 14

1 about five steps closer towards the car, and
 2 Branden walked behind him and made a couple steps
 3 and fired on him.
 4 Q. Who fired on him?
 5 A. Branden fired on Mike.
 6 Q. Where was Michael facing when
 7 Branden shot?
 8 A. Towards the cliff.
 9 Q. Away?
 10 A. Away from him.
 11 Q. He didn't see what was coming at
 12 him?
 13 A. No.
 14 Q. When you saw -- just prior to the
 15 shooting, did you know what was going to happen at
 16 that point?
 17 A. Yes.
 18 Q. And after you saw the first shot
 19 what did you see Michael do?
 20 A. Drop to one knee putting his
 21 hands on the ground, sort of screamed, moaned.
 22 Q. Okay. Could you tell where the
 23 defendant had shot Michael?
 24 A. Probably in the shoulder, neck
 25 area, toward the back.

1 Q. And what happened after that
 2 first shot when you saw Michael go down on his
 3 knee and his hands, what happened next?
 4 A. Branden walked up closer and
 5 fired in closer to the neck head area.
 6 Q. Okay. What did you see Michael
 7 do at that point?
 8 A. He sort of dropped and I guess
 9 rolled over, and I seen him face up after that.
 10 Q. When the first shot took place,
 11 how far was Michael from or how far was the
 12 defendant from Michael when he shot him in the
 13 back?
 14 A. I would say about two to four
 15 feet.
 16 Q. And the second time?
 17 A. Maybe one or two feet away.
 18 Q. Was he standing right above him
 19 at that point?
 20 A. Basically.
 21 Q. Now, after that happened and you
 22 saw the body now of Michael rolled to the position
 23 of facing up, is that what you said?
 24 A. Yes.
 25 Q. What happened next?

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1 A. Everybody ran to the car and
 2 started pulling away, and then had got out again.
 3 Q. Who got out again?
 4 A. Branden. And walked up above
 5 Michael looking up and fired again towards his
 6 chest and head area.
 7 Q. Do you know why?
 8 A. No.
 9 Q. Did he say he wanted to get out
 10 again?
 11 A. No.
 12 Q. Did he end, did he wind up
 13 getting back inside the car?
 14 A. Yes.
 15 Q. What happened then, did he say
 16 anything?
 17 A. He said if anybody says anything
 18 that they were going to die.
 19 Q. Did he make any statement as to
 20 why he had killed Michael?
 21 A. He said basically that's what you
 22 get for trying to take me off my own set, my set
 23 he said.
 24 Q. What does that mean?
 25 A. Michael tried to take him from

1 the gang, make him no longer a gang member or --
 2 Q. Now, what happened after the
 3 shooting, did you ultimately drive home?
 4 A. Yes.
 5 Q. What happened?
 6 A. I dropped Michael, Tommy, Jotee
 7 off at Branden's, not Michael, Branden, Jotee at
 8 Branden's house, and from there I drove home.
 9 Q. Did you stay here in Clark
 10 County?
 11 A. No.
 12 Q. What did you do?
 13 A. I left for California.
 14 Q. Why?
 15 A. Scared and to be with my family.
 16 Q. Isn't it true that you ultimately
 17 got charged with this crime too?
 18 A. Yes.
 19 Q. You eventually, there is a reason
 20 why you're testifying today, correct?
 21 A. Yes.
 22 Q. Could you inform the court why
 23 you're testifying?
 24 A. For a deal, probation.
 25 Q. It's not guaranteed probation,

1 correct?

2 A. No.

3 Q. But you are pleading to a felony?

4 A. Yes.

5 Q. For your involvement in this
6 crime?

7 A. Yes.

8 Q. And that felony is an accessory
9 to murder, correct?

10 A. Yes.

11 Q. But no probation has been
12 promised to you other than cooperation, correct?

13 A. Yes.

14 BY COUMO: Judge, if the record could reflect
15 I'm showing defense counsel Proposed State's
16 Exhibit 4.

17 THE COURT: Okay.

18 MR. COUMO: May I approach the witness?

19 THE COURT: Yes.

20 BY MR. COUMO:

21 Q. Mr. Deskin, I'm showing you
22 State's Proposed Exhibit 4. Look at it and see if
23 you recognize anything in here?

24 A. Yes, the gun.

25 Q. Could you point to what you're

1 pointing at?

2 A. This handgun right here.

3 MR. COUMO: Judge, may the record reflect the
4 witness has identified a pistol weapon that is
5 towards the bottom middle part of the photograph?

6 THE COURT: Yes.

7 BY MR. COUMO:

8 Q. What is this, what is this gun?

9 A. It's a Browning nine millimeter.

10 Q. Have you seen that weapon before?

11 A. Yes.

12 Q. And when did you see that weapon
13 before?

14 A. When he had, when Branden had
15 purchased it.

16 MR. SCISCENTO: I'm going to object to this
17 as foundation. There is a picture of a gun. We
18 don't know if that was the gun used with the
19 recovery of that. State's moving this into
20 evidence. I think we need more foundation as to
21 what gun that is.

22 MR. COUMO: He's doing that.

23 MR. SCISCENTO: There is no identifying marks
24 on it other than a picture of a Browning without
25 any serial numbers on it.

1 THE COURT: I'll sustain your objection.

2 BY MR. COUMO:

3 Q. How do you know that that is the
4 gun?

5 A. From the rust marks that the
6 dirty, the way it's rusted and kind of dirty.

7 Q. And certainly looks like the
8 weapon you saw him purchase?

9 A. Yes.

10 Q. What else about the weapon, is
11 that the only time you saw that weapon?

12 A. Those two times, yes.

13 Q. Also when it was used for the
14 crime?

15 A. Yes.

16 Q. And does it accurately and fairly
17 depict what the rust color as being the murder
18 weapon that was used by the defendant?

19 A. Yes.

20 MR. COUMO: Judge, at this time move to admit
21 State's Proposed Exhibit 4.

22 MR. SCISCENTO: I object to it. Without
23 having the physical gun we're not sure, there is
24 no specific markings. We don't know if the
25 picture is faded. We don't know anything about

1 the picture. He's identified the gun that has
2 similarities allegedly used in the killing. He
3 can't say with specifics whether or not that was
4 the gun actually used without actually viewing
5 that gun itself.

6 MR. COUMO: Judge, I would say counsel has a
7 good argument to make if it was a chrome color
8 gun, but under the circumstances, where this
9 photograph was taken and also the fact that it has
10 a rusty look to it which your Honor can see for
11 himself in the photograph there, there is rusting
12 type of markings on the side of the weapon. This
13 witness has seen the weapon on two occasions now.
14 And he clearly identified it without any
15 hesitation as being the weapon.

16 MR. SCISCENTO: Your Honor --

17 MR. COUMO: And so for, you know, for
18 preliminary hearing purposes, I might also, Judge,
19 if the court feels inclined to maybe withhold
20 judgment but as an officer of proof, although I
21 have a detective here to testify that there was a
22 search warrant done on the defendant's home, and
23 that a nine millimeter weapon was recovered, he
24 can testify that a millimeter weapon was
25 recovered, but he was not the one who actually did

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Page 22

1 the searching. It was another detective, but he
2 knows that a nine millimeter was recovered from a
3 blue bag. And as the court can see, those weapons
4 are inside a blue bag.

5 For preliminary hearing purposes
6 right now, this witness has clearly identified
7 this weapon.

8 MR. SCISCENTO: He's identified a weapon
9 which we don't know if any markings were placed on
10 it after they recovered it. We don't know if that
11 is the exact weapon.

12 THE COURT: I'm not going to accept this
13 State's Proposed Exhibit No. 4. I'm not going to
14 accept his testimony as far as him identifying
15 that this particular gun is the same gun that the
16 defendant allegedly utilized to shoot the victim.
17 I'm assuming you'll bring this up with the
18 detective as far as this being located.

19 MR. COUMO: I am going to, although he cannot
20 say he is. He was downstairs or whatever he was
21 doing, he was with the defendant at the time
22 another detective went in. Through police
23 knowledge, he has learned that there was the fact,
24 although I'm not presenting it, the ballistics
25 have been done, and it is the murder weapon.

1 THE COURT: That will tie it up.

2 MR. DUFFY: Your Honor, we would ask that the
3 witness be allowed to testify to this matter. I
4 realize Mr. Coumo is not intentionally
5 testifying.

6 MR. COUMO: Just for offer of proof.

7 THE COURT: I'm not going to allow the
8 admission of the photograph at this time.

9 MR. SCISCENTO: As to the ballistics and
10 everything, I would move to strike that as there
11 is no foundation on that. There is no evidence
12 provided on that.

13 THE COURT: I have not heard any testimony on
14 that regard.

15 MR. SCISCENTO: I know but it's on the
16 record. I would move to strike that portion
17 unless --

18 THE COURT: That will be stricken.

19 MR. COUMO: It was just an offer of proof.

20 THE COURT: I'm not considering any
21 statements by counsel.

22 BY MR. COUMO:

23 Q. But, Mr. Deskin, do you know that
24 that was a Browning nine millimeter?

25 A. Correct.

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1 Q. And you indicated that there was
2 rust markings on the weapon?

3 A. Yes.

4 Q. And you can see that on that
5 weapon, correct?

6 A. Yes.

7 Q. Do you recognize the surrounding
8 area where that photograph was taken at all?

9 A. Appears to be his bedroom, the
10 defendant's bedroom.

11 Q. And you've been in the
12 defendant's bedroom in the past?

13 A. Yes.

14 Q. Okay, thank you, sir. Judge, at
15 this time I'll pass the witness.

16 One last question, Judge, if I
17 may, counsel. Everything that you testified to
18 when the killing occurred and where it occurred,
19 did that happen here in Clark County, Nevada?

20 A. Yes.

21 THE COURT: Thank you. Mr. Sciscento, before
22 you start, we're going to take care of some other
23 matters here.

24 (Break in proceedings.)

25 THE COURT: Let's go back on the murder

1 case. I appreciate your patience.

2 CROSS-EXAMINATION

3 BY MR. SCISCENTO:

4 Q. What is your nickname?

5 A. Woodpecker.

6 Q. Where did you get that nickname
7 from?

8 A. From a friend of mine, Jesse.

9 Q. Who is Jesse?

10 A. He's a friend I've known for
11 about four, four and a half years.

12 Q. Is he a gang member?

13 A. No.

14 Q. Okay.

15 THE COURT: I'm sorry. I didn't hear the
16 nickname.

17 BY MR. SCISCENTO:

18 Q. Woodpecker. What is Jesse's last
19 name?

20 A. Romero.

21 Q. And does he live out here in
22 Las Vegas?

23 A. Yes.

24 Q. Drawing your attention back to
25 July 16th, 1998, you mentioned that you went over

Page 25

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1 to Branden's house?

2 A. Yes.

3 Q. Do you know what time that was?

4 A. I don't recall.

5 Q. Do you know what you did that
6 day, July 16th, the moment you got up until the
7 moment you went over to Branden's house?

8 A. From the moment I got up?

9 MR. COUMO: I would object to relevancy.

10 MR. SCISCENTO: I'm trying to find out the
11 time, if I could find out if he worked that day,
12 when he got off, where he went after that. I'm
13 trying to break down a time frame.

14 THE COURT: Are you able to approximate the
15 time you went over to the defendant's home?

16 THE WITNESS: No. I know it was in the
17 evening.

18 THE COURT: Why don't we start from the
19 evening on then.

20 BY MR. SCISCENTO:

21 Q. Okay. What do you consider the
22 evening, when does the evening start, 5:00
23 o'clock, 6:00 o'clock, 7:00 o'clock?

24 A. About then.

25 Q. About what time?

1 A. When the sun goes down, down
2 around 5:00 or whenever.

3 Q. This being July, the sun --

4 A. It was about 7:00 then when the
5 sun went down.

6 Q. The sun goes down about 7:00,
7 7:30, would you agree with that statement?

8 A. Yes.

9 Q. That the sun goes down about
10 7:00, 7:30 in July?

11 A. Yes.

12 Q. So it was dark when you went over
13 to Branden's house?

14 A. I don't recall. It might have
15 been, I know it was, I believe it was after 5:00,
16 I believe, so it was after 5:00.

17 Q. Again, was the sun up or down the
18 first time you went over Branden's house, sunup or
19 sundown?

20 A. I don't recall.

21 Q. Okay. This was an important day
22 in your mind, sir; is that correct?

23 A. Yes.

24 Q. It was a day that you witnessed a
25 murder?

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1 A. Yes.

2 Q. You would remember what happened
3 on that day; isn't that correct?

4 A. Yes.

5 Q. Okay. But you don't know what
6 time you went over to see him?

7 A. I don't recall when I showed up.

8 Q. Prior to July 16th, was there
9 ever a time when you had a meeting regarding
10 killing Michael Beasley?

11 A. Yes, there was a meeting.

12 Q. And you were present at that
13 meeting?

14 A. Yes.

15 Q. And there was questions about
16 whether or not Michael Beasley should be shot?

17 A. Yes.

18 Q. Also on July 16th, 1998, there
19 was a statement made by a Tommy Burnside regarding
20 doming somebody?

21 A. Yes.

22 Q. Was that statement made by Tommy
23 Burnside?

24 A. Yes.

25 Q. In your presence?

1 A. Dome, d-o-m-e, somebody.

2 Q. What time was that statement made
3 about doming somebody?

4 A. Between 9:00 and 10:30.

5 Q. In the morning or night?

6 A. Night.

7 Q. What does it mean to you when
8 somebody says dome somebody?

9 A. Shoot somebody in the head.

10 Q. And who were they going to dome?

11 A. Michael.

12 Q. And Tommy Burnside told you that
13 Michael, that they were going to dome Michael?

14 A. No.

15 Q. Okay. What did Tommy Burnside
16 say?

17 A. He had told Branden to dome him.

18 Q. He told Michael that?

19 A. No.

20 Q. He told Branden?

21 A. Branden, he said just dome him.

22 Q. I want to see if I understand
23 this. Did somebody say they want to pick up a 25
24 and shoot that day?

25 A. Yes.

1 Q. Who said that?
 2 A. I can't recall.
 3 Q. And your statement that you gave
 4 to the Officers Thowson and T-h-o-w-s-e-n,
 5 B-u-c-z-e-k, do you remember giving that
 6 statement?
 7 A. Yes.
 8 Q. And your statement you mentioned
 9 about Tommy had just said dome him?
 10 A. Yes.
 11 Q. But you don't say that, he said
 12 it to Branden?
 13 A. I believe I said that Branden
 14 said let's do this, and I said Tommy replied with
 15 just dome him.
 16 Q. So prior to taking Michael
 17 Beasley out to the desert in your car, you knew
 18 that a killing was going to occur?
 19 A. Yes.
 20 Q. Okay. And you were involved in
 21 driving Michael Beasley to the place he was going
 22 to be shot at; isn't that correct?
 23 A. Yes.
 24 Q. What time, you went from
 25 Branden's house to Michael Beasley's house or

1 apartment?
 2 A. House.
 3 Q. Michael Beasley's house?
 4 A. Yes.
 5 Q. You picked Michael Beasley up,
 6 you then drove back to Branden's house, correct?
 7 A. Yes.
 8 Q. What time was the second time you
 9 arrived at Branden's house?
 10 A. I can't recall the time exactly.
 11 Q. It was night time?
 12 A. Yes.
 13 Q. It was still July 16th?
 14 A. Yes.
 15 Q. You don't know how late it was?
 16 A. Before midnight, after 9:30.
 17 Q. Okay. So in between that time
 18 frame?
 19 A. Yes.
 20 Q. When you got to Branden's house
 21 with Michael Beasley in your car, who was present
 22 at Michael's house?
 23 A. Me, Jotee, Tommy, Branden,
 24 Michael, his mother.
 25 Q. Now, you say his mother, whose

1 mother?
 2 A. Branden's mother, his little
 3 cousins.
 4 Q. Now, Branden's little cousins?
 5 A. Yes.
 6 Q. Do you know their name?
 7 A. No.
 8 Q. How little are the cousins how
 9 old?
 10 A. I would say about ten.
 11 Q. How many of them were there?
 12 A. I know at least two.
 13 Q. There were at least two cousins
 14 there?
 15 A. At least two.
 16 Q. Was there anybody else there
 17 other than the people you just mentioned?
 18 A. Tommy and Jotee's little brother.
 19 Q. Tommy and Jotee's little brother,
 20 how old are they?
 21 A. Are they?
 22 Q. How old are Tommy and Jotee's
 23 little brother?
 24 A. He's about 10, 11, maybe 12.
 25 Q. 10 or 11, okay, or 12?

1 A. Yeah.
 2 Q. Did you speak with either the
 3 cousins, or did you speak with the cousins at all,
 4 Branden's cousins that night, did you say hi to
 5 them or anything like that?
 6 A. Yes.
 7 Q. So he visually saw you there?
 8 A. Yes.
 9 Q. Did Branden's mother see you
 10 there?
 11 A. Yes.
 12 Q. Did you speak to her at all?
 13 A. I'm not sure.
 14 Q. Say hi to her, anything like
 15 that?
 16 A. I assume so.
 17 Q. What about Tommy and Jotee's
 18 little brother, did you say hi to him?
 19 A. I don't recall.
 20 Q. Do you recall if you ever made
 21 visual contact with him?
 22 A. Yes.
 23 Q. So he actually saw you?
 24 A. Yes.
 25 Q. Was there anybody else present

1 there, was Crystal Bradley present there?
 2 A. No.
 3 Q. No other girls were present? Do
 4 you know no there were no girls other than the
 5 mother?
 6 A. I think his girlfriend was there.
 7 Q. You think whose girlfriend was
 8 there?
 9 A. Branden's.
 10 Q. So Branden's girlfriend may have
 11 been there?
 12 A. Or she was at work.
 13 Q. Do you know a person named Sug or
 14 Sugarbear?
 15 A. Yes.
 16 Q. What do you know him by?
 17 A. Sugarbear.
 18 Q. Does he go by any other names?
 19 A. Scandals.
 20 Q. Does he go by the nickname Sug?
 21 A. People have called him that.
 22 Q. But you know him as Sugarbear?
 23 A. Yes.
 24 Q. And who is Sugarbear?
 25 A. Damian Von Louis.

1 Q. How do you know his last name?
 2 A. From the court's paperwork I've
 3 read his last name.
 4 Q. When did you read his last name?
 5 A. On a statement.
 6 Q. When you gave your statement you
 7 didn't know Damian's last name; is that correct?
 8 A. No, I didn't.
 9 Q. So this information that you're
 10 giving now was provided to you by the police after
 11 you gave the statement?
 12 A. His last name.
 13 Q. Okay. Is there any other
 14 information that was provided to you by the police
 15 regarding this incident of the shooting?
 16 A. No.
 17 Q. Just the last name of Von Louis.
 18 You had stated before when the district attorney
 19 asked you if any statements were made after the
 20 shooting, you get in the car and drive back, and
 21 there was statements made by Branden; is that
 22 correct?
 23 A. Yes.
 24 Q. What did you say, what did
 25 Branden say?

1 A. He said if anybody says anything
 2 or rats that they are going to die.
 3 Q. Do you remember giving a
 4 statement to the detectives?
 5 A. Yes.
 6 Q. Regarding this case?
 7 A. Yes.
 8 Q. When they asked you when you guys
 9 were driving away from the scene was there any
 10 conversation in the car about anybody about the
 11 death, do you remember what your response was? My
 12 question is do you remember what your response
 13 was?
 14 A. Yes.
 15 Q. Okay. To that question, what was
 16 your response?
 17 A. That he had asked Jotee how does
 18 he feel.
 19 MR. SCISCENTO: Okay. If I may approach,
 20 your Honor. Your, Honor page 16 of the report.
 21 THE COURT: Okay.
 22 BY MR. SCISCENTO:
 23 Q. I want you to clarify a section.
 24 I want you to read this to yourself, this one
 25 right here. Upon reading that statement, your

1 answer to my question was, was there any
 2 conversation said, you said yes. Jotee said
 3 something, Branden said something, and in your
 4 statement here is different; isn't that correct?
 5 A. Yes.
 6 Q. What was your statement here that
 7 you gave to the police?
 8 A. I said there was no conversation.
 9 Q. So why all of a sudden has it
 10 changed to no conversation to conversation being
 11 made?
 12 A. I'm not sure. I do recall saying
 13 that.
 14 Q. Okay. Did the police tell you to
 15 say any of this?
 16 A. No.
 17 Q. Did the detectives tell you to
 18 say this?
 19 A. No.
 20 Q. Did the detectives tell you to
 21 say that Branden did this?
 22 A. No.
 23 Q. Sugarbear is a friend of yours?
 24 A. Not really, kind of.
 25 Q. Sugarbear is not a friend of

1 yours?
 2 A. Acquaintance.
 3 Q. How long have you known him?
 4 A. About, I think maybe six months,
 5 maybe more.
 6 Q. Was Sugarbear present at any time
 7 on July 16th?
 8 A. No.
 9 Q. And you know Sugarbear by sight?
 10 A. Yes.
 11 Q. Do you know if Sugarbear ever
 12 planned on shooting Michael Beasley?
 13 A. No.
 14 Q. All right. Now, explain to me
 15 what kind of car -- it was your car that drove
 16 them up that night?
 17 A. Yes.
 18 Q. What kind of car is that?
 19 A. 1991 Cougar.
 20 Q. What color is it?
 21 A. Burgundy.
 22 Q. How many does it seat?
 23 A. Five.
 24 Q. Okay. Bucket seats in the front
 25 or bench?

1 A. Bucket.
 2 Q. You stated that you, Branden
 3 Nasby, Jotee, Michael Beasley, and the other
 4 Burnside brother were there that night, the five
 5 of you?
 6 A. Yes.
 7 Q. You were driving. Where was
 8 Branden sitting?
 9 A. Passenger.
 10 Q. Where were the rest of the boys
 11 sitting, and I want the exact location, one
 12 directly behind you, one behind the passenger and
 13 one in the middle?
 14 A. Michael was sitting behind me.
 15 Q. Directly behind you?
 16 A. And I'm unsure but I believe
 17 Tommy was on the outside window, and Jotee was in
 18 the middle in the back.
 19 Q. Now, you pulled up, you drove up
 20 with them sitting in that location, what were you
 21 wearing, do you recall?
 22 A. I believe white shorts.
 23 Q. Okay. What was Branden wearing?
 24 A. I don't recall.
 25 Q. You don't recall at all?

1 A. No.
 2 Q. What kind of shoes did he have
 3 on, do you recall?
 4 A. I don't recall.
 5 Q. Were they sneakers?
 6 A. I don't recall at all.
 7 Q. You don't know if they were dress
 8 shoes?
 9 A. I don't know.
 10 Q. You don't know what color shirt
 11 he was wearing?
 12 A. No.
 13 Q. Was he wearing any jewelry, do
 14 you recall?
 15 A. I don't recall.
 16 Q. Was he wearing a hat?
 17 A. He might have been but I don't
 18 recall.
 19 Q. What was Tommy wearing, Tommy
 20 Burnside?
 21 A. I don't recall.
 22 Q. What was his brother wearing?
 23 A. I don't recall.
 24 Q. Okay. Now, you pulled up to this
 25 area where you said you were going to go shoot.

1 Prior to this you've already seen the nine
 2 millimeter you stated, correct?
 3 A. Yes.
 4 Q. Okay. You've seen that gun twice
 5 before, correct, twice before July 16th you saw
 6 that gun?
 7 A. I saw it when he had purchased
 8 it, that's once before and that night.
 9 Q. Once before, so you saw it twice
 10 before that night?
 11 MR. COUMO: Judge, I'm going to object.
 12 That's confusing, twice before that night. He
 13 said he saw it once before that and on the night.
 14 THE COURT: Restate the question.
 15 BY MR. SCISCENTO:
 16 Q. Okay. How many times prior to
 17 July 16th had you visually seen the gun, the
 18 Browning?
 19 A. Once.
 20 Q. Did you ever hold that gun prior
 21 to July 16th?
 22 A. Yes.
 23 Q. Did you ever clean that gun?
 24 A. Yes.
 25 Q. When did you clean that gun?

1 A. I don't recall the day.
 2 Q. How did you clean that gun?
 3 A. With a rag.
 4 Q. What was the cleaning consisting
 5 of, wiping it down?
 6 A. Yes.
 7 Q. Okay. Was that prior to July
 8 16th?
 9 A. I'm not sure.
 10 Q. Was your cleaning to get the dust
 11 off and dirt and any grime on it, was that the
 12 purpose of the cleaning?
 13 A. I assume so.
 14 Q. Did you clean the inside of the
 15 barrel?
 16 A. No.
 17 Q. With a pipe cleaner, nothing like
 18 that?
 19 A. No.
 20 Q. So you just cleaned the outside
 21 of it?
 22 A. (Witness shakes head.)
 23 Q. When did you clean this gun?
 24 A. I'm not sure.
 25 Q. Was it the day that Branden

1 bought it?
 2 A. I don't believe so.
 3 Q. So it was another day. So, in
 4 fact, you have seen this gun more than once before
 5 July 16th? Well, you cleaned the gun but it
 6 wasn't when he bought it, but it was before July
 7 16th, so you've seen this more than once before;
 8 isn't that correct?
 9 A. I don't remember when we cleaned
 10 it. It might have been that night. I don't
 11 remember.
 12 Q. Did you clean it to get the rust
 13 and dirt off of it?
 14 A. Just to clean the gun.
 15 Q. Okay. Did you, in fact, get it
 16 cleaned?
 17 A. Somewhat.
 18 Q. Okay. Now, drawing your
 19 attention back to the scene where the shooting
 20 was, you pull up, explain to me, does everyone get
 21 out of the car?
 22 A. Yes.
 23 Q. Everybody gets out?
 24 A. Everybody.
 25 Q. Are they smoking -- let me stop

1 there. When you got out of the car, how long were
 2 you out there before you got back in the car and
 3 drove off?
 4 A. Say between 5 to 15 minutes.
 5 Q. You stated to the district
 6 attorney earlier that it was just Branden and
 7 Michael that got out, Michael walked to the edge
 8 and Branden shot him?
 9 A. No.
 10 Q. You didn't say that earlier?
 11 A. No.
 12 Q. Okay. I might be mistaken you on
 13 this. So you're out there 10 to 15 minutes?
 14 A. Yes.
 15 Q. Was there any smoking going on?
 16 A. I don't believe so.
 17 Q. When I say smoking, I mean
 18 smoking, I mean just smoking regular cigarettes?
 19 A. I don't believe so.
 20 Q. You were smoking prior to getting
 21 to the area of the shooting, correct?
 22 A. Yes.
 23 Q. You were smoking in your car?
 24 A. Yes.
 25 Q. What were you smoking?

1 A. Camel.
 2 Q. Camel filters, non-filters?
 3 A. Camel filters.
 4 Q. Was anybody in the car smoking?
 5 A. I believe so.
 6 Q. Who?
 7 A. Branden and I believe Tommy.
 8 Q. Was Branden smoking your
 9 cigarettes, or did he have his own cigarettes?
 10 A. He had his own.
 11 Q. What kind of cigarettes were
 12 those?
 13 A. Benson and Hedges.
 14 Q. They weren't Winston's?
 15 A. No.
 16 Q. Do you know what Winston's look
 17 like?
 18 A. Yes.
 19 Q. Okay. 10 to 15 minutes you're
 20 out there, what is going on, please explain to me
 21 what is going on there.
 22 A. Pulled up, everybody gets out of
 23 the car. We are looking around for something to
 24 shoot. Michael was walking away and he had picked
 25 up like a board, like a piece of wood, and I had

1 pointed down into the cliff and said there is some
 2 stuff to shoot. There was like refrigerators and
 3 TVs, and looked over and said there is not enough
 4 light, and he said can you back the car or put
 5 some more light on it. I backed up. I drove
 6 closer to the cliff and shined more light, and I
 7 left the lights on. As I was getting out of the
 8 car, that's when I had seen Michael come this way
 9 and Branden step towards him.
 10 Q. All right. Now, was this done in
 11 front of your headlights?
 12 A. No. It was off to the left a
 13 little bit.
 14 Q. Was there enough light to see
 15 what was going on?
 16 A. Yes.
 17 Q. So your headlights kind of
 18 illuminated that area?
 19 A. Yes.
 20 Q. And Michael was walking towards
 21 the edge of the cliff?
 22 A. No. Well, he kind of came toward
 23 the cliff. The cliff is here. He came toward it
 24 kind of in the middle.
 25 Q. So he's walking toward the cliff?

1 A. Towards the cliff, towards the
 2 car.
 3 Q. Towards the edge of the cliff?
 4 A. Yes.
 5 Q. You said towards the car. I
 6 don't want to put words in your mouth. Toward
 7 your car too?
 8 A. My car was at the end of the
 9 cliff, so he was kind of walking from where he
 10 was, he was coming towards the cliff not just
 11 straight to it.
 12 Q. He was going vertically across?
 13 A. Yes.
 14 Q. Now, you said Branden walked up
 15 behind him and shot him?
 16 A. Yes.
 17 Q. Do you know your sense of
 18 direction when you're up there, north, east, south
 19 and west?
 20 A. Yes.
 21 Q. Okay. Which way was Michael
 22 facing at that time, if you know?
 23 A. West.
 24 Q. Was he facing directly west?
 25 A. Yes.

1 Q. Left, directly left or right?
 2 A. Directly west.
 3 Q. What was in front of you, was
 4 there a mountain in front of you?
 5 A. Yes.
 6 Q. What was that mountain?
 7 A. I don't remember.
 8 Q. Was there any industry or
 9 developments?
 10 A. No.
 11 Q. It was just a mountain?
 12 A. Yes.
 13 Q. And you're sure Michael was
 14 facing directly west?
 15 A. Yes.
 16 Q. Facing directly west, Branden
 17 came up behind him?
 18 A. Yes.
 19 Q. What side of Michael's body, if
 20 he's facing forward his left being his left and
 21 right being his right, that being Michael's left
 22 and right, what side did Branden come up on
 23 Michael?
 24 A. I would say from the back,
 25 Michael's right.

1 Q. Michael's right-hand side?
 2 A. Yes.
 3 Q. Okay. So he's coming up from his
 4 right side of Michael's right side, and where did
 5 he place the gun?
 6 A. He drewed it up and he was about
 7 two, three feet from him and fired in this area.
 8 Q. That being in Michael's right
 9 shoulder?
 10 A. Yes.
 11 Q. His rear right shoulder?
 12 A. Yes.
 13 Q. Okay. How far away was the gun
 14 from him at the time it went off?
 15 A. About two, four feet.
 16 Q. Okay. At the time of the
 17 shooting was Michael standing straight up?
 18 A. Yes.
 19 Q. Was he somewhat still, what I
 20 mean still, he wasn't moving around on the first
 21 shot?
 22 A. That's correct.
 23 Q. He was standing still at the
 24 first shot?
 25 A. Yes.

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1 Q. Was Branden bringing the gun,
2 holding it in an upward manner or downward
3 manner? What I mean by that, was the gun barrel
4 facing downwards or upwards or straight ahead?
5 A. It looked to me it was straight
6 ahead.
7 Q. So it was just a level barrel?
8 A. Yes.
9 Q. And how many times did Branden
10 shoot?
11 A. Once right then.
12 Q. Okay. Now, you went up there
13 with the knowledge that Michael Beasley was going
14 to be shot?
15 A. Yes.
16 Q. And you're an accomplice with
17 this crime; isn't that correct?
18 A. Yes.
19 Q. And you're being charged as an
20 accomplice to this crime; isn't that correct?
21 A. Yes.
22 Q. And you've been offered
23 negotiations to testify?
24 A. Yes.
25 Q. Okay. Did the investigators,

1 what is, when is the first time the investigators
2 ever spoke to you regarding this case?
3 A. The detectives?
4 Q. Yes.
5 A. I think it was maybe four, five
6 days after I was extradited out here.
7 Q. Do you recall what that date was?
8 A. When they talked to me?
9 Q. Yes.
10 A. I believe around the 17th. It
11 was after the 18th.
12 Q. The 17th of October?
13 A. Yes.
14 Q. Did you have counsel present at
15 that time on the 17th? You understand what I mean
16 by counsel?
17 A. Yes.
18 Q. Was there an attorney present on
19 your behalf?
20 A. Yes.
21 Q. Who was that attorney?
22 A. Chad Golightly.
23 Q. Was he there on the 17th?
24 A. Yes.
25 Q. Okay. Did you give a statement

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1 to the police at that time?
2 A. Yes.
3 Q. Okay. Is that the same statement
4 that you gave that is recorded that I showed you a
5 copy of?
6 A. Yes.
7 Q. That was done, they said on the
8 19th, so could you be mistaken as to the date?
9 A. Yes, sir.
10 Q. So most likely it was the 19th if
11 this report says the 19th?
12 A. Yes.
13 Q. So prior to giving this statement
14 on the 19th, did you ever speak to the officers?
15 A. No.
16 Q. This was the first time you ever
17 spoke to them?
18 A. No.
19 Q. They never tried to interview you
20 before?
21 A. No.
22 Q. Prior to the 19th of October, did
23 you ever speak to Sugarbear?
24 A. No.
25 Q. You never spoken to him?

1 A. No.
2 Q. When was the last time you talked
3 to him?
4 A. Four, maybe five months ago.
5 Q. Four or five months ago?
6 A. Three or four.
7 Q. Do you know what month that would
8 be?
9 A. No.
10 Q. Are you a member of the gang,
11 L.A. Crazy?
12 A. No.
13 Q. Are you a member of any gang?
14 A. No.
15 Q. Have you ever been affiliated
16 with any gang?
17 A. Yes.
18 Q. What gang were you affiliated
19 with?
20 A. Sand Chucas.
21 Q. San Chucas? Not the Mura Sava
22 Tuchia, the San Chucas?
23 A. Yes.
24 Q. Is that a local gang in
25 Las Vegas?

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1 A. Yes.
 2 Q. That's an Hispanic gang?
 3 A. Yes.
 4 Q. Are you Hispanic?
 5 A. No.
 6 Q. When you say association, what do
 7 you mean by that?
 8 A. I don't understand.
 9 Q. Well, when you're associated with
 10 the gang, is that different than being a gang
 11 member?
 12 A. Yes.
 13 Q. Okay. Are you a gang member of
 14 the San Chucas, or are you associated with them?
 15 A. I was a gang member.
 16 Q. Okay. The San and the L.A.
 17 Riders have a rivalry; isn't that correct?
 18 A. I guess, yes.
 19 Q. You know that they have a
 20 rivalry?
 21 A. Yes.
 22 Q. The rivalry was heightened in
 23 June of this year; isn't that correct?
 24 A. I don't know.
 25 Q. Did you ever hear of a shooting

1 between a Mura Sava Tuchia and a San Chucas?
 2 MR. COUMO: I'm going to object. I believe
 3 we're going well beyond scope of direct.
 4 MR. SCISCENTO: Well, your Honor, I'm trying
 5 to establish whether or not he has a motive for
 6 wanting Michael Beasley dead and that being a gang
 7 affiliation, and there was --
 8 THE COURT: Overruled.
 9 BY MR. SCISCENTO:
 10 Q. San Chucas and Riders also had a
 11 fight at sometime or had a shooting sometime in
 12 June; isn't that correct?
 13 A. I do not recall. I don't know.
 14 Q. You don't know anything about
 15 that shooting?
 16 A. I don't recall.
 17 Q. Do you know about in July, was
 18 there any heightened rivalry between San Chucas
 19 and the L.A. Riders or any gang called Crazy on
 20 Niggers?
 21 A. Not that I recall.
 22 Q. Do you know the gang called Crazy
 23 on Niggers?
 24 A. I've heard of it.
 25 Q. Court's indulgence for a moment.

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1 You've been arrested for this crime. Have you
 2 ever been arrested for any other felonies?
 3 MR. COUMO: Objection, Judge.
 4 THE COURT: Sustained.
 5 BY MR. SCISCENTO:
 6 Q. Have you ever been convicted of
 7 any other felonies?
 8 A. Yes.
 9 MR. COUMO: Objection. Again, this young man
 10 is under age still.
 11 THE COURT: Overrule the objection. That's
 12 an appropriate question.
 13 BY MR. SCISCENTO:
 14 Q. I'm sorry. How hold are you?
 15 A. 19.
 16 Q. Have you ever been convicted of
 17 any felonies?
 18 MR. COUMO: Judge, can I just object and ask
 19 counsel to keep it within adult, because sometimes
 20 individuals that they, they don't differentiate
 21 between juvenile and adult.
 22 BY MR. SCISCENTO:
 23 Q. From the time of 18-years-old
 24 until today, have you ever been arrested in any
 25 felonies other than the one here?

1 A. No.
 2 Q. I'm sorry. Have you before been
 3 convicted of any felonies since 18?
 4 A. No.
 5 Q. You have no rape convictions or
 6 anything like that?
 7 A. No.
 8 Q. No further -- I'm sorry. I'll
 9 try to be brief on this. What day was it that
 10 Branden purchased the gun from Mac, I think you
 11 said it was, Mac or David?
 12 A. David.
 13 Q. Is David the same as Mac?
 14 A. No.
 15 Q. What day was that, do you recall?
 16 A. I don't recall.
 17 Q. What time was it, do you recall?
 18 A. It was night time.
 19 Q. Where did he purchase that gun,
 20 the physical location, at a house?
 21 A. Branden's house.
 22 Q. Why did you leave Las Vegas for
 23 California after the shooting?
 24 A. Scared and I had a newborn baby.
 25 Q. Why were you scared?

1 A. It was just a hectic situation.
 2 Q. You didn't want to get arrested?
 3 A. Amongst other things.
 4 Q. That's one of the reasons you
 5 left?
 6 A. I assume so.
 7 Q. How about retaliation from the
 8 gang, were you afraid of that?
 9 A. Yes.
 10 Q. That was one of your main
 11 motivations for leaving?
 12 A. Yes.
 13 Q. What kind of cigarettes was Tommy
 14 smoking that night, do you recall?
 15 A. I don't recall.
 16 Q. Okay. When exactly did you leave
 17 Las Vegas for California?
 18 A. After October 16th.
 19 MR. COUMO: Objection, asked and answered. I
 20 think he mentioned two days after.
 21 MR. SCISCENTO: If he can clarify.
 22 THE COURT: Do you recall when you left?
 23 THE WITNESS: I believe it was the 19th.
 24 BY MR. SCISCENTO:
 25 Q. The 19th so a few days, two to

1 three days, four days maybe?
 2 A. Yes.
 3 Q. One last question, what kind of
 4 shoes were you wearing that night?
 5 A. Nikes.
 6 Q. Nike sneakers?
 7 A. Yes.
 8 Q. What brand was it?
 9 A. I don't know.
 10 MR. SCISCENTO: No further questions.
 11 THE COURT: Any redirect?
 12 REDIRECT EXAMINATION
 13 BY MR. COUMO:
 14 Q. Just a touch up point, Judge,
 15 Mr. Deskin, you mentioned this meeting during
 16 Cross-Examination that happened about a couple of
 17 months before Michael was actually killed?
 18 A. Yes.
 19 Q. And there was a question posed if
 20 Michael should be killed?
 21 A. Yes.
 22 Q. Who instigated that, who brought
 23 that up?
 24 A. Branden.
 25 Q. And what was the decision among

1 you buddies?
 2 A. Everyone was unsure and said no.
 3 Q. And why did, why did the
 4 defendant want, why did he even bring that up at
 5 that meeting, if you know?
 6 MR. DUFFY: Objection. Calls for
 7 speculation.
 8 THE COURT: Overruled.
 9 THE WITNESS: I don't recall.
 10 BY MR. COUMO:
 11 Q. Now, you mentioned that there may
 12 a been a girlfriend at the defendant's home, his
 13 home the night when the murder took place?
 14 A. Yes.
 15 Q. What was her name?
 16 A. Colleen.
 17 Q. Do you see her in court today by
 18 chance?
 19 A. Yes.
 20 MR. SCISCENTO: I asked that there was a rule
 21 invoked, exclusionary, and we have potential
 22 witnesses here.
 23 MR. COUMO: I agree with that. I did not
 24 know that she was present, your Honor.
 25 THE COURT: What's her last name?

1 THE WITNESS: I don't know.
 2 BY MR. COUMO:
 3 Q. Do you see her here in court?
 4 A. Yes.
 5 THE COURT: Ma'am, I'm going to order you to
 6 have a seat outside.
 7 MR. SCISCENTO: Your Honor, she is present
 8 here too as well. Given the fact that he
 9 testified that she was present on the day of the
 10 16th for safety sake I would ask her to wait
 11 outside.
 12 MR. DUFFY: We don't plan on calling her
 13 anybody that is here today for a witness but
 14 potentially at trial.
 15 BY MR. COUMO:
 16 Q. I just wanted to make sure we
 17 were clear on that. Now, that there was some
 18 confusion over the statements that were made in
 19 the car right after the murder took place. From
 20 the moment you got back into the car the second
 21 time that the defendant got back into the car was
 22 that he mentioned the fact that nobody better rat?
 23 A. Yes.
 24 Q. Something to that effect?
 25 A. Yes.

1 Q. And he also made, you also
2 mentioned earlier about him making the statement
3 why he killed Michael, correct?
4 A. Yes.
5 Q. From that point on all the way to
6 the point that you dropped him off, was there
7 anything else said?
8 A. Yes.
9 Q. What was that?
10 A. He had, Branden had asked Jotee
11 how did he feel and Jotee replied, okay.
12 Q. What was wrong with Jotee?
13 A. He looked a little shook up.
14 Q. Okay. But it wasn't a party
15 going on in your car on the way home, correct?
16 A. No.
17 Q. On July 16th, did you want
18 Michael dead?
19 A. No.
20 Q. Why were you there then, explain
21 that to the court.
22 A. I don't know.
23 Q. Was it something about the
24 defendant that made you be there?
25 A. Well, I was, I felt kind of

1 intimidated and pressured, and at the time I had
2 owed him money.
3 Q. Owed who money?
4 A. Branden.
5 MR. COUMO: Nothing further, Judge.
6 THE COURT: Any re-cross?
7 RE-CROSS-EXAMINATION
8 BY MR. SCISCENTO:
9 Q. Who was at that meeting, the
10 previous meeting of October 16th that it was
11 discussed, the killing of Michael Beasley?
12 A. Branden, myself, Tommy, Jotee,
13 Donnie Mac.
14 Q. Let me stop you there real
15 quickly. Mac is not the same as Dave, correct?
16 A. That's correct.
17 Q. They are not the same?
18 A. They are not the same.
19 Q. Mac, is that his name, nickname
20 or real name?
21 A. Nickname.
22 Q. Mac is?
23 A. Yes.
24 Q. Do you know his real name?
25 A. I believe it's Madison.

1 Q. And who else was present at that
2 meeting?
3 A. Chris.
4 Q. Was Sugarbear there?
5 A. No.
6 Q. Are you sure?
7 A. Yes, I'm pretty sure.
8 Q. Pretty sure, okay. Who else, was
9 there of those people that you mentioned other
10 than those?
11 A. I believe that was it.
12 MR. SCISCENTO: No further questions, your
13 Honor.
14 MR. COUMO: Nothing further.
15 THE COURT: Thank you, sir.
16 MR. COUMO: State calls Dr. Jordan.
17 THE COURT: Mr. Deskin may be released from
18 his testimony.
19 ROBERT JORDAN,
20 called as a witness, and having been first duly
21 sworn to testify to the truth, the whole truth,
22 and nothing but the truth, was examined and
23 testified as follows:
24 THE CLERK: Please be seated.
25 THE COURT: Before you start, we have two

1 other witnesses. Do you know how long they will
2 be approximately?
3 MR. COUMO: Not long by the State. I don't
4 know how long the Cross-Examination is going to
5 be.
6 MR. SCISCENTO: We stipulated mostly to his
7 expertise. I don't think there is going to be
8 many questions. I will keep it brief, your
9 Honor.
10 THE COURT: I'm not trying to rush anyone. I
11 want to gauge the time.
12 MR. COUMO: I know my questioning of the
13 coroner, I mean there is really not an issue of
14 the cause and manner of death.
15 MR. COUMO: Judge, before I start questioning
16 doctor --
17 THE CLERK: He needs to state his name.
18 DIRECT EXAMINATION
19 BY MR. COUMO:
20 Q. Sir, can you please state your
21 name for the record.
22 A. Dr. Robert Jordan J-o-r-d-a-n.
23 MR. COUMO: Judge, counsel and the State have
24 agreed for preliminary hearing purposes to
25 stipulate to Dr. Jordan's expertise in the field

1 of pathology.

2 MR. SCISCENTO: That is correct for
3 preliminary hearing, your Honor.

4 BY MR. COUMO:

5 Q. Dr. Jordan, good morning.

6 A. Good morning.

7 Q. I'm going to draw your attention
8 to July 18th, 1988. On that day, particular day
9 were you working at the coroner's office?

10 A. Yes, I was.

11 Q. In your capacity as a deputy
12 medical examiner; is that correct?

13 A. That's correct.

14 Q. On that date, sir, did you do an
15 autopsy of an individual by the name of Michael
16 Beasley?

17 A. Yes, sir.

18 Q. And now showing you for
19 identification purposes State's Proposed Exhibit
20 1, which is also being shown to defense counsel,
21 if I may approach, Judge.

22 THE COURT: Yes.

23 BY MR. COUMO:

24 Q. Showing you for identification
25 purposes, do you recognize that individual, sir?

1 A. State's Exhibit No. 1 is a
2 photograph of the decedent, Michael Beasley, upon
3 whom I performed an autopsy and assigned our
4 assessment number 983679.

5 Q. Does that accurately and fairly
6 depict Michael Beasley when you saw him at your
7 place of business, sir?

8 A. It does.

9 MR. COUMO: At this time I move to admit
10 State's Proposed Exhibit 1.

11 MR. SCISCENTO: If I could ask real quick,
12 were you there present when this picture was
13 taken? I withdraw that. I have no objection to
14 that.

15 THE COURT: Well, it will be admitted.

16 By MR. COUMO:

17 Q. Now, Dr. Jordan, in performing an
18 autopsy, did you first do an external examination
19 of Michael Beasley?

20 A. Yes.

21 Q. And in doing so, was there any
22 significant pathology that you discovered in doing
23 the external?

24 A. Yes. The decedent, Michael
25 Beasley, had a number of gunshot wounds which were

1 specifically identified as an entrance wound over
2 the left eye and through-and-through gunshot wound
3 to the chest which came into the back.

4 Q. So you accounted for at least two
5 gunshot wounds?

6 A. Yes, sir.

7 Q. Now, having done this external,
8 was there any other markings on his body other
9 than these two gunshot wounds?

10 A. Nothing of significance.

11 Q. The gunshot wound that you saw on
12 the face, could you determine where it was shot
13 from, the front or the back?

14 A. It was from the front.

15 Q. From the front. Now, Dr. Jordan,
16 after having done the external examination of
17 Michael Beasley, did you then conduct an internal?

18 A. Yes, sir.

19 Q. And having done so, was there any
20 significant pathology that you uncovered?

21 A. Other than the bullet tracks,
22 there was no sign of natural disease in any of the
23 organs. The gunshot wound to the head went
24 through the skull and into the brain shattering as
25 it went through. The gunshot wound to the back

1 penetrated the right lung and the right subclavian
2 artery before it came out of the chest and front.

3 Q. Now, in light of then of your
4 internal and external examination, did you form an
5 opinion as to the cause of Michael Beasley's
6 death?

7 A. In my opinion, Michael Beasley
8 died as a result of gunshot wound to the head and
9 chest.

10 Q. How would you characterize that
11 in the manner?

12 A. In my opinion, Michael Beasley
13 died as a result of a homicide.

14 Q. One point, Doctor, were you able
15 to recover any projectiles?

16 A. I found fragments of bullets
17 within the skull, pieces of jacket and core, but
18 it was too disintegrated to tell much about it.

19 Q. Okay. And did you, in fact, turn
20 that over to any police crime scene analyst over
21 there?

22 A. Yes, sir.

23 Q. You're certainly aware of the
24 stippling effects that happens when gunshots occur
25 close by?

1 A. Yes, sir.
 2 Q. Looking at the bullet wound that
 3 you indicated that went from the back that went
 4 from, went from the back and exited through the
 5 front, did you see any stippling effect from that
 6 gunshot wound?
 7 MR. SCISCENTO: He may know what stippling
 8 effect is. For the record, I would like to have
 9 what stippling effect is put on the record,
 10 because I don't know.
 11 THE COURT: Go ahead.
 12 BY MR. COUMO:
 13 Q. For counsel could you explain
 14 stippling?
 15 A. Stippling or it's synonymic to
 16 tattooing. It's associated close range gunshot
 17 wounds. And what happens is that particles of
 18 powder leave the gun barrel, travel at a high very
 19 velocity, burned and unburned, and strike the skin
 20 causing tiny little tiny hemorrhages within the
 21 skin and burying themselves in the skin and
 22 producing the same phenomenon as artistic
 23 tattooing where you have pigment under the skin.
 24 So you have a hemorrhagic phenomenon caused by
 25 rupture of small vessels producing a pattern.

1 Q. Now, on that gunshot wound to the
 2 back in the back portion of Michael Beasley, did
 3 you see any stippling?
 4 A. None that I saw, no.
 5 Q. Okay. And one of the effects of
 6 stippling would be if the skin was exposed,
 7 correct?
 8 A. That is correct.
 9 Q. If this victim had clothing on,
 10 would stippling still show up on a close range
 11 gunshot?
 12 A. It may or may not. It might
 13 certainly be diminished.
 14 Q. As to the gunshot wound to the
 15 head, was there any signs that you recall that
 16 indicated whether or not it was a close range or a
 17 long range shot?
 18 A. I saw no evidence of close range
 19 distance.
 20 MR. COUMO: Court's indulgence. If I may
 21 have this marked as, I believe, State's Proposed
 22 Exhibit 5. If I may show for the record to
 23 defense counsel State's Proposed Exhibit 5. May I
 24 approach again, Judge.
 25 THE COURT: Yes.

1 BY MR. COUMO:
 2 Q. Doctor, do you recognize again on
 3 State's Proposed Exhibit 5?
 4 A. This is another photograph of the
 5 decedent, Michael Beasley, at the time of autopsy
 6 showing the left side of the head with the gunshot
 7 wound and approximately the mid portion of the
 8 left eyebrow.
 9 Q. And does that accurately and
 10 fairly depict the victim, sir?
 11 A. It does.
 12 MR. COUMO: Judge, at this time I'll move to
 13 admit State's Proposed Exhibit 5.
 14 MR. SCISCENTO: No objection, your Honor.
 15 THE COURT: It will be so admitted.
 16 BY THE COURT:
 17 Q. Now, Dr. Jordan, can you explain
 18 the discoloration of the skin?
 19 A. There is a wide area of
 20 discoloration pail color of a normally black
 21 skin. It looks, it's pattern it's caused by the
 22 superficial layer of the skin peeling off due to
 23 early decomposition.
 24 Q. In that photograph can you
 25 indicate whether or not that could have been a

1 close range shot?
 2 A. Hard to tell. There is no
 3 evidence of stippling whatsoever.
 4 Q. Will stippling show more once
 5 the, if the person him being still alive, or will
 6 it be more profound once if a gunshot wound is
 7 shot into a human body that is not pumping blood
 8 anymore?
 9 A. Wouldn't make any difference.
 10 MR. COUMO: Okay, thank you. Judge, I pass
 11 the witness.
 12 THE COURT: Cross.
 13 CROSS-EXAMINATION
 14 BY MR. SCISCENTO:
 15 Q. Doctor, how many shots did, how
 16 many bullet holes did you see in the body of
 17 Michael Beasley when you examined him?
 18 A. Three.
 19 Q. Where were those three located,
 20 if you recall?
 21 A. One was in about the mid portion
 22 of the left eyebrow. A second was on the right
 23 back, and the third was on the right chest.
 24 Q. When you say right back, his
 25 back, what do you mean by that, so like the

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1 meniscus dorsi, which muscle group would that be?

2 A. Right upper back trapezius, in
3 that area.

4 Q. What was marked as State's
5 Exhibit, if I may approach, State's Exhibit 5,
6 that's the left eyebrow?

7 A. Yes, sir.

8 Q. Okay. And that shows I'm
9 assuming, is that correct, that that shows a
10 bullet hole?

11 A. Yes, sir.

12 Q. Is that an entry wound or exit
13 wound?

14 A. Entry wound.

15 Q. How do you know that?

16 A. The appearance of the underlying
17 skull as well as the fact that there was no
18 corresponding exit for this shot.

19 Q. Okay.

20 A. The underlying skull was bevelled
21 inward which is characteristic of entrance wound.

22 Q. So that's an entrance shown from
23 the front?

24 A. Yes, sir.

25 Q. And was that the cause of death,

1 or do you know which was the cause of death?

2 A. If you were to compare the
3 lethality of a head wound to a chest wound, you
4 would put this one first I suppose.

5 Q. Now, the decomposition of the
6 body tissue, the whiteness around the eyes, you
7 said that was due to what?

8 A. Decomposition.

9 Q. What is that caused by?

10 A. Breakdown of protein which begins
11 immediately after death.

12 Q. Okay. Based on this,
13 decomposition of the body tissue, can you give me
14 exact or approximate time of death?

15 A. No, sir. Depending on the
16 circumstances and environment where the body was
17 found, I would say probably up to 12 hours, 14
18 hours perhaps.

19 Q. So that's just a guess on your
20 part. Did you ever make a statement in your
21 report of cause at time of death?

22 A. No, sir.

23 Q. I'm sorry. For the time of
24 death, I want to make sure I clarify that
25 question. The two other shots that you saw bullet

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1 wounds, there was one to the back and one to the
2 chest?

3 A. Yes, sir.

4 Q. Can you tell me the entrance and
5 exits, were they in the front or back?

6 A. The entrance was on the back, and
7 the exit was on the front.

8 Q. On both shots?

9 A. Well, there were two holes. One
10 is where the bullet went in and the other where
11 the bullet came out.

12 Q. You mentioned that there, maybe I
13 stated it incorrectly. How many shots did this
14 body of Michael Beasley take?

15 A. Two.

16 Q. Okay. But there were three
17 holes?

18 A. That's correct.

19 Q. That's my misunderstanding. So
20 the one shot was from the back going forward from
21 the front?

22 A. Yes.

23 Q. And exiting out of the chest?

24 A. That's correct.

25 Q. What side of, now, I want to make

1 sure I understand this. If I was laying supine on
2 the floor my right hand being the extended, the
3 right and my left being extended left, I'm talking
4 about me as a body, my right side is my right
5 side, right?

6 A. Yes, sir.

7 Q. Let me state this correctly.

8 Now, as you're looking down on him and you say the
9 right side of the body, what do you mean?

10 A. Wherever the right hand is is the
11 right side of the body.

12 Q. When you say the right side of
13 Michael Beasley's, it's his right hand or that
14 right side?

15 A. Yes, sir.

16 Q. So we have that understanding,
17 now on his back with the bullet, where did the
18 bullet go in, from his left or right, was it left
19 side or right side?

20 A. Went in on his right side.

21 Q. Where did it exit out? You said
22 supine.

23 A. Supine means lying on your back.

24 Q. What I want to understand is when
25 you're talking about that how the bodies are?

1 A. Yes, sir.
 2 Q. So, now, if he's standing up
 3 that's still his right-hand side where the bullet
 4 comes in?
 5 A. Yes, sir.
 6 Q. So if he's right-handed, that's
 7 where the bullet is coming from?
 8 A. That's correct.
 9 Q. I want to make sure we understand
 10 that. So the bullet is coming through on his
 11 right side and exiting through the chest, is that
 12 how this happened?
 13 A. Yes, sir.
 14 Q. Okay. And you said about the
 15 trapezius?
 16 A. Yes, sir.
 17 Q. And that being up by the
 18 shoulder?
 19 A. Yes, sir.
 20 Q. Is it near, was it below the
 21 neck?
 22 A. Actually, it was eleven inches
 23 down from the top of the head, which puts it in
 24 the upper back somewhere, probably around the
 25 scapula, upper border of the scapula.

1 Q. And in your examination, could
 2 you determine the range that the bullet was shot
 3 from?
 4 A. No, sir.
 5 Q. Did you examine the clothing?
 6 A. Not in any detail. That is the
 7 function of the crime scene analyst.
 8 Q. What do you consider close range
 9 of firing a bullet?
 10 A. Oh, anywhere from 12 to 24, 25
 11 inches.
 12 Q. 12 to 25 inches, so about two and
 13 a half inches away?
 14 A. Yes, sir.
 15 Q. Is what you figure two feet,
 16 anything beyond that is not considered close
 17 range?
 18 A. That would be considered distant.
 19 Q. And then in your physical
 20 examination of this body, did you come up with a
 21 determination if this was a close range shooting
 22 or distal shooting?
 23 A. Distant. Both shots to me were
 24 distant shots.
 25 Q. And that being more than two feet

1 away?
 2 A. Yes, sir.
 3 Q. Okay. Can you, upon examination
 4 of a body do you know the angle of the bullet
 5 coming in and exiting?
 6 A. Yes, sir.
 7 Q. And what was that angle?
 8 A. May I refer to my record?
 9 Q. You may. I'm talking about the
 10 one on the chest, the one on the back not the head
 11 wound.
 12 A. According to my record, I state
 13 that a bullet entered the back traveling from back
 14 to front in a straight line. So it went neither
 15 left nor right but traveled in a straight line
 16 from the skin of the back to the skin of the
 17 chest.
 18 MR. SCISCENTO: I have no further questions.
 19 MR. COUMO: None by the State, Judge.
 20 THE COURT: Thank you.
 21 MR. COUMO: State calls Crystal Bradley.
 22 CRYSTAL BRADLEY,
 23 called as a witness, and having been first duly
 24 sworn to testify to the truth, the whole truth,
 25 and nothing but the truth, was examined and

1 testified as follows:
 2 THE CLERK: Please be seated. State your
 3 full name and spell your last name, please.
 4 THE WITNESS: Crystal Bradley,
 5 B-r-a-d-l-e-y.
 6 THE CLERK: How do you spell Crystal?
 7 THE WITNESS: C-r-y-s-t-a-l.
 8 DIRECT EXAMINATION
 9 BY MR. COUMO:
 10 Q. Ms. Bradley, do you know somebody
 11 that is sitting here in court today?
 12 A. Yes.
 13 Q. And who is that?
 14 A. Branden.
 15 Q. And can you point to him so the
 16 judge knows who you are talking about.
 17 A. (Witness complies.)
 18 MR. COUMO: If the record could identify
 19 she's identified the defendant.
 20 THE COURT: What is he wearing?
 21 THE WITNESS: Prison garment.
 22 THE COURT: Record so reflect.
 23 BY MR. COUMO:
 24 Q. What relationship do you have
 25 with the defendant, Branden?

1 A. He was just a friend.
 2 Q. Okay. And I'm going to take you
 3 back to the latter part of July around July 17th,
 4 1998. Were you talking on the telephone with a
 5 female friend of yours?
 6 A. Uh-huh.
 7 Q. Who was that?
 8 A. Tanisha.
 9 Q. And what relationship is Tanisha,
 10 do you know?
 11 A. Just a friend.
 12 Q. Who is Tanisha dating?
 13 A. She was dating the deceased.
 14 Q. Michael Beasley?
 15 A. Uh-huh.
 16 THE COURT: Is that a yes, ma'am?
 17 THE WITNESS: Yes.
 18 BY MR. COUMO:
 19 Q. And while you were on the
 20 telephone, do you have a, like a three-way call or
 21 can somebody call into you?
 22 A. Yes.
 23 Q. And did somebody call you while
 24 you were on the telephone?
 25 A. No.

1 Q. On that date though while you
 2 were talking to Tanisha, did you happen to get in
 3 the telephone conversation with Branden?
 4 A. Yes.
 5 Q. How did that happen?
 6 A. We called him.
 7 Q. You called him?
 8 A. Uh-huh.
 9 Q. Why did you call him?
 10 A. Me and Tanisha had been gossiping
 11 about with Michael and we called Branden to keep
 12 gossiping.
 13 Q. And what gossip was being talked
 14 about Michael?
 15 A. About how he was going around
 16 saying certain things about the gang and
 17 everything.
 18 Q. Okay. What gang was that?
 19 A. The L.A. Riders.
 20 Q. Was he bad-mouthing the gang or?
 21 A. Basically.
 22 Q. Okay. Now, when you called
 23 Branden here what happened, what was said?
 24 MR. SCISCENTO: Your Honor, I don't know if
 25 she said that she called. She said we called, and

1 I think there might be a question as to whether or
 2 not she placed the phone call.
 3 THE COURT: Clarify that.
 4 BY MR. COUMO:
 5 Q. Who exactly called?
 6 A. We did.
 7 Q. So, now, when you called him did
 8 you call him at the number that you know he lives
 9 at?
 10 A. Yes.
 11 Q. And you've called him before?
 12 A. Yes.
 13 Q. And you've known him for how
 14 long?
 15 A. About a year and a half, almost
 16 two years.
 17 Q. Okay. You recognized his voice
 18 when he answered the phone or was on the phone?
 19 A. Yes.
 20 Q. And what exactly happened when
 21 you got him on the telephone?
 22 A. At first we were all talking and
 23 then he said, well, I need to talk to you by
 24 yourself. So I got Tanisha off the phone.
 25 Q. And what happened then?

1 A. He went through the whole
 2 scenario about what happened.
 3 Q. Okay. Did you know what he was
 4 going to tell you beforehand?
 5 A. No, I didn't.
 6 Q. Tell the judge what the defendant
 7 told you.
 8 MR. DUFFY: Objection, your Honor, hearsay.
 9 MR. COUMO: Well, judge --
 10 THE COURT: Overruled.
 11 BY MR. COUMO:
 12 Q. Okay, thanks.
 13 A. He said the police are looking
 14 for droop. That's what he called him. And I said
 15 what did he do now, what you mean. He said, no, I
 16 shot him. They looking for him in the desert.
 17 And I said, well, what you mean, what happened,
 18 and he went through and told how it was him and
 19 then the three other boys, and they took him to
 20 the desert and everything.
 21 Q. Okay. Did he explain why he shot
 22 him, why he shot Michael?
 23 A. He felt he was taking his clout,
 24 so to say, as far as taking his place in the
 25 gang.

1 Q. Did he tell you exactly how it
2 went down or?
3 A. Yes.
4 Q. And how exactly, what exactly did
5 he tell you?
6 A. He said that they went to
7 Michael's house and told him that they were going
8 to go shoot a gun that he had just got, because he
9 had never shot it before. He said Michael didn't
10 want to leave at first because he had his newborn
11 baby with him, but ended up going anyway, and that
12 they all drove up to the desert, wherever it
13 was. And when they first got out he said that it
14 seemed as if Michael knew what was going to
15 happen, because he kept his distance. So they got
16 in the car again and drove up some more, got back
17 out and I guess his back was towards him, because
18 he said that he shot him once and he grabbed his
19 neck. Michael grabbed his neck and fell to his
20 knees. He shot him the second time. Then they
21 got in the car and the other three boys were
22 wanting him to pick up the shells, pick up the
23 shells, because their fingerprints were on them.
24 He said forget the shells, I'm going to go back
25 and make sure he's dead and shot him a third time

1 and left.
2 Q. This was because the defendant
3 thought Michael was taking his clout?
4 A. Yes.
5 Q. Now, are you aware of somebody by
6 the name of Sugarbear?
7 A. Yes.
8 Q. You wouldn't know what his real
9 name is?
10 A. Damian something.
11 Q. Do you know if Damian was with
12 this group at the time?
13 A. Not at the time. He was in
14 California.
15 Q. How do you know he was in
16 California?
17 A. Because he always goes to
18 California, and I had talked to him later on after
19 all of this had happened.
20 Q. And you learned that he was in
21 California?
22 A. Yes.
23 Q. So there was really the five of
24 them that went up there and only four came back?
25 A. Yes.

1 Q. Did he tell you what kind of gun
2 he used?
3 A. No. He said he told them he went
4 up there to shoot a gun, because he had just got
5 it.
6 MR. COUMO: Judge, I'll pass the witness,
7 thank you.
8 THE COURT: Cross.
9 CROSS-EXAMINATION
10 BY MR. DUFFY.
11 Q. Ms. Bradley, you testified that
12 you were on a telephone conversation with Tanisha
13 Banks on July 17th, correct?
14 A. Yes.
15 Q. Okay. Did you call Tanisha or
16 did she call you?
17 A. I can't remember exactly, because
18 we talked very often.
19 Q. Were you at your house?
20 A. Yes, I was.
21 Q. Do you recall what time of day
22 this was, this phone conversation was?
23 A. It was sometime in the morning.
24 I know it was before about 12:00, 1:00 o'clock.
25 Q. And do you remember the specific

1 date we're talking about?
2 A. No. I can't recall the exact
3 date.
4 Q. Okay. So do you remember what
5 day of the week it was?
6 A. No, I don't. I know it was a
7 weekday.
8 Q. It was a weekday?
9 A. Yes, it was.
10 Q. So you were talking with Crystal?
11 A. I'm crystal.
12 Q. I'm sorry. You were talking with
13 Tanisha, my apologies, and you were gossiping
14 about?
15 A. Branden, I mean Michael.
16 Q. Michael?
17 A. Yes.
18 Q. And Michael had been bad-mouthing
19 the gang basically?
20 A. Yes.
21 Q. And that's L.A. Crazy Riders?
22 A. Yes.
23 Q. Had Michael said something to you
24 about L.A. Crazy Riders?
25 A. No.

1 Q. Had Michael said something to
2 Tanisha as far as you know?
3 A. No. It wasn't to Tanisha. It
4 was to somebody that knew Tanisha.
5 Q. And that's what you guys were
6 talking about, Tanisha told you. Whose idea was
7 it to call Branden?
8 A. Mine.
9 Q. And why were you doing that?
10 A. Because he kept in touch with
11 us. We just periodically called to make sure how,
12 hi, I'm alive, whatever.
13 Q. And Tanisha wanted to talk to
14 Branden too?
15 A. Yes.
16 Q. You're all friends?
17 A. Yes.
18 Q. How long were you talking to
19 Tanisha before you three-way'd Michael or Branden
20 in?
21 A. I'll say maybe 15, 20 minutes.
22 Q. And when you three-way'd Branden
23 in, how long were all three of you on the phone
24 together?
25 A. Maybe five minutes.

1 Q. And during that whole time the
2 conversation was just around Michael, or did you
3 talk about some other things?
4 A. No, just Michael.
5 Q. And then Tanisha got off and you
6 and Branden talked?
7 A. Yes.
8 Q. And how long did you and Branden
9 just talk?
10 A. For about 10, 15 minutes.
11 Q. You got off the phone with him?
12 A. Yes.
13 Q. Did you call Tanisha back?
14 A. Yes.
15 Q. How long between the time you got
16 off the phone with Branden did it take before you
17 called Tanisha?
18 A. About five minutes, not even five
19 minutes.
20 Q. Did you do something in that five
21 minutes?
22 A. I went to the bathroom.
23 Q. Okay. You just stayed in your
24 house?
25 A. Yes.

1 Q. And then you call Tanisha back?
2 A. Yes.
3 Q. And you testified that when you
4 and Branden were on the phone alone Branden told
5 you that they went up shooting?
6 A. Uh-huh.
7 Q. Did he tell you when this
8 happened?
9 A. He said the night before.
10 Q. The night before your phone
11 conversation?
12 A. Uh-huh.
13 Q. And he told you that Tommy was
14 with him?
15 A. Yes.
16 Q. And Tommy's brother?
17 A. Yes.
18 Q. And his name is?
19 A. Jotce.
20 Q. And who else was with him?
21 A. A person by the name of
22 Woodpecker that we go by.
23 Q. You don't know what Woodpecker's
24 name was?
25 A. I think it was Jeremy, but they

1 keep referring to him as Jehrimiah.
2 Q. Who is they?
3 A. The counselor.
4 Q. Have you talked to somebody about
5 testifying today?
6 A. Not exactly, no. They just said
7 to be truthful about what I say.
8 Q. You talked to a counselor
9 outside?
10 A. Not a counsel, the lady who
11 brought him. She's with the D.A.'s office.
12 Q. You said something about a
13 counselor, is that what you meant?
14 A. Yes.
15 Q. You meant some lady from the
16 D.A.'s office?
17 A. Yeah.
18 Q. Did she or anyone else tell you
19 what to say today?
20 A. No, not at all.
21 Q. So you testified Branden told you
22 that he went with Woodpecker, Jotce and Tommy to
23 pick up Michael that night?
24 A. Yes.
25 Q. That he was actually in the car

1 and went up over there?
 2 A. Yes.
 3 Q. And did he tell you from there
 4 they went back to Branden's house?
 5 A. No.
 6 Q. He told you they went straight up
 7 to the desert?
 8 A. Yes.
 9 Q. Do you know the area that he was
 10 describing that they took Michael too?
 11 A. Not when he was telling me. I
 12 didn't know the exact desert until it was on the
 13 news.
 14 Q. So but today as we sit here, you
 15 know where the area is?
 16 A. Yes.
 17 Q. Have you ever been up there?
 18 A. Yes.
 19 Q. Who did you go up there with?
 20 A. I've driven up there. I haven't
 21 been in that desert. I know where it was from
 22 driving there that area.
 23 Q. So you haven't been to that
 24 specific spot?
 25 A. No.

1 Q. But you have friends that live
 2 close to that?
 3 A. Yes.
 4 Q. Have you ever been up there with
 5 Sugarbear?
 6 A. No.
 7 Q. And you also testified that
 8 Branden told you that the -- strike that.
 9 Branden told you they were in
 10 Woodpecker's car?
 11 A. Yes.
 12 Q. Are you familiar with
 13 Woodpecker's car?
 14 A. No. I've only seen it once, and
 15 I know it's just a dark-colored car.
 16 Q. Is it big or small?
 17 A. It's big I guess. It's not --
 18 Q. Have you ever ridden in it?
 19 A. No.
 20 Q. And you testified that Branden
 21 told you that they stopped once on the way up?
 22 A. No. At the desert, they got
 23 there. He said that they stopped, and when they
 24 got out he said he could tell that droop knew
 25 something was going to happen. So they got back

1 in the car and drove up in the desert some more.
 2 Q. Did he tell you that everyone got
 3 out of the car the first time?
 4 A. He didn't specify. He said they
 5 drove up in the desert somewhere.
 6 Q. Somebody got out?
 7 A. Yes.
 8 Q. And that Michael was suspicious
 9 or uncomfortable?
 10 A. Uh-huh.
 11 Q. So they got back in, they drove
 12 further, is that what he told you?
 13 A. Yes.
 14 Q. Did he tell you how much further?
 15 A. No.
 16 Q. How much time?
 17 A. No.
 18 Q. At that time he said when they
 19 stopped the second time, what did he tell you
 20 happened?
 21 A. He said that they got out and
 22 Michael's back was toward them. So he shot him,
 23 he pointed the gun and shot him.
 24 Q. Did he tell you how close or far
 25 away he was from Michael?

1 A. No.
 2 Q. Did he give you any other
 3 details?
 4 A. No.
 5 Q. Did he tell you who was out of
 6 the car at the time?
 7 A. No.
 8 Q. Meaning who, meaning Tommy?
 9 A. Yeah, no.
 10 Q. Or anyone else. And he told you
 11 that he shot him how many times?
 12 A. He said when they got out and his
 13 back was towards him he shot him, and I guess he
 14 hit the neck, because he said he grabbed his
 15 neck. He said he shot him one more time. They
 16 got in the car and they were wanting him to get
 17 the shells. He got out again and shot him a third
 18 time.
 19 Q. You weren't up there during this
 20 time at all, were you?
 21 A. No.
 22 Q. And you never went up there
 23 afterward?
 24 A. No.
 25 Q. So you don't have any personal

1 knowledge of what occurred?
 2 A. No.
 3 Q. Up there?
 4 A. No.
 5 Q. Just what you've been told?
 6 A. Yes.
 7 Q. You said since this happened you
 8 talked to Damian?
 9 A. Yes.
 10 Q. Is that right, Damian is
 11 Sugarbear?
 12 A. Yes.
 13 Q. And you said Damian is in
 14 California a lot?
 15 A. Yes, he is.
 16 Q. Does he live in California?
 17 A. No.
 18 Q. He lives --
 19 A. Not that I know of.
 20 Q. He lives in Las Vegas?
 21 A. Yes.
 22 Q. Do you have a phone number for
 23 Damian in California?
 24 A. No, I don't.
 25 Q. So he must have called you?

1 A. No. I don't even have his number
 2 to where he is now. I talk to him through my
 3 brother.
 4 Q. Okay. I guess I'm not following
 5 you. I was under the impression that you
 6 testified that you talked to Sugarbear on the
 7 phone?
 8 A. I did.
 9 Q. How did you do that through your
 10 brother?
 11 A. I called my brother and my
 12 brother called him. He has his number, I don't.
 13 Q. So you three-way'd your brother?
 14 A. Yes.
 15 Q. And you're assuming that
 16 Sugarbear was in California when you were speaking
 17 with him on the phone?
 18 A. No. He was out here when I
 19 talked to him. This was after the fact.
 20 Q. So he was in Las Vegas when you
 21 talked to him on the phone?
 22 A. Yes.
 23 Q. And when, to the best of your
 24 recollection, did that phone conversation occur?
 25 A. I'd say maybe three weeks after I

1 knew about this.
 2 Q. Had you talked to Sugarbear at
 3 all before that three weeks?
 4 A. No.
 5 Q. When was the last time before
 6 that phone conversation you had ever seen and/or
 7 spoken with Sugarbear?
 8 A. About a year.
 9 Q. It had been that long?
 10 A. Yes.
 11 Q. Have you spoken with Sugarbear
 12 since that telephone conversation?
 13 A. No, I have not.
 14 Q. Have you seen him?
 15 A. No, I haven't.
 16 Q. When you spoke with Sugarbear,
 17 did he know about this, did he seem to know about
 18 this whole event?
 19 A. He knew that his friend had died,
 20 but he said he didn't think that what Branden was
 21 telling him as far as other people as far as
 22 Michael leaving with other people was true. He
 23 was suspicious about that. He didn't know exactly
 24 what was going on.
 25 Q. So Sugarbear didn't tell you that

1 he had killed Michael?
 2 A. No.
 3 MR. DUFFY: Court's indulgence, your Honor.
 4 Nothing further, your Honor.
 5 THE COURT: Any redirect?
 6 REDIRECT EXAMINATION
 7 BY MR. COUMO:
 8 Q. Just one quick question, Judge.
 9 You know how people are happy, you can hear it in
 10 this tone of voice, when they're sad you can also
 11 hear it, when the defendant, Branden, over here
 12 was confessing to killing Michael, what was his
 13 tone of voice like?
 14 A. He wasn't happy or sad. He was
 15 just talking.
 16 Q. Kind of matter of fact?
 17 A. (Witness shakes head.)
 18 MR. COUMO: Thank you.
 19 RE-CROSS-EXAMINATION
 20 BY MR. SCISCENTO:
 21 Q. Do you think he was telling you
 22 the truth, Branden telling you the truth when he
 23 told you this?
 24 A. Yes.
 25 Q. Do you think he was testing you

1 to see if you would tell anybody?
 2 A. No.
 3 Q. You don't think that?
 4 A. No.
 5 MR. SCISCENTO: No further questions.
 6 THE COURT: You're excused.
 7 MR. COUMO: Can we approach?
 8 (Bench side conference.)
 9
 10 JAMES BUCZEK,
 11 called as a witness, and having been first duly
 12 sworn to testify to the truth, the whole truth,
 13 and nothing but the truth, was examined and
 14 testified as follows:
 15 THE CLERK: Please be seated. State your
 16 full name, spell your last name, please.
 17 THE WITNESS: My name is James Buczek,
 18 B-u-c-z-e-k.
 19 THE CLERK: Thank you.
 20 DIRECT EXAMINATION
 21 BY MR. COUMO:
 22 Q. Sir, how are you employed?
 23 A. With the Las Vegas Metropolitan
 24 Police Department.
 25 Q. And your duties are?

1 A. Homicide investigator.
 2 Q. Sir, I'm going to draw your
 3 attention to July 17th, 1998. Did you investigate
 4 a crime that occurred out in the desert area west
 5 of Alexander Road?
 6 A. Yes, I did.
 7 Q. And on that particular date did
 8 you actually go to the scene?
 9 A. Yes, I did.
 10 Q. Could you describe the scene as
 11 you saw it?
 12 A. The scene was way out. It was
 13 out 2.1 miles northwest of Alexander and Jensen in
 14 the desert. It was an unpopulated area. There
 15 was a very large in diameter pole that was out in
 16 that area, and it was, there was also kind of like
 17 a cliff area, and it was obviously used by people
 18 to go out and shoot their guns. And there was
 19 some junk out there that had been shot up.
 20 Q. Was there any signs that a
 21 homicide had occurred at that location?
 22 A. Yes, there was.
 23 Q. And what was that?
 24 A. It was a dead body of a black
 25 male adult that had gunshot wounds.

1 MR. COUMO: Judge, for the record, reflect
 2 I'm showing defense counsel State's Proposed
 3 Exhibit 2 and 3. May I approach?
 4 THE COURT: Yes.
 5 BY MR. COUMO:
 6 Q. Showing you State's Exhibit
 7 Proposed 2 and 3, and if you can look at them and
 8 recognize what you see, sir?
 9 A. Yes, I do.
 10 Q. What is that?
 11 A. This is the body of the victim
 12 that was located out at the scene.
 13 Q. Does it accurately and fairly
 14 depict the scene when you arrived at the scene?
 15 A. Yes.
 16 MR. COUMO: Move to admit State's 2 and 3.
 17 MR. SCISCENTO: No objection.
 18 THE COURT: It will be admitted.
 19 BY MR. COUMO:
 20 Q. Now, Detective, in investigating
 21 this crime, how did you or do you start to develop
 22 a suspect?
 23 A. I received a telephone call from
 24 Banks.
 25 Q. Tanisha Banks?

1 A. Yes. I received a telephone call
 2 from her, and she had told me that she was having
 3 a three-way telephone conversation with Crystal
 4 Bradley and also a Branden Nasby who she
 5 identified as Blue. She said during the
 6 conversation Branden had said that Blue wanted or
 7 that Michael Beasley wanted to be jumped out of
 8 the gang, and that he was arranging to have it
 9 done. She also said that, she said that Michael
 10 had dropped the baby off that morning. And she
 11 said that Branden sounded very surprised as to him
 12 dropping the baby off, and then he then said
 13 Crystal, I need to talk to you alone and Tanisha
 14 hung up on the three-way conversation. She said
 15 shortly thereafter she received a telephone call
 16 from Crystal, and Crystal said that Branden --
 17 MR. SCISCENTO: Your Honor, I'm going to
 18 object as hearsay now, anything that Branden tells
 19 Tanisha.
 20 THE COURT: Objection, sustained.
 21 BY MR. COUMO:
 22 Q. In all that information that you
 23 gathered, did you verify the information that
 24 Tanisha Banks gave you?
 25 A. Yes, I did.

1 Q. And in speaking with other
2 witnesses, did you develop then your suspect in
3 this case?
4 A. Yes.
5 Q. So I'll ask who was that suspect?
6 A. The suspect was Branden Nasby.
7 Q. Now, in determining Branden Nasby
8 as your suspect, sir, did you do anything as to
9 his home?
10 A. Yes. We, I had a search drew up,
11 a search warrant and had it signed by a judge, and
12 we went over to his house and executed it over off
13 of Switchblade.
14 Q. Switchback maybe?
15 A. Switchback, I'm sorry.
16 Q. Is that located at 4509
17 Switchback?
18 A. Yes.
19 Q. That's in the city limits of
20 North Las Vegas?
21 A. That's correct.
22 Q. What did you specifically do when
23 you went there?
24 A. I took custody of Mr. Nasby and
25 placed him under arrest. I advised him of his

1 rights, and at that point we were getting ready to
2 leave the house.
3 Q. Let me stop you for a second. Do
4 you see Mr. Nasby here today?
5 A. Yes, I do.
6 Q. Can you please point to him and
7 tell me what he's wearing today?
8 A. He's seated besides defense
9 counsel. He's wearing a blue jail marked CCDC on
10 it.
11 MR. COUMO: Judge, record reflect witness has
12 identified the defendant.
13 THE COURT: Yes.
14 BY MR. COUMO:
15 Q. Now, you were indicating that you
16 were getting ready to take the defendant away?
17 A. That's correct.
18 Q. Who was doing the search warrant?
19 A. There was Sergeant Ken Hefner and
20 Detective Thowsen and Detective Duane Morgan, and
21 I believe Detective Tom Moren was also there.
22 Q. And your specific duty was to do
23 what?
24 A. My specific duty was to have
25 contact with Branden Nasby and to interview him if

1 he chose to be interviewed.
2 Q. Was he under arrest at that time?
3 A. Yes, he was.
4 Q. Did you wish to speak do Branden
5 Nasby?
6 A. Yes, I did.
7 Q. And prior to speaking to him, did
8 you read him anything or tell him anything?
9 A. Yes, I did. I read him his
10 rights per Miranda.
11 Q. Did you read them off of a card
12 or memory?
13 A. Off the card.
14 Q. Did he indicate that he
15 understood the rights?
16 A. Yes, he did.
17 MR. COUMO: The court doesn't need to hear
18 the rights.
19 MR. DUFFY: We'll stipulate.
20 BY MR. COUMO:
21 Q. He indicated, once he indicated
22 he understood those rights, did he say he wished
23 to talk to you?
24 A. Excuse me. Yes, he did. He did
25 say that he wanted to talk to me.

1 Q. Now, did you start asking him
2 questions as to -- or what did he say, how did the
3 conversation take place?
4 A. Well, we had got him into the car
5 and he wanted to know what he was under arrest
6 for. And I explained it to him, and he said that
7 was my homey. We started driving. We were
8 driving away, and we were talking about the gun
9 that was used in the murder, and he says I have a
10 25 automatic that is over at my cousin's house.
11 And I said who is your cousin. He says it's
12 T-bone, and I then kept on saying, you know,
13 things are going to be difficult on your mom with
14 the police there. They are going to be searching
15 the house. I said the best thing is if you have a
16 gun, just let me know. He said okay. He says
17 let's go back to the house. I'll show you where
18 it is, so I immediately turned around.
19 Q. Prior to that, did he bring up on
20 his own any other gun?
21 MR. SCISCENTO: Object as leading, your
22 Honor.
23 MR. COUMO: It's not because I'm not
24 suggesting any answer.
25 THE COURT: Objection, overruled.

1 BY MR. COUMO:
 2 Q. Prior to him saying turn back
 3 let's go when he was talking about the 25
 4 automatic, did he mention any other guns?
 5 A. Yeah. He said the nine
 6 millimeter wasn't there.
 7 Q. Had you mentioned that a nine
 8 millimeter was used?
 9 A. No.
 10 Q. Now, you indicated now you're
 11 turning around because he was going to show you
 12 where the gun was?
 13 A. That's correct.
 14 Q. Okay. And tell the Judge exactly
 15 what happened then.
 16 A. We then went back to the house,
 17 and he led us up to his room and said that the gun
 18 was located in the back underneath his bed. And
 19 at that point I think it was Sergeant Hefner
 20 located a bag, and there was that gun along with
 21 two other guns.
 22 Q. Do you recall what color this bag
 23 was in his room?
 24 A. I believe it was blue.
 25 Q. Did you actually see the gun?

1 A. No, I did not.
 2 Q. But did you actually see the bag
 3 it was in?
 4 A. Yes.
 5 Q. And you saw the room?
 6 A. Yes, I did.
 7 Q. Now, and to your knowledge, was
 8 there, in fact, a nine millimeter?
 9 A. Yes, there was.
 10 Q. Was there anything else
 11 discovered?
 12 A. There was I believe a shotgun and
 13 a rifle.
 14 Q. Now, the defendant during the
 15 conversation with him, did he mention anything as
 16 to how he obtained the nine millimeter, or did you
 17 ask him?
 18 A. Yes. He said that he had
 19 purchased the nine millimeter from an individual
 20 by the name of Sugarbear, and he said he bought it
 21 after the murder of Michael Beasley.
 22 Q. Did he mention anything about
 23 that particular gun, if he had possessed it prior
 24 to, prior to the murder?
 25 A. Yes. He said that he had handled

1 it before.
 2 Q. Do you know why he would say
 3 that?
 4 A. No, I don't.
 5 Q. But his story is that he
 6 purchased the weapons after the murder from
 7 Sugarbear?
 8 A. Yes, that's correct.
 9 Q. Okay. Detective Buczek, did he
 10 indicate to you as to who may have killed, did you
 11 ask him if he killed Michael Beasley?
 12 A. Yes, I did.
 13 Q. And what was his response?
 14 A. He said no, Sugarbear had.
 15 Q. That Sugarbear did it?
 16 A. That's correct.
 17 Q. Did he bring up during the
 18 conversation with you Tanisha Banks at all?
 19 A. Yes. And he also said that she
 20 had Michael Beasley killed.
 21 MR. COUMO: Okay. Court's indulgence. I'm
 22 going to show you State's Proposed Exhibit 4.
 23 Here, counsel, you've probably seen it.
 24 MR. SCISCENTO: Yeah.
 25 ///

1 BY MR. COUMO:
 2 Q. Look at that exhibit and see if
 3 you recognize the surrounding area including the
 4 bag.
 5 A. It appears to be the bedroom area
 6 of Michael, of I mean of Branden.
 7 Q. And the bag that these weapons
 8 are in, does that appear to be the bag that you
 9 saw being removed from underneath the bed?
 10 A. I believe so, yes.
 11 Q. You're familiar with weapons
 12 obviously in your line of work, correct?
 13 A. Yes.
 14 Q. Are you familiar with a Browning
 15 nine millimeter?
 16 A. Yes.
 17 Q. Look at those weapons or weapon.
 18 Do you recognize what could be a Browning nine
 19 millimeter?
 20 A. That's a semiautomatic handgun,
 21 and it appears as though it could be a nine.
 22 MR. COUMO: I will offer State's Proposed
 23 Exhibit 4.
 24 MR. SCISCENTO: I still object. We haven't
 25 specifically stated that that gun was found in

1 that bag at that house. The officer testified
2 that that looks like the room. It looks like the
3 bag, but still hasn't testified that that was
4 actually the gun found inside the bag. We don't
5 know if it was placed on the person who actually
6 took that picture or recovered that gun.
7 MR. COUMO: Judge?
8 THE COURT: Hang on just a second. Officer,
9 were you present when the blue bag was opened up?
10 THE WITNESS: Yes, I was.
11 THE COURT: Okay.
12 MR. SCISCENTO: Your Honor, he stated he
13 wasn't there. He didn't see the gun earlier. He
14 never saw the gun uncovered.
15 THE WITNESS: I didn't see the gun, but it
16 was opened up when I was there.
17 THE COURT: You were present when the bag was
18 opened, but at that time did you see any weapons
19 inside the bag?
20 THE WITNESS: I didn't look inside, no. I
21 was with Mr. Nasby.
22 THE COURT: I'm going to exclude State's
23 Number 4.
24 MR. COUMO: Can I be heard real briefly
25 again?

1 THE COURT: Sure.
2 MR. COUMO: On the chain of custody or to be
3 able to present this and have it admitted is not
4 great. We have witnesses who testified from two
5 people now that a nine millimeter was used. The
6 defendant on his own testimony to Detective Buczek
7 brings out the fact about nine millimeter, and, in
8 fact, leads him to the weapon. We know that the
9 victim was killed by a nine millimeter weapon, and
10 it just goes towards probable cause, and that's
11 what we're here for.
12 THE COURT: The testimony is in. Okay. This
13 officer did not see the gun in the bag, and you're
14 asking him to authenticate.
15 MR. COUMO: But he also pointed out that he
16 recognizes the bag, and he also recognizes the
17 bedroom area, and we also know from Jehrimiah
18 Deskin it appears bc, the surrounding area appears
19 to be the bedroom of the defendant.
20 THE COURT: The key here is the alleged
21 murder weapon, and this officer, if I recall, did
22 not testify that he saw this gun in the bag.
23 MR. COUMO: I won't press it any further.
24 THE COURT: His testimony is in about the
25 nine millimeter. I'm saying from the photograph.

1 MR. COUMO: That's fine. Pass the witness.
2 CROSS-EXAMINATION
3 BY MR. SCISCENTO:
4 Q. Buczek?
5 A. That's correct.
6 Q. Buczek, Detective Buczek is it?
7 A. Yes, it is.
8 Q. Detective Buczek, when did you
9 first come on the scene which we'll consider the
10 murder scene where Michael Beasley's body was
11 found, when did you first come there?
12 A. It was approximately around 9:00,
13 10:00 in the morning.
14 Q. And that being on July 17th?
15 A. That's correct.
16 Q. Were you the first to arrive at
17 that scene?
18 A. No, I was not.
19 Q. Were there other officers there?
20 A. Yes.
21 Q. Do you know how many other
22 officers were there?
23 A. Not offhand.
24 Q. Was it cornered off, was it roped
25 off that area?

1 A. That I don't recall.
2 Q. Okay. Who was in charge when
3 you, who was in charge of that murder scene?
4 A. When I arrived Sergeant Hefner
5 who is my supervisor.
6 Q. You didn't relieve him and then
7 you became in charge?
8 A. He's my supervisor. He's pretty
9 much in charge. He runs the show there, and I do
10 the investigation.
11 Q. So he was in charge of the murder
12 scene, and then you were investigating it?
13 A. That's correct.
14 Q. What was your part in the
15 investigation of that murder scene?
16 A. My, of that murder scene?
17 Q. Right, yeah, that area?
18 A. Nothing.
19 Q. You didn't look around or
20 anything?
21 A. I looked around, but I, but to
22 investigate the murder scene itself, that was my
23 partner Thowsen. He handled the murder scene. I
24 handled the interviews of witnesses.
25 Q. Okay. So at that area then you

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1 don't know how many, well, do you know how many
 2 casings, let me see if I have this right. A
 3 casing is part of the bullet that holds the gun
 4 powder but not the projective?
 5 A. I observed three shell casings
 6 there at the scene.
 7 Q. That's my understanding of shell
 8 casings. You observed three shell casings?
 9 A. Three what appeared to be fresh
 10 shell casings. There were other shell cases
 11 there. There was three in the vicinity of the
 12 body.
 13 Q. How many shell casings did you
 14 see around there, hundreds?
 15 A. Yes, sure.
 16 Q. Maybe?
 17 A. Sure.
 18 Q. Do you know how long any of those
 19 shell casings had been there?
 20 A. No.
 21 Q. As you were driving, now, you
 22 went to Branden Nasby's house, did you have an
 23 arrest warrant at that time?
 24 A. No, I did not.
 25 Q. Why did you arrest him at that

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1 time when you got to his house?
 2 A. I felt I had, I had enough
 3 probable cause to do so.
 4 Q. When you went to his house that's
 5 when you developed the probable cause?
 6 A. No.
 7 Q. When did you develop that
 8 probable cause?
 9 A. Prior to his arrest.
 10 Q. So you're driving to his house to
 11 do the search warrant?
 12 A. Yes.
 13 Q. But you don't have in your mind
 14 probable cause to arrest Branden Nasby?
 15 A. No, you're incorrect. I did have
 16 probable cause driving to his house to arrest him.
 17 Q. So probable cause was developed
 18 prior to you driving out there?
 19 A. That's what I said.
 20 Q. I'm not sure if you said that.
 21 Prior to driving out there then, you had probable
 22 cause to arrest him, one of your purposes in going
 23 out there was to perform the search and to arrest
 24 Branden Nasby?
 25 A. That's correct.

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1 Q. So you developed probable cause
 2 prior to leaving the station and going out there,
 3 driving out there?
 4 A. That's correct.
 5 Q. Okay. And then you picked up
 6 Branden Nasby and you drove him back, and your job
 7 at that point was to interview him?
 8 A. That's correct.
 9 Q. And try to get as much
 10 information regarding this murder?
 11 A. That's correct.
 12 Q. And you were talking about guns,
 13 correct?
 14 A. That's correct.
 15 Q. Did you institute the
 16 conversation?
 17 A. Sure.
 18 Q. What was the conversation, how
 19 did you institute it, instigate it, I'm sorry.
 20 How did you start conversation regarding guns?
 21 A. When we got into the car he asked
 22 me what he was arrested for, and I explained to
 23 him that he was under arrest for the murder of
 24 Michael Beasley.
 25 Q. Okay.

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1 A. And we then started talking about
 2 the search of his house. I said are there any
 3 guns there.
 4 Q. Okay. So you're talking about
 5 guns in general, right?
 6 A. Sure.
 7 Q. Have you ever heard a person
 8 refer to guns, you know, the nine, the 25, the 38,
 9 I got, you know, I have my 38 over here, did you
 10 ever hear him refer to guns like that?
 11 A. Yes.
 12 Q. In a way, the gun, the nine
 13 millimeter, the nine, 38, possessive like that?
 14 A. Yes.
 15 Q. So he mentions the nine
 16 millimeter, correct?
 17 A. That's correct.
 18 Q. Branden Nasby mentions it to you?
 19 A. That's correct.
 20 Q. How long in the conversation did
 21 he mention the nine millimeter?
 22 A. Five, ten minutes.
 23 Q. Five to ten minutes?
 24 A. It may have not even been that.
 25 I don't remember exactly how long.

1 Q. When you get to his house do you
2 arrest him right away?
3 A. Yes.
4 Q. And you read him his Miranda
5 rights?
6 A. That's correct.
7 Q. When did you read them to him?
8 A. I took him out to the car and
9 prior to placing him into the car, I took the card
10 out and I read it to him verbatim from the card.
11 Q. I'm assuming he understood what
12 you meant?
13 A. He said he understood. I asked
14 him if he understood, he said yes.
15 Q. And then was there anybody else
16 around you at that time, any other officers?
17 A. Yeah. Detective Tom Moren was
18 present.
19 Q. Do you know if he heard the
20 Miranda warnings?
21 A. I would venture to say yes. I
22 mean he was present with us.
23 Q. He was close enough in proximity,
24 there is a possibility?
25 A. Yes.

1 Q. And so then you get him in the
2 car and you're driving towards the station because
3 now he's under arrest, and you're concerned about
4 the gun?
5 A. Yes.
6 Q. Okay. And you have a feeling the
7 gun is at the house; is that correct?
8 A. I did not know. That's what we
9 are there for, to see if the gun was there.
10 Q. Okay. And you are looking for
11 other things too, correct?
12 A. Sure.
13 Q. How did you begin the
14 conversation regarding the gun?
15 A. I explained to you earlier that
16 he asked me what he was under arrest for, and I at
17 that point, I told him for the murder of Michael
18 Beasley. And we talked a little bit, and then I
19 explained to him what we are doing there for the
20 search warrant, and we were looking for the gun.
21 I said, you know, it's going to make it a lot
22 easier if you can tell us if you have any guns in
23 the house and where they are located. It's going
24 to be much easier for your mother.
25 Q. Do you know if Branden was not

1 physically but emotionally close to his mother?
2 A. From what I saw that day I would
3 say yes.
4 Q. Was his mom there when you did
5 the search warrant?
6 A. Yes.
7 Q. Was she upset?
8 A. Very.
9 Q. Did Branden see that?
10 A. Yes.
11 Q. Was she crying?
12 A. Yes, she was.
13 Q. So Branden sees this scene,
14 you're in the car, you say it will be easier on
15 your mother if you tell us where the gun is?
16 A. Sure.
17 Q. And this is after he's in custody
18 and read his Miranda rights?
19 A. That's correct.
20 Q. And you were trying to appeal to
21 his emotional level?
22 A. No.
23 MR. COUMO: Objection. That calls for
24 speculation and quite honestly not relevant.
25 MR. SCISCENTO: I think it's relevant, your

1 Honor, as a Christian burial speech as whether or
2 not he tries to impress on my client, if you will,
3 emotional lever to tell him where the gun was and
4 violates his Miranda rights.
5 MR. COUMO: What difference does it make?
6 He's waived his Miranda rights. They are there
7 lawfully with the search warrant. I mean it's not
8 relevant.
9 MR. SCISCENTO: It's relevant as to whether
10 or not they tried to attempt to get information
11 from my client on a confession, and they used
12 emotions, an emotional lever on my client. There
13 is a case that's called the Christian burial
14 speech where they took one guy from a state to
15 another state. The officers were there, and their
16 testimony is that this person is out there in the
17 snow, they're not going to have a good Christian
18 burial, we're not going to be able to find that
19 body, that poor person out there, because they
20 knew that the defendant was, believe it or not, a
21 very religious person, so they worked on that.
22 Now, this officer has mentioned
23 that his mother, Branden's mother was there.
24 There was a strong emotional tie. He sees his
25 mother upset, his mother crying. And in order to

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1 get Branden Nasby to tell him where the gun is he
2 uses that, and he instigates the conversation by
3 playing on his emotions, and that is a violation
4 of Miranda. Whether or not he voluntarily gave it
5 up, it's the, what you impress on him to testify,
6 there should have been no conversation. He
7 instigated the conversation. I'm right now laying
8 down the foundation to suppress any statements
9 made.

10 MR. COUMO: I'm going to have to object.
11 That case is completely not even applicable to
12 what is happening right here. The case that
13 counsel is talking about, as this court probably
14 knows, is in order to get a confession out of this
15 individual, what is happening here, he's just
16 asking do you want to tell us where it is, it
17 always happens. Every police officer asks do you
18 want us to tear up the house or tell us where it
19 is.

20 THE COURT: I'm going to sustain the
21 objection. It was on a search warrant, and the
22 bag was located in his bedroom.

23 MR. COUMO: Thank you.

24 BY MR. SCISCENTO:

25 Q. Detective Buczec, Buczec, right?

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1 A. That's correct.

2 Q. You heard from Branden Nasby that
3 Sugarbear was the one that killed Michael Beasley?

4 A. That's what he said.

5 Q. And you've heard that nickname
6 before used in connection with the killing of
7 Michael Beasley; isn't that correct?

8 A. That's correct.

9 Q. And you heard that from two other
10 people; isn't that correct?

11 A. Yes.

12 Q. Who were those people you heard
13 it from?

14 A. I heard it from Jotce Burnside,
15 and I also heard it from Tommy Burnside.

16 Q. And those two people through your
17 investigation, have you determined that those two
18 people were present at the time of the killing?

19 A. Yes.

20 Q. At the time of the killing of
21 Michael Beasley?

22 A. That's correct.

23 Q. Is there, and they mentioned to
24 you that this Sugarbear was possibly the killer?

25 A. At one time, yes, however, they

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1 have changed their statement on that.

2 Q. Have you ever spoken to this guy,
3 Sugarbear?

4 A. No, I have not.

5 Q. Do you know his real name?

6 A. Yes, I do.

7 Q. Damian Von Louis?

8 A. That's correct.

9 Q. Is he currently incarcerated in
10 Clark County Detention Center?

11 A. That I don't know.

12 MR. COUMO: Objection.

13 BY MR. SCISCENTO:

14 Q. Real quickly, how many officers
15 or detectives or police personnel went to Branden
16 Nasby's house to do a search other than yourself,
17 if you recall?

18 A. There was Sergeant Ken Hefner,
19 Detective Thowsen. There was Detective Tom Moren,
20 Detective Duane Morgan, and there was probably at
21 least two patrol officers.

22 BY MR. DUFFY:

23 Q. Detective, was there a meeting
24 with all of those people or other homicide
25 detectives or police personnel that led you to the

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1 determination of probable cause that you had the
2 probable cause to arrest Branden Nasby?

3 A. No.

4 Q. So you never discussed that with
5 anybody else?

6 A. Yes, I did, but not with all
7 those people.

8 Q. Who did you discuss that with?

9 A. I discussed it with Sergeant Ken
10 Hefner and my partner, Thowsen.

11 Q. Was that immediately prior to
12 going out and arresting him?

13 A. Within, I would say within
14 probably the day before at least.

15 MR. DUFFY: I have nothing further, your
16 Honor.

17 THE COURT: Any redirect by the State?

18 MR. COUMO: No, your Honor.

19 THE COURT: Thank you officer. Any other
20 witnesses by the state?

21 MR. COUMO: We rest, Judge.

22 THE COURT: Any witnesses for the defense?

23 MR. SCISCENTO: No, your Honor. I spoke to
24 my client regarding his right to testify and
25 counseled him not to testify. He agrees he's not

1*going to. Defense will not be presenting any
2 evidence.
3 THE COURT: Any argument by the State?
4 MR. COUMO: I submit it, Judge.
5 THE COURT: Defense?
6 MR. SCISCENTO: Look, your Honor, for the
7 record, at least the only testimony that we had
8 were testimonies from a coconspirator and
9 testimonies from somebody who heard my client give
10 a statement. To that fact, there has been no
11 other evidence linking directly, no physical
12 evidence linking my client to the shooting
13 itself. Now, when the coconspirator, under the
14 coconspirator rule there must be some
15 corroboration. I don't think there has been
16 corroboration from the coconspirator. There has
17 been no proof that, independent proof that Branden
18 Nasby was there. And also his testimony cannot be
19 used other than other things to corroborate. So
20 in an attempt to corroborate the coconspirator's
21 statement that they used my client's statement
22 through a third party, but, again, those both need
23 to be independently corroborated by an independent
24 person in this case, there has been no
25 corroboration.

1 The detective testified. It's
2 nothing that corroborates the statements of the
3 witnesses. Based on that, your Honor, I would
4 move to dismiss, if this court would like, and I
5 think it might be best, this will be taken up on a
6 writ, I could put it up on written form. It is
7 somewhat complicated, and it just came to me after
8 we've done most of this, I understand the
9 coconspirator rule and having corroboration, but
10 my understanding, my belief there has been no
11 corroboration. A person who is charged with this
12 crime, and the corroboration must be by
13 independent witnesses and not just merely
14 retelling what he has said. They have got to find
15 additional evidence, and there has been no
16 additional evidence that corroborates the
17 statements made. There has been no evidence.
18 THE COURT: I disagree with you on the law,
19 and that his, the defendant's statement can be
20 used to corroborate the coconspirator's
21 statement. We also have Crystal Bradley's
22 testimony. So I deny your motion to dismiss.
23 It appearing to me from the
24 complaint on file herein, the following crimes
25 have been committed, conspiracy to commit murder

1 with use of a deadly weapon. State having
2 presented sufficient evidence to establish
3 probable cause, that the defendant committed said
4 crimes, I hereby order said defendant to answer to
5 said charges in the Eighth Judicial District
6 Court, state of Nevada, County of Clark at the
7 following date and time.
8 THE CLERK: November 24th, 8:30, District
9 Court III.

10 * * * * *
11 Attest: Full, true, accurate transcript of
12 proceedings.

13 
14 ANGELA CAMPAGNA,
15 CCR #495
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-#-			24th [1] 131:8	54:14	54:17	57:7	allow [1] 22:7	artery [1] 68:2
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-1-			103:7 103:16	83:15	84:2	87:24	always [2] 86:17	associated [3] 53:9
			38 [3] 120:8 120:9	88:1	88:14	88:24	125:17	53:14 69:16
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			-4-	90:18	92:4	92:7	Amongst [1] 57:3	assume [3] 32:16
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too [3] 11:25 16:17 46:7 60:8 68:18 89:14 93:10 122:11 took [10] 14:10 59:13 60:19 84:19 93:10 105:24 113:6 121:8 121:9 124:14 top [1] 77:23 touch [2] 58:14 89:10 toward [6] 13:25 45:22 45:23 45:25 46:6 95:22 towards [15] 13:1 13:8 15:5 18:5 45:9 45:20 46:1 46:1 46:3 46:5 46:10 85:17 96:13 114:10 122:2 TOWNSHIP [1] 1:3 tracks [1] 67:21 transcript [2] 1:14 131:11 trapezium [2] 73:2 77:15 travel [1] 69:18 traveled [1] 79:15 traveling [1] 79:13 trial [1] 60:14 tried [3] 15:25 51:19 124:10 tries [1] 124:2 true [3] 16:16 99:22 131:11 truth [14] 3:17 3:17 3:18 63:21 63:21 63:22 79:24 79:24 79:25 100:22 100:22 101:12 101:12 101:13 truthful [1] 92:7 try [2] 56:9 119:9 trying [6] 15:22 25:10 25:13 54:4 64:10 123:20 Tuchia [2] 52:22 54:1 turn [2] 68:19 109:2 turned [1] 108:18 turning [1] 109:11 TVs [1] 45:3 twice [4] 40:4 40:5 40:9 40:12 two [30] 6:21 12:8 12:11 14:14 14:17 19:12 20:13 31:12 31:13 31:15 48:7 48:15 57:20 57:25 63:25 67:4 67:9 74:25 75:9 75:15 78:12 78:15 78:25 83:16 109:21 114:4 126:9 126:16 126:17 127:21 type [1] 20:12	-U- ultimately [2] 16:3 16:16 unburned [1] 69:19 uncomfortable [1] 95:9 uncovered [2] 67:20 113:14 under [1] 20:8 55:10 69:23 98:5 105:25 107:2 108:5 119:23 122:3 122:16 129:13 underlying [2] 73:16 73:20 underneath [2] 109:18 112:9 understand [7] 28:22 50:15 53:8 76:1 76:24 77:9 130:8 understood [5] 107:15 107:22 121:11 121:13 121:14 unless [1] 22:17 unpopulated [1] 102:14 unsure [2] 38:16 59:2 up [82] 6:25 7:5 7:24 8:5 8:15 8:22 11:9 11:14 12:3 14:4 14:9 14:23 15:4 15:5 15:12 21:17 22:1 25:6 25:8 26:17 27:7 28:23 30:5 37:16 38:19 38:19 39:24 42:20 44:22 44:25 45:5 46:14 46:18 47:17 47:22 48:3 48:6 48:17 49:12 58:14 58:23 59:4 61:13 70:10 74:17 77:2 77:17 78:20 85:11 85:12 85:16 85:22 85:22 86:24 87:4 91:5 92:23 93:1 93:6 93:17 93:19 93:20 94:4 94:21 95:1 95:5 96:19 96:22 97:3 102:19 104:14 105:10 108:19 109:17 111:17 113:9 113:16 119:5 125:5 125:18 130:5 130:6 upper [3] 73:2 77:24 77:25 upset [2] 123:7 124:25 upward [1] 49:2 upwards [1] 49:4 used [15] 18:18 19:13 19:18 20:2 20:4 87:2 102:17 108:9 109:8 114:5 124:11 126:6 129:19	129:21 130:20 uses [1] 125:2 utilized [1] 21:16 -V- Vegas [10] 1:3 3:1 24:22 52:25 56:22 57:17 97:20 98:20 101:23 105:20 velocity [1] 69:19 venture [1] 121:21 verbatim [1] 121:10 verify [1] 104:23 vertically [1] 46:12 vessels [1] 69:25 vicinity [1] 117:11 victim [6] 12:17 21:16 70:9 71:10 103:11 114:9 viewing [1] 20:4 VILLANI [1] 1:16 violates [1] 124:4 violation [1] 125:3 visit [1] 5:23 visual [1] 32:21 visually [2] 32:7 40:17 voice [3] 83:17 100:10 100:13 voluntarily [1] 125:4 Von [3] 33:25 34:17 127:7 vs [1] 1:8 -W- wait [1] 60:10 waived [1] 124:6 walked [6] 12:25 13:2 14:4 15:4 43:7 46:14 walking [4] 44:24 45:20 45:25 46:9 wanting [3] 54:6 85:22 96:16 warnings [1] 121:20 warrant [9] 20:22 105:11 106:18 117:23 118:11 122:20 123:5 124:7 125:21 wash [1] 12:20 weapon [23] 18:4 18:10 18:12 19:8 19:10 19:11 19:18 20:12 20:13 20:15 20:23 20:24 21:7 21:8 21:11 21:25 23:2 23:5 112:17 114:8 114:9 114:21 131:1 weapons [6] 21:3 111:6 112:7 112:11 112:17 113:18 wearing [13] 4:16	4:18 38:21 38:23 39:11 39:13 39:16 39:19 39:22 58:4 80:20 106:7 106:9 weed [1] 8:14 week [1] 88:5 weekday [2] 88:7 88:8 weeks [3] 10:15 98:25 99:3 west [8] 11:16 46:19 46:23 46:24 47:2 47:14 47:16 102:4 whatnot [1] 11:24 whatsoever [1] 72:3 whereever [1] 85:12 Wherever [1] 76:10 white [1] 38:22 whiteness [1] 74:6 whole [7] 3:17 63:21 79:24 84:1 90:1 99:18 101:12 wide [1] 71:19 wind [1] 15:12 window [1] 38:17 Winston's [2] 44:14 44:16 wiping [1] 41:5 wise [1] 10:13 wish [1] 107:4 wished [1] 107:22 withdraw [1] 66:13 withhold [1] 20:19 within [5] 55:19 68:17 69:20 128:13 128:13 without [4] 18:24 19:22 20:4 20:14 witness [44] 2:3 2:6 2:9 2:12 2:15 2:18 2:21 2:24 3:16 3:22 5:1 5:3 5:3 10:8 10:23 17:18 18:4 20:13 21:6 22:3 23:15 25:16 41:22 57:23 59:9 60:1 60:13 63:20 72:11 79:23 80:4 80:7 80:17 80:21 81:17 87:6 100:17 101:11 101:17 106:11 113:10 113:15 113:20 115:1 witnessed [1] 26:24 witnesses [10] 3:9 59:22 64:1 105:2 114:4 116:24 128:20 128:22 130:3 130:13 wood [2] 12:11 44:25 Woodpecker [4] 24:5 24:18 91:22 92:22	Woodpecker's [3] 91:23 94:10 94:13 words [1] 46:6 worked [2] 25:11 124:21 wound [19] 67:1 67:2 67:11 67:23 67:25 68:8 69:2 69:6 70:1 70:14 71:7 72:6 73:12 73:13 73:14 73:21 74:3 74:3 79:11 wounds [6] 66:25 67:5 67:9 69:17 75:1 102:25 writ [1] 130:6 written [1] 130:6 wrong [1] 61:12 -Y- year [3] 53:23 83:15 99:8 years [2] 24:11 83:16 young [3] 55:9 yourself [5] 6:16 6:21 35:24 83:24 127:16
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CASE NO. C154293

DEPT. NO. 3

FILED

ORIGINAL

DEC 14 8 03 AM '98

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TOMMIE C. BURNSIDE, JR.,
JOTEE BURNSIDE,
Defendants.

Case No. 98F-11168C
98F-11168D

REPORTER'S TRANSCRIPT

OF

WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE TONY L. ABBATANGELO
JUSTICE OF THE PEACE

WEDNESDAY, DECEMBER 2, 1998
9:00 a.m.

APPEARANCES:

For the State:

Frank Coumou, Esq.
Deputy District Attorney

For Defendant T. Burnside:

Dayvid Figler, Esq
Special Public Defender

For Defendant J. Burnside:

Howard Brooks, Esq.
Deputy Public Defender

Reported by: DANETTE L. ANTONACCI, CCR #222
Official Court Reporter

[6-12]

2
1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 2, 1998

2 * * * * *

3
4
5 THE COURT: 98F-11168, Tommie Burnside and
6 Jotee Burnside.

7 Both are present in custody. Both have
8 counsel present. And the District Attorney's Office is
9 present as well.

10 MR. BROOKS: Judge, as to Mr. Jotee Burnside,
11 this is Howard Brooks his attorney speaking.

12 As to Jotee Burnside, we'll
13 unconditionally waive our preliminary hearing today to
14 agree to plead guilty in District Court to one count of
15 accessory to commit murder, and the accessory is after the
16 fact to murder. And the State retains the right to argue
17 at the time of sentencing.

18 MR. COUMOU: That's correct, your Honor. And
19 that is the exact same negotiations for the C defendant,
20 Tommie Burnside.

21 THE COURT: Is that correct, Mr. Figler?

22 MR. FIGLER: Your Honor, with one other
23 exception with regard to Mr. Tommie Burnside. He does have
24 some other cases in the system. One is a misdo (sic) and
25 one is a wobbler. Any time that he would receive the State

1 has agreed to recommend that that run concurrent.

2 MR. COUMOU: That's incorrect. We don't take
3 any position whether or not it runs concurrent or
4 consecutive.

5 MR. FIGLER: Then for the record, part of the
6 negotiations that it can run concurrent, that by pleading
7 guilty to accessory after the fact to murder there can be
8 an imposition of concurrent, and if we request that it
9 won't be opposed by the State. Is that fair?

10 MR. COUMOU: Yeah, we're not going to take any
11 position, but just so counsel knows, I can't tie District
12 Court judges' hands as to sentencing.

13 THE COURT: But you're not going to stand up
14 and say we want consecutive time?

15 MR. COUMOU: No, sir.

16 THE COURT: So that's for Tommie.

17 MR. FIGLER: That's correct, your Honor.

18 THE COURT: For Tommie Burnside, what the
19 State is saying, they're not going to stand up and argue
20 that you deserve consecutive time. They'll stand silent.
21 Your attorney will argue for concurrent time, if you get
22 time. As the D.A. was just pointing out he cannot say what
23 the District Court judge will do. He's not going to stand
24 up and argue for consecutive, but he'll let the chips fall
25 where they will.

3 1 MR. FIGLER: That's fair, your Honor. Thank
2 you.

3 THE COURT: You're welcome.

4 Today each of you could have had a
5 preliminary hearing, but you each are waiving your right to
6 that.

7 By doing so you each of you are giving
8 up your right to confront and cross examine the State's
9 witnesses through the assistance of your attorney;

10 You're giving up the right to testify on
11 your own behalf. If you do not testify that cannot be held
12 against you;

13 And you're giving up the right to
14 present any evidence on your own defense.

15 By unconditionally waiving your right to
16 a preliminary hearing, you're giving up these rights.

17 Tommie Burnside, do you understand this?

18 DEFENDANT T. BURNSIDE: Yes.

19 THE COURT: And Jotee Burnside, do you
20 understand this?

21 DEFENDANT J. BURNSIDE: Yes, sir.

22 THE COURT: When you each get to District
23 Court you can each accept the offer as it has been stated.
24 However, if you do not you will then go directly to trial
25 in District Court. In either situation, whether you accept

3 1 the offer or do not accept it, you will not come back here
2 to Justice Court and you will not have a preliminary
3 hearing.

4 Tommie Burnside, do you understand this?

5 DEFENDANT T. BURNSIDE: Yes.

6 THE COURT: And Jotee, do you understand this?

7 DEFENDANT J. BURNSIDE: Yes.

8 THE COURT: Appearing to me from the complaint
9 on file herein, the following crimes of conspiracy to
10 commit murder and murder with use of a deadly weapon have
11 been committed by said defendants Tommie Burnside and Jotee
12 Burnside, they each have unconditionally waived their right
13 to a preliminary hearing, I hereby order said defendants
14 answer said charges in the Eighth Judicial District Court,
15 State of Nevada, County of Clark at the following date and
16 time.

17 THE CLERK: December 10, 8:30, District Court
18 III.

19 MR. BROOKS: Thank you, Judge.

20 MR. FIGLER: Thank you, your Honor.

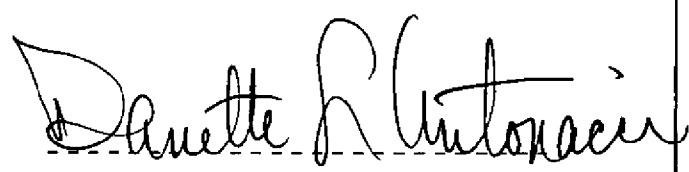
21 MR. COUMOU: Thank you, Judge. And thank you
22 for giving us the time.

23 (Proceedings concluded.)

24 --oOo--

25

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



DANETTE L. ANTONACCI
CCR #222

ORIGINAL

FILED

DEC 18 3 33 PM '98

Stewart L. Bell
CLERK

NOTC
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRENDAN JAMES NASBY,
#1517690

Defendant.

Case No. C154293A
Dept. No. III
Docket E

NOTICE OF EXPERT WITNESSES
[NRS 174.234 (2)]

TO: BRENDAN JAMES NASBY, Defendant; and

TO: JOSEPH SCISCENTO, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call expert witnesses in its case in chief as follows:

ROBERT JORDAN - Clark County Medical Examiner - He will articulate the cause and
manner of death of the decedent and will testify that the manner of death was homicide.

TORREY JOHNSON - Las Vegas Metropolitan Police Department - He will articulate the
cause and manner of death of the decedent and will testify that the manner of death was homicide.

The substance of each expert witness' testimony and a copy of all reports made by or at

///

///

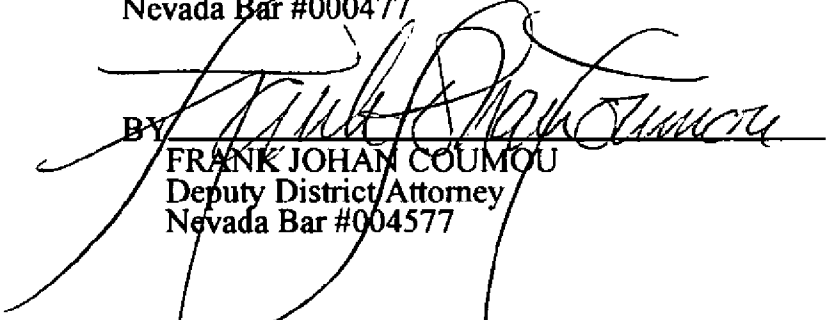
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FILED

1 the direction of the expert witness has been provided in discovery.

2 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY 
7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

10 RECEIPT OF COPY

11 RECEIPT OF COPY of the above and foregoing Notice of Expert Witnesses is hereby
12 acknowledged this 10th Day of December, 1998.

13 JOSEPH SCISCENTO, Esq.
14 ATTORNEY FOR DEFENDANT

15 BY 
16 330 S Third Street #860
17 Las Vegas, Nevada 89101

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25
26
27
28 msr

CURRICULUM VITAE

ROBERT A. JORDAN

Birthplace: Rochester, New York
Date: July 10, 1926

Premedical Education: B.S., Defiance College,
Defiance, Ohio, 1949
M.S., Bowling Green State University
Bowling Green, Ohio, 1950
Ph.D., Tulane University of Louisiana
New Orleans, Louisiana, 1954

Medical Education: M.D., Tulane University of Louisiana
New Orleans, Louisiana, 1958

Internship: General rotating, U.S.P.H.S., Hospital
Norfolk, Virginia, July, 1958 to July, 1959

Residency: Pathology: U.S.P.H.S. Hospital,
Baltimore, Maryland, July, 1959 to July,
1963

Military Service: U.S.A.F., Pacific Theatre of Operations
1945-1947

U.S.P.H.S., Division of Hospitals, 1958-
1966

Experience in Pathology: Chief Pathologist, U.S.P.H.S. Hospital,
Boston, Mass. (300 bed General Hospital),
1963-1965

Chief Pathologist, U.S.P.H.S. Hospital,
Staten Island, N.Y. (800 bed General
Hospital),
1965-1966

Assistant Medical Examiner of Harris
County, Texas, 1966-1968

Laboratory Director, Kelsey-Seybold
Clinic, Houston, Texas, 1968-1984

Medical Director: Smith-Kline
Bioscience Laboratories, Houston,
Texas, 1983-1990

Assistant Medical Examiner of Harris
County, Texas, 1984-1990

Deputy Medical Examiner of Clark County,
Nevada, 1991-1996. Retired.

Contract pathologist to Office of Coroner
Medical Examiner of Clark County, Nevada
January 1998 to present.

Teaching Appointments:

Assistant Professor of Pathology, Tufts
University School of Medicine, Boston,
Mass. 1963-1965

Assistant Professor of Pathology, New
Jersey State College of Medicine,
Jersey City, New Jersey, 1965-1966

Clinical Assistant Professor of Pathology,
Baylor College of Medicine, Houston,
Texas, 1968 to present

Consultant to Tumor Registry, The
University of Texas M.D. Anderson
Hospital and Tumor Institute at Houston,
1968 to present

Active staff in Pathology, The Methodist
Hospital, Houston, Texas, 1968-1970

Courtesy Staff, St. Luke's Episcopal
Hospital, Houston, Texas, 1968-1990

Medical Licensure:

Nevada, 1991 to present

Curriculum Vitae
Robert A. Jordan
Page 3

Certification:

American Board of Pathology
Pathologic Anatomy, 1966
Clinical Pathology, 1966
Forensic Pathology, 1986

Societies:

Fellow, emeritus College of American
Pathologists
Fellow, emeritus American Society of
Clinical Pathologists
Member, American Society of Tropical
Medicine
Member, Harris County Medical Society
Member, Texas Medical Association
Member, Texas Society of Pathologists
Member, Houston Society of Clinical
Pathologists

Publications:

Intestinal nematodes in well-cared-for
Dogs. American Journal of Tropical
Medicine and Hygiene. 9:1, pp. 29-31.
January, 1960

The laboratory diagnosis of amebiasis.
Maryland Society of Medical
Technologists News Letter. May 1962

Eastern Equine Encephalitis: report of
Case with autopsy. American Journal
of Tropical Medicine and Hygiene. 14:3,
pp. 470-474. April 1965

March 1973

Primary Melanoma of the lung, chest.
62:3, pp. 629-631. November, 1972

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Name: Torrey D. Johnson P#: 4820 Date: August 15, 1997
Classification: Criminalist II

Current Discipline of Assignment: Firearms

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks	X	Breath Alcohol	X
Trace Evidence	X	Arson Analysis	X
Toxicology	X	Firearms	X
Latent Prints		Crime Scene Investigations	X
Serology	X	Clandestine Laboratory Response Team	X
Document Examination		DNA Analysis	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Antelope Valley College, Lancaster, CA	9/64 - 6/66	Chemistry	AA
CA State University at San Diego	9/66 - 1/69	Chemistry/Math Minor	BS
CA State University at San Diego	1/69 - 1/72	Chemistry	MS
Riverside City College / AJ Prog Riverside, CA	1/75 - 6/75		

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Firearm and Toolmark Classes/Seminars:		
Advanced Firearm and Toolmark Examination	CA Dept. of Justice, Sacramento, CA	1/76
Basic Firearms and Toolmark Examination (correspondence)	CA Dept. of Justice, Sacramento, CA	3/76
Body Wound and Crime Scene Reconstruction	CA Dept. of Justice, Sacramento, CA	11/76
Firearms Qualification	CA Dept. of Consumer Affairs, Sacramento, CA	9/77
Firearms and Explosives Seminar	Dept. of Treasury / BATF , Riverside, CA	4/78
AFTE Annual Training Seminar	Orlando, Florida	5/82
Ruger Armour's Course	Sturm, Ruger & Co., Inc. Southport, NH	5/82

Statement of Qualifications

Name: Torrey D. Johnson

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ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Ordinance Expo '83 Range (Shooting) Development	LA Police Rev. & Athletic Club	1/83
AFTE Annual Training Seminar	San Mateo, CA	5/83
AFTE Annual Training Seminar	New Orleans, Louisiana	6/84
AFTE Annual Training Seminar	Baltimore, Maryland	5/86
Specialized Techniques in Firearms Identification School	FBI Academy, Quantico, VA	4/87
AFTE Annual Training Seminar	Seattle, Washington	6/87
Glock 17 Armour's Course	Glock, Inc., San Jose, CA	2/88
AFTE Annual Training Seminar	Dupage County, Illinois	6/88
Shot Show (firearms Industry Trade Show)	Las Vegas, NV	1/89
Heckler and Koch Armour's Course	CA Dept. of Justice, Sacramento, CA	11/90
Shot Show (firearms Industry Trade Show)	Las Vegas, NV	1/91
AFTE 22nd Annual Training Seminar	Houston, Texas	6/91
Sigarms Sig Sauer P-226 Armorer School	Sigarms, Inc.	6/91
Forensic Ballistics Workshop	Yuma Proving Grounds, Yuma, AZ	11/92
Shot Show (firearms Industry Trade Show)	Houston, Texas	1/93
Forensic Ballistics Workshop	Yuma Proving Grounds, Yuma, AZ	11/93
Shot Show (Firearms Industry Trade Show)	Dallas, Texas	1/94
Ammunition Testing	Las Vegas, NV	3/1/95
Exterior Ballistics Workshop	San Diego, CA	6/95
AFTE 26th Annual Training Seminar	San Diego, CA	6/95
Savage Arm, Inc. "Basic Tactical Rifle Armorer's Course"	San Diego, CA	6/95
Drugfire Training	Las Vegas, NV	8/95
Investigation of Death	Las Vegas, NV	10/95
Drugfire Training	Reno, NV / Las Vegas, NV	11/95
Drugfire Training	Las Vegas, NV	1/96
Forensic Ballistics Workshop	Yuma, AZ	11/96
Civilian Use of Force and Firearm Training	Las Vegas, NV	6/97
AFTE 28th Annual Training Seminar	Annapolis, MD	7/97

Statement of Qualifications

Name: Torrey D. Johnson

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ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Other Related Training Classes/Seminars:		
Controlled Substance Analysis	CA Dept. of Justice, Sacramento, CA	9/73
Legal Aspects of Evidence	Riverside City College, Riverside, CA	9/74
Energy Dispersive X-ray Spectrometry	CA Dept. of Justice, Riverside, CA	4/75
Advanced Drug Analysis	CA Dept. of Justice, Sacramento, CA	12/77
CA Association of Criminalist Training Seminar	Palm Springs, CA	1/80
Congress of Criminalists on Drugs	CA Dept. of Justice, Sacramento, CA	4/84
Scott Air Pack II-A Initial Indoctrination	Bullard Safety Co, Sacramento, CA	5/85
Mass Spectrometry - Techniques & Interpretation	Hewlett-Packard Analytical Gp , Asilomar, CA	1/88
Mass Spectral Interpretation	Hewlett-Packard, Atlanta, GA	5/89
Clandestine Laboratory Recertification	Las Vegas, NV	3/95
Forensic Microscopy	CA Dept. of Justice, Sacramento, CA	3/74
Explosives and Public Safety	Riverside City College, Riverside, CA	9/74
Conference on Polymers	FBI Academy, Quantico, VA	10/74
Introduction to Scanning Electron Microscopy	CA Criminalistics Institute, Sacramento, CA	5/92

COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Superior, Municipal and Justice Courts in numerous California Counties including: Amador, Butte, Colusa, Eldorado, Fresno, Glenn, Imperial, Los Angeles, Mono, Marin, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Santa Ana, Sierra, Solano, Sutter, Tuolumne, Yolo and Yuba. Federal court in Fresno, Los Angeles and Sacramento.	Qualified in various areas including crime scene processing, firearms, toolmarks & impression evidence, chemical analysis, trace evidence and driving under the influence.	
Clark County District Court	Firearms and toolmarks	

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
City of San Diego - Utilities Dept.	Chemist	10/71 - 6/73

EMPLOYMENT HISTORY		
Employer	Job Title	Date
CA Dept. of Justice - Crime Lab - Riverside, CA	Senior Criminalist	9/73 - 5/79
CA Dept. of Justice - Crime Lab - Sacramento, CA	Senior Criminalist	5/79 - 3/89
CA Criminalistics Institute	Senior Criminalist	3/89 - 11/91
CA Criminalistics Institute	Supervising Criminalist	11/91 - 12/94
Las Vegas Metropolitan Police Dept.	Criminalist II	12/94 - present

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
Association of Firearm and Toolmark Examiners (AFTE) - Distinguished Member	
International Wound Ballistics Association - charter member (invited)	
International Ammunition Association (formerly the International Cartridge Collectors Association)	

PUBLICATIONS / PRESENTATIONS:
<i>Metal Detectors: Notes on Their Operating Principles, Things to Consider When Buying One and Their Use at a Crime Scene.</i> (Presented at the CA Association of Criminalists Semi-annual Seminar, Nov., 1980; published in Tieline, Vol. 5, No. 2, Winter 1979).
<i>A One-Man Sifting Screen for Crime Scene Use,</i> (Tieline, Vol. 5, No. 3, 1979).
<i>Poongsan Metal Manufacturing Company - Ammunition from the Republic of Korea,</i> (AFTE Journal, Vol. 13, Nol. 3, July 1981; also published in The International Cartridge Collector, Issue 310, May-June 1982 and in Tieline, Vol. 7, No. 1, Spring 1981) co-authored with Paul Dougherty, then the Director of the San Mateo County Crime Laboratory.
<i>Electronic Metal Detectors for Recovering Firearms Evidence,</i> (Presented a the AFTE Training Seminar, Orlando, Florida, 1982).
<i>Unusual Toolmark Confirms Candle Manufacturer in Arson / Homicide Case,</i> (Presented at the AFTE Training Seminar, 1982).
<i>The Persistence of Toolmarks in R-P .25 Auto Cartridge Case Extractor Grooves,</i> (Presented at the AFTE Training Seminar, 1982).

Statement of Qualifications

Name: Torrey D. Johnson

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PUBLICATIONS / PRESENTATIONS:

Eclipse All Plastic Shotshells, (AFTE Journal, Vol. 15, No. 4, Oct. 1983), co-authored with William Matty, Riverside Department of Justice Laboratory.

A Comparison of Manufacturing Marks on Smith and Wesson Firing Pins, (AFTE Journal, Vol. 16, No. 3, July 1984), co-authored with William Matty, Riverside Department of Justice Laboratory.

The Accumulation, Use and Storage of Firearms Reference Material or The Care and Feeding of Gun and Ammo Collections, (Presented at the AFTE Training Seminar, New Orleans, LA 1984).

Starline Brass, (AFTE Journal, Vol. 16, No. 4, Oct. 1984; also published in *The International Cartridge Collector*, Issue 329, July-August 1985 and in *Tieline*, Vol. 10, No. 1, 1985), co-authored with William Matty, Riverside Department of Justice Laboratory.

Arcadia Machine and Tool (Notes on AMT Firearms), (AFTE Journal, Vol. 18, No. 3, July 1986; also published in *Tieline*, Vol. 11, No. 2, 1986), co-authored with William Matty, Riverside Department of Justice Laboratory.

The Use of Polarized Light in Forensic Photography (presented at the annual AFTE Training Seminar, Houston, Texas, 1991).

A Novel Method for the Restoration of Obliterated Serial Numbers in Magnetic Materials (presented at the annual AFTE Training Seminar, Houston, Texas, 1991)

California Assault Weapon Identification Guide (took all photographs and assisted in booklet layout, design and writing text).

Firearms Evidence and the Emergency Medical Team, (lecture presented at the University of California, Davis Medical Center, Emergency Medicine/Trauma Conference, December 10, 1991).

Science and Technology vs. Crime (lecture presented at the 8th Annual American River College, Science and Technology Week, April 25-May 1, 1992).

A Survey and Evaluation of Variables in the Preparation of Ballistic Gelatin (supervised and co-authored this project with student intern Sherrie Post. Presented by Sherrie Post at the International Wound Ballistics Association, 1st International Conference, Sacramento, CA, March 1994).

The following technical notes have also been published:

- "Imported .22 Cartridge", *Tieline* Vol. 5, No. 1, 1978.
- "Winchester-Western Luballoy Cartridge Discontinued", *Tieline*, Vol. 5, No. 4, 1979
- "Smith and Wesson Plus Colt Equals SMOLT - The Hybrid Handgun", *Tieline*, Vol. 6, No. 1, 1980

Solubility Properties of Organic Compounds as Applied to Drug Identification and Purification, (*Tieline*, Vol. 2, No. 3, 1976).

Forensic Chemistry (presented at the 99th Two-Year College Chemistry Conference, American River College, Mar. 11, 1988).

Forensic Chemistry (invited dinner speaker at the Oct. 11, 1988 meeting of the Sacramento Committee for Advancing the Teaching of Science - SCATS).

Anabolic Steroids in "Cross-Tops", (co-authored with John P. Bowden) *Micrograms*, Vol. XXII, No. 10, October 1990.

Statement of Qualifications

Name: Torrey D. Johnson

Page: 6

PUBLICATIONS / PRESENTATIONS:

The following technical notes have also been published:

- "PCP, TCP Analysis", Tieline, Vol. 1, No. 1, 1975
- "Card File System for Drug Inventory" (co-authored with Ronald Ralston), Tieline, Vol. 5, No. 4, 1979.

OTHER QUALIFICATIONS:

CA Department of Justice / Bureau of Forensic Services - Firearm Technical Advisory Group (F-TAG) - Chairperson

Served on the *Tricorder Committee* (to evaluate and specify laboratory instrumentation) which received a Division of Law Enforcement Unit Citation on December 10, 1985

Served on the Attorney General's Assault Weapon Advisory Committee, the California Body Armor Selection Committee and the California Ammunition Selection Committee.

CHAMBER

FILED

DEC 10 3 38 PM '98

Robert J. Thompson
CLERK

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293A
Dept. No. III
Docket E

14
15 NOTICE OF WITNESSES
16 [NRS 174.234 (1)(b)]

17 TO: BRENDAN JAMES NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21	<u>NAME</u>	<u>ADDRESS</u>
22	Thowsen, Thomas	LVMPD P#1467
23	Cabrales, Allen	LVMPD P#2045
24	Hefner, Kenneth	LVMPD P#2185
25	McGhie, Gordon	LVMPD P#2883
26	Falvey, Darlene	LVMPD P#3176
27	Carroll, James A	LVMPD P#3656
28	Buczek, James J., Jr.	LVMPD P#3702

1	<u>NAME</u>	<u>ADDRESS</u>
2	Smith, David J	LVMPD P#4124
3	Giersdorf, Daniel	LVMPD P#4521
4	Sams, Jessie	LVMPD P#4793
5	Neil, Kelly	LVMPD P#5410
6	Crait, Jeffrey A.	4409 Twin Peaks Dr., N Las Vegas, NV 89030
7	Gilmore, Robert	5910 Fannine Way, Las Vegas, NV 89130
8	Beavers, Jomeka	3327 Outlook Point St., N Las Vegas, NV 89030
9	Banks, Tanesha	2651 Napa Dr., Las Vegas, NV 89115
10	Bradley, Crystal	Unknown
11	Jones, Helen, Beavers	3327 Outlook Point St., N Las Vegas, NV 89030
12	Beasley, Velma	8519 S Main St. #2, Los Angele, CA 90003
13	Deskin, Jerimiah	714 E Sahara Ave #204, LV, Nv 89104
14	McPhail, R.	LVMPD P#3326
15	Norma	LVMPD P#3110
16	Adams, Brittany	1390 Honey Lake Street, Las Vegas, NV 89110
17	Carroll, Sgt. J,	LVMPD P#3656
18	Von Lewis, Damion, aka Sugar Bear - ID#1593424	
19	Garland, Mark	Unknown

20 These witnesses are in addition to those witnesses endorsed on the Information and any
21 other witness for which a separate Notice has been filed.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY FRANK JOHAN COUMOU
Deputy District Attorney
Nevada Bar #004577

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice of Witnesses is hereby
acknowledged this 18th Day of December, 1998.

Joseph Sciscento, Esq.
ATTORNEY FOR DEFENDANT

BY Joseph S. Sciscento
330 S Third Street #860
Las Vegas, Nevada 89101

ORIGINAL

16

1 **ORDR**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

DEC 21 2 31 PM '98

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 TOMMIE C. BURNSIDE #159158
12 JOTEE BURNSIDE,

13 Defendants.
14

Case No. C154293C,D
Dept No. III
Docket E

15 ORDER DENYING DEFENDANTS MOTION FOR
16 OWN RECOGNIZANCE RELEASE OR HOUSE ARREST

17 DATE OF HEARING: 12/15/98
18 TIME OF HEARING: 9:00 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the 15th
20 day of December, 1998, the Defendants being present, Special Public Defender DAVID
21 FIGLER, and HOWARD BROOKS, Public Defender, respectively, the Plaintiff being
22 represented by STEWART L. BELL, District Attorney, through FRANK JOHAN COUMOU,
23 Deputy District Attorney, and the Court having heard the arguments of counsel and good cause
24 appearing therefor,

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DEC 21 1998

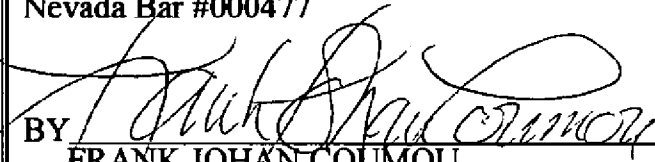
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1 IT IS HEREBY ORDERED that the Defendants Motion for Own Recognizance Release
2 or House Arrest, shall be, and it is denied.

3 DATED this 21 day of December, 1998.

4
5 
6 DISTRICT JUDGE

7
8 STEWART L. BELL
9 DISTRICT ATTORNEY
10 Nevada Bar #000477

11 BY 
12 FRANK JOHAN COUMOU
13 Deputy District Attorney
14 Nevada Bar #004577
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ORIGINAL

Shirley B. Paragium

JAN 5 10 20 AM '99

FILED

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 BRENDAN NASBY,
12 #1517690

13 Defendant.

Case No. C154293A
Dept. No. III
Docket E

14
15 SUPERCEDING NOTICE OF WITNESSES
16 [NRS 174.234 (1)(b)]

17 TO: BRENDAN NASBY, Defendant; and

18 TO: JOSEPH SCISCENTO, Esq., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21 NAME

ADDRESS

22 Holmes, John Robert

1901 Arbor Way, #A, Las Vegas, Nevada

23 Boyd, Fred

LVMPD P#5216

24 ///

25 ///

26 ///

27 ///

28 ///

CE31

1 These witnesses are in addition to those witnesses endorsed on the Information and any
2 other witness for which a separate Notice has been filed.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY  _____

7 FRANK JOHAN COUMOU
8 Deputy District Attorney
9 Nevada Bar #004577

10 RECEIPT OF COPY

11 RECEIPT OF COPY of the above and foregoing Notice of Witness is hereby
12 acknowledged this 3rd Day of January, 1999.

13 JOSEPH SCISCENTO, Esq.
14 ATTORNEY FOR DEFENDANT

15 BY  _____

16 330 S Third Street #860
17 Las Vegas, Nevada 89101

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ORIGINAL

Shirley B. Pangione

JAN 6 10 30 AM '99

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1 MTN
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 BRENDAN JAMES NASBY,
12 #1517690

13 Defendant.

Case No. C154293A
Dept. No. III
Docket E

1-8-99
8:30 A.M.

15 NOTICE OF MOTION AND MOTION
16 TO REVOKE DEFENDANT NASBY'S JAIL
17 PRIVILEGES AND TO PLACE HIM IN ISOLATION

18 DATE OF HEARING: 1-7-98

19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
21 FRANK JOHAN COUMOU, Deputy District Attorney, and files this Notice of Motion and
22 Motion to Revoke Defendant's Jail Privileges and to Place Him in Isolation.

23 This Motion is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 NOTICE OF HEARING

27 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
28 bring the foregoing motion on for setting before the above entitled Court, in Department III

///

CMC

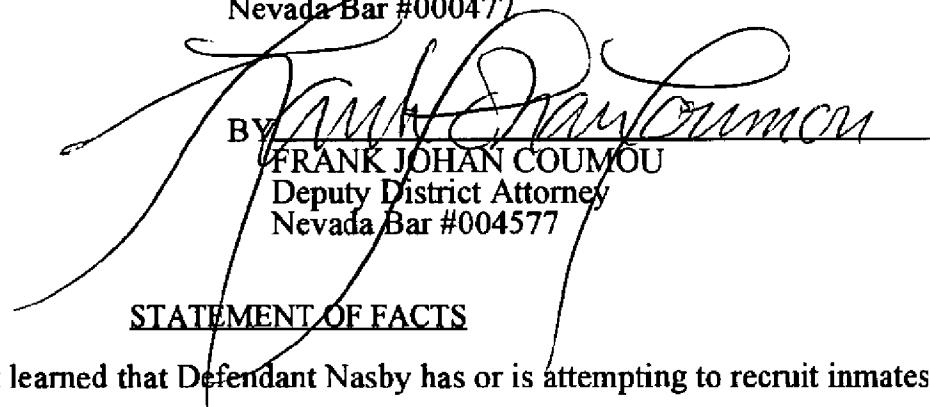
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CE11

Friday 8th
1 thereof, on Thursday, the 7th day of January, 1999, at the hour of 9:00 o'clock a.m., or as soon
2 thereafter as counsel may be heard.

3 DATED this _____ day of January, 1999.

4 STEWART L. BELL
5 DISTRICT ATTORNEY
6 Nevada Bar #000477

7 BY 
8 FRANK JOHAN COUMOU
9 Deputy District Attorney
10 Nevada Bar #004577

11 STATEMENT OF FACTS

12 The State has just learned that Defendant Nasby has or is attempting to recruit inmates
13 to kill, scare, or kidnap essential prosecution witnesses.

14 Defendant Nasby is charged with First Degree Murder with use of a Deadly Weapon.
15 Las Vegas Metropolitan Police Detectives arrested and booked Defendant Nasby at the Clark
16 County Detention Center (CCDC) on or about August 4, 1998. Defendant Nasby has since been
17 housed in the general jail population and allowing him access to telephones and other inmates.

18 While in custody, Defendant Nasby has contacted other inmates and recruited them to
19 kill, scare, or kidnap key witnesses for the State. Defendant Nasby has apparently given a list
20 with the names of these key witnesses along with identifiers to his recruits. (See attached
21 exhibit one). The named witnesses are in fact material witnesses, and two of which testified
22 against Defendant Nasby at the preliminary hearing.

23 It should also be noted to the Court that there already has been witness intimidation.
24 Defendant Nasby's girlfriend beat and tried to kidnap Tanesha Banks (case is pending in Justice
25 Court). Defendant Nasby has also personally contacted Miss Banks from CCDC to tell her that
26 he has people out on the street looking to kill her. (See attached exhibit two).

27 This information causes great concern to the State and therefore moves accordingly to
28 ///

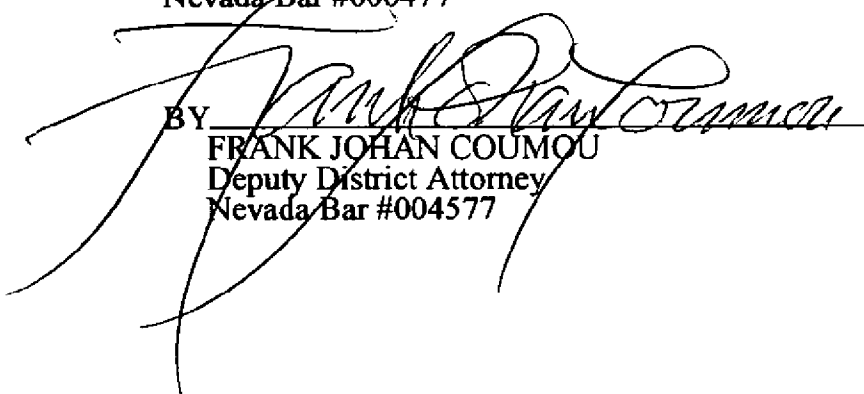
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1 place Defendant Nasby in "isolation" allowing him only "legal" telephone communications to
2 his attorney.

3 DATED this _____ day of January, 1999.

4 STEWART L. BELL
5 DISTRICT ATTORNEY
6 Nevada Bar #000477

7 BY 
8 FRANK JOHAN COUMOU
9 Deputy District Attorney
10 Nevada Bar #004577

11 RECEIPT OF COPY

12
13 RECEIPT OF COPY of the above and foregoing motion is hereby acknowledged this

14 17th day of January, 1999.

15 JOSEPH SCISCENTO, Esq.
16 ATTORNEY FOR DEFENDANT

17 BY 
18 330 S Third Street #860
19 Las Vegas, Nevada 89101

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21
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28 msr

AFFIDAVIT FOR ORDER SHORTENING TIME

STATE OF NEVADA }
COUNTY OF CLARK } ss:

FRANK JOHAN COUMOU, being first duly sworn, deposes and says:

Your affiant requests the Court's permission for an Order Shortening Time for a hearing on State's Motion to Revoke Defendant's Jail Privileges and to Place Him in Isolation.

The State has just learned that Defendant Nasby has or is attempting to recruit inmates to kill, scare, or kidnap essential prosecution witnesses.

Therefore, for the reasons set forth in the Statement of Facts in the attached motion, it is imperative that this motion be heard by this Court as soon as possible.

Hence, the State of Nevada requests a hearing on or before Thursday, January 7, 1999, at 9:00 am.

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

Executed on 1.4.99
(Date)

Frank Johan Coumou
(Signature)

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IT IS HEREBY ORDERED that the time for hearing in the Motion be shortened and that the hearing on the State's Motion be held on the 8th day of January, 1999, at the hour of 9:00 A.M.

DATED this 6 day of January, 1999.

DISTRICT JUDGE

To : FRANK COUMOU

From : JIM BUCZEK

Subject : BRENDAN NASBY

**LAS VEGAS
METROPOLITAN
POLICE
DEPARTMENT**

Date : 12/22/98

M E M O R A N D U M

On 11/07/98, General Assignment Detectives Kevin Johnson and Jim Mitchell recieved a copy of a letter drafted by Brendan Nasby from John Holmes. One page was missing and the first page was copied twice as explained in Johnson's memo. See attached memo from Johnson and copy of letter by Holmes. Nasby retained the original and allowed Holmes to make a copy.

On 12/16/98, Gang Investigation Bureau Detective Tom Bateson told me that he spoke to John Holmes and recieved copies of the full 3 pages of the letter authored by nNasby. Bateson said that Holmes had some information for me.

On 12/17/98, I spoke with Holmes. I explained to Holmes that I could not make him any promises. Holmes committed to a taped interview. Holmes told me that on 11/05/98, at approximately 9:00 pm, Nasby told Holmes that he killed Droop aka Michael Beasley. Holmes also said that Nasby wants to have Crystal Bradley, Tanesha Banks, Brittny Adams, Porsche Nichols and "Woodpeker" killed, scared, or kidnapped until the trial is completed. Holmes said that Nasby has recruited his cellmate "Happy" aka Hector Santiago, "T-Pot", "DJ", "Dizzy", "Mac", and himself to kill, scare or kidnap the witnesses. Refer to the copy of Holmes statement. Holmes also allowed me to copy a piece of paper that Nasby wrote the names, social security numbers, addresses, and telephone numbers of Crystal Bradley, Tanesha Banks, Brittny Adams, and Porsche Nichols. On the rear of the paper is the name Woodpecker/Jermie (aka Jerimiah Deskins) and telephone number 656-6814 or 41. Holmes retained the original copy and told me that when he leaves jail that he will give it to me.

I just spoke with the handwriting analyst and she said that with the proper comparisons she should be able to make a comparison of our exemplars.

Call me when you get back.

EXHIBIT " 1 "

The girl's statement

I met Shugy at the 7-11 on 15th and Fremont I knew him for about a week before the murder happened. He was always a heavy drinker every time I saw him he was drinking. On the night of the murder he had on a black T-shirt, black pants (dickies), and black converse with black laces. On that night (July 16, 1998) me and Shugy met at the bus station on Stewart & Las Vegas Blvd. I had my homegirl drop me off there on her way to Fremont. After me and Shugy met that night at the bus stop around 9:00 P.M. we hopped on the Martin L. King Bus and took it to Craig and M.L.K. When we got off we went to an 4M/PM gas station and Shugy paged someone. I think he paged woods. Me and Shugy waited for about up there for about 20 minutes then woods came and picked us up in a dark red car (burgundy) with Droop in the back seat, T-Cone in the front seat, his other Joe-T in the back behind T-Bone hopped in the back & Shugy hopped in the front with T-Bone. Now Woods was driving next to him and then Shugy next to T-Bone the back seat it was Droop behind woods, he next to Droop, then Joe-T on my right, Shugy

nine that Shugg had. Nobody minded because we were smoking and drinking the whole way up to the desert. I don't ~~from~~ remember which desert it was but I remember that it was off of Alexander somewhere. When we got there Shugg, Woods, and Droop got out. Me, T-Bone, ~~and~~ and Joe-T stayed in the car smoking and drinking. 10 minutes later I started to get out of the car and saw Woods sitting on the hood of the car. Droop standing in front of the edge of the cliff and Shugg put the gun up to Droop's head area and shot him. After that one shot I hopped back in the car. I heard another shot but I didn't want to look anymore so I didn't see where he shot him the second time. But as ~~as~~ all this was happening T-Bone and Joe-T both were wondering what was going on. Then Woods and Shugg got in the car, but Shugg hopped back out and shot Droop again. Then he got back in the car and we headed back to the AM/PM. Now it was Woods driving & Shugg next to him. In the back seat it was Me behind Wood, Joe-T next to me in the middle, and T-Bone in the right behind Shugg. When we got to the AM/PM Me and Shugg got out. Shugg told me to ~~shut~~ shut up and stay quiet about what happened. Woods, T-Bone, and Joe-

3

~~Shugg~~ left us there. Me and Shugg didn't talk any more that night. I called my ride that took me to the bus ~~stop~~ station and told her to come and get me. I left ~~Shugg~~ Shugg at the gas station and haven't talked to him since. On July 16th, That was my first time meeting Droop, T-Bone ~~Joe~~ Joe-T, and Woods but I couldn't take it any more. The fact that I knew something was eating me up inside. I would have told sooner but I was scared of Shugg. ~~T-Bone~~ T-Bone had a blue 22 ~~Jersey~~ Jersey and black ~~pant~~ pants. Joe-T had on a striped blue shirt on and blue pants. I don't know what kind of shoes ~~sh~~ they had on because they never got out of the car. Wood had on white shorts with a white tang top and white nike shoes. I don't remember what kind of nikes shoes but I know they were low top all white nike ~~sh~~ shoes.

576-37-6349-SS#

576-3136-H. Phone

Crystal Marie Bradley

W. Washington ← Wild Flower Apartment

541

Las Vegas, NV 89127

576-37-6349-SS#

+ 53-0129-H. Phone

2651 Napa drive

Las Vegas, NV 89115

Tanesha Banks

Bri-tney Keshia Adams / Porsche Nichols

1397 Honey lake St.

Las Vegas, NV 89110

453-2472-H. Phone

359-76-6141-SS#

T-pot

233-0822

Tiffany

360-9176

Shank

573-8371

Mace

644-1912

Lto

432-3727

DJ

876-1100

Kelly + Sherell

564-1106

Amber + Alicia

396-7453 / 253-8551

Michelle

396-7017

Dizzy

547-1619

G. ROB

Martha

Vince
565-9499
564-7162
Ansel

COOL
459-050

432-3777
L.O.

WOOD PETER
H
656-6814

564-1106

Kelly
Sherell

TANYA
3300 N. TANYA
- 65 Vega E 207-
89120

ALICE - T. fare
S 47-9100-
Binside
ANDY
6165-068

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: 980717-0541

SPECIFIC CRIME: MURDER WITH DEADLY WEAPON

DATE OCCURRED: 07/17/98

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: JOHN ROBERT HOLMES

DOB: 04/16/79

SOCIAL SECURITY #:

RACE: B

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: 1901 ARBOR WAY #A
LAS VEGAS, NV. 89108

HOME PHONE: 646-1113

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. BUCZEK, P# 3702, LVMPD HOMICIDE Detail, on 12/17/98 at 1335 hours.

Q: Robert, are you aware that this is being taped?

A: Yes I am.

Q: Okay. Robert, you had contacted us one time reference a piece of paper you had received from a Brandon Nasby, is that correct?

A: Yes it is.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 2

EVENT #: 980717-0541

STATEMENT OF: JOHN ROBERT HOLMES

Q: Okay. And how long have you been living in the same module at the Clark County Detention Center as Brandon?

A: About two months.

Q: Okay. And Brandon also goes by the name of Blue. Is that correct?

A: Yes it is.

Q: Okay. And, uh, are you related to Brandon at all?

A: Uh, so-called cousin.

Q: But, are you really cousins?

A: No, I'm not.

Q: Okay. He just refers to you as his cousin?

A: Yes.

Q: Okay. And did you know Brandon before you were in the Clark County Detention Center?

A: Yes.

Q: How long have you known him for?

A: Uh, about three months.

Q: Okay. Were you ever a member of the L.A. Crazy Ridaz?

A: No I wasn't.

Q: Okay. Did you happen to know Michael Beasley?

A: Yes.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 3

EVENT #: 980717-0541

STATEMENT OF: JOHN ROBERT HOLMES

Q: And you know him as...what was his street name?

A: Droop.

Q: Okay. And...now we'll go back to this, uh, uh, piece of paper that you gave the detectives a while back. This is a statement that was prepared by Brandon?

A: Yes.

Q: Okay. And was it in his own handwriting?

A: Yes.

Q: And what did he want you to do with this piece of paper?

A: He wanted me to re-copy it and send a copy to one of my girlfriends to have them come forward and testify on his behalf, to blame it on Sugar Bear.

Q: Okay. And what girlfriend was that?

A: Uh, any one of 'em.

Q: Okay. And what was he to blame on Sugar Bear?

A: Uh, that Sugar Bear killed Michael Beasley.

Q: Okay. Did there ever come a time where, uh...I'm sorry, let's go back...what does the statement, uh, this statement... what is she supposed to do in this statement?

A: She supposed to come forth and say that she met Sugar Bear on 15th and Fremont at 7-11 and they were talking and whatever, you know...he was always a heavy drinker, then, uh, one day he's, um...they known each other for about a week. He met...then they supposed to went to the DTC to catch the bus over to, um, Martin

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 4

EVENT #: 980717-0541

STATEMENT OF: JOHN ROBERT HOLMES

Luther King and Craig or Carey or somewhere, then they went to an AM-PM. They was supposed to have paged some guy and they...they stayed there for about 10 minutes until a guy named Woodpecker came to pick 'em up and it was T-Bone, Joe T, Sugar Bear and Droop in the car. They said that they were going to get high, get drunk. They was driving to, to a desert...they was getting drunk, getting high. Droop, uh, and Woodpecker and Sugar Bear got out the car. T-Bone and Joe T stayed in the car with my girlfriend and they were sitting there smoking weed, getting drunk and they heard two shots. Woodpecker was sitting on the front of the car, T, uh, Sugar Bear and Droop was out in front of the car parked further up. Sugar Bear shot Droop. She saying that she started crying. Then they turned around and Sugar Bear got back in the car. Woodpecker got in the car then Sugar Bear got out the car, went back and shot Droop again. And then they left.

Q: Okay. And Blue was never even supposed to have been there?

A: And Blue wasn't supposed to be there.

Q: Okay. And uh, did he ever say anything about what size of gun was used?

A: He said it was a 9 millimeter.

Q: Okay. Now you've had conversations with him, is that correct?

A: Yes I have.

Q: Okay. And could you...did he ever tell you that he actually shot Droop?

A: 11-5-98. 9 PM. He told me, he killed Droop.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 5

EVENT #: 980717-0541

STATEMENT OF: JOHN ROBERT HOLMES

Q: What did he say to you?

A: We was playing chess. He said "Do you, did you like Droop?" I said "No, no he ... he was cool. You know what I'm saying. But we never got into it." Then he said, "Uh, for real?" Then he said T-Bone killed Droop and like "For real?" Said "Well, that's the past" or whatever. He was like "no, then he looked at t.v. I made a little move then he made a move." Then he said "now you want to hear the truth?" I said, I'm saying "Whatever...if you want to tell me the truth, tell me the truth." Then he said "I killed the homey." And I'm sitting there and my eyes got real red and watery. I'm like "For what?" He said, um, "Just because, that don't matter." I'm like "Well, like it don't matter." "Whatever it was, it was for a good reason." He said, um, "Yeah, whatever." Then uh, he said "You want to know the real reason?" He said he killed him because Droop was hurting the hood. Droop was trying to take his stripes. So he felt he had to kill him. And I was like "So why you just didn't take him off the hood?" He said that, um, what did he say...He said, uh, "That every...everybody a friend of the hood wanted Droop dead." And that was it.

Q: Okay.

A: But, before all that happened, is L.A. Ridaz and Crazy Young Niggers. And Droop was part of CYN. That was just a little clique that we had on Fremont. We used to go and mess with females, whatever...just chill, we smoke weed and whatever. That was it. Blue was from Ridaz so then Droop and Blue and all them met up at

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the park and that's when they picked up that we all was from California. Before Droop got killed, um, Blue, T-Bone, Joe T, T-Pot, G Stone, Dizzy and um, Shank, they all had a meeting. Everybody from Ridaz had a meeting. But nobody from CYN was there. And that's when they decided to kill Droop. And they said the only person that would do it was Blue. A couple other people from Ridaz was mad but know... they, they didn't...they couldn't say nothing. 'Cause Droop was the leader or whatever. When they finally did it, that's when Droop came...I mean Blue came back and told, uh, called Crystal and told Crystal that he did it. I guess that's when Crystal came and called the police and told 'em whatever.

Q: Okay. Did you hang out with...now, you were with CYN?

A: Yes.

Q: Okay. And uh, did you know any of these other guys very well that were in Crazy...uh, L.A. Ridaz?

A: I knew, um, Mack and T-Pot. Well see...well I didn't really know of 'em because I wasn't there when they all clicked up.

Q: Okay.

A: I had just, one day, uh, Droop called everybody and said he was having a bar-b-que and went to Droop house and that's when we all just started meeting each other. I mean Sugar Bear, T-Pot, Joe T, uh, T-Bone and who was it there...Crystal and Blue got some pictures up there of everybody from Ridaz and Crazy Young

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Niggers. And that's how I met everybody. And then later on that night I left but before I left, they was telling about going to shoot us some _____. Droop stayed. I end up staying with Droop for a little while. T-Bone, Joe T, Blue and um, Mack, they all left. And that was it. And then I left and Droop stayed there.

Q: Okay. Today you also handed me a piece of paper that has various names on it and social security numbers, phone numbers and addresses. Could you read, could you tell me the names of the, of the people that are on there?

A: Yes. It's, uh, Crystal Marie Bradley, it's Tanesha Banks, Brittany Kesha Adams slash Porsche, Porsche Nicoles and um, Woodpecker also known...uh, his real name is Jermaine, or something like that.

Q: Maybe Jeremiah?

A: Yeah, Jeremiah.

Q: Okay. Now these people that, uh, where, where did the...where did you get these names from?

A: I got these from, uh, Brandon Nasby.

Q: Did he write these down himself?

A: He wrote 'em down himself. Except for Wood, uh, Jeremiah.

Q: And he...how did you get that name?

A: Uh, he gave it to me. But he didn't know the number or nothing. And his girlfriend, Colleen, gave me the number. She supposed to get...she said she know the

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directions to his house so when she get in the car, she supposed to go get the directions and then she going to give 'em to me, the name of the streets and the address and all that.

Q: Okay. How did, uh...why do you have these addresses?

A: 'Cause he wants me to hook up with T-Pot, DJ, and Dizzy and Mack when I get out to have these people killed. And if I don't do it, one of them is going to do it or his celly, Happy, is going to do it.

Q: Okay. His cellmate, Happy, uh, do you happen to know his last name by any chance?

A: Uh, Santiago.

Q: Okay. Very good. Uh, so he wants, he wants all, all these people killed?

A: Killed, scared...so they won't come to court or scared so they come to court and plead the fifth. Or they want 'em kidnapped after the court is over with.

Q: Okay. What was the exact words he told you?

A: He said he needs them scared so they'll come to court and plead the fifth or he want 'em kidnapped and held until after court is all over with or he wants them just flat out killed.

Q: Okay.

A: And left in a ditch somewhere.

Q: Has he offered you anything in...for doing this?

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A: No.

Q: He just expect you to do it?

A: Yeah.

Q: Off your friendship?

A: Uh huh.

Q: Okay. There's, there's, uh, some other names at the bottom of the paper and telephone numbers. Could you read those off for me, please.

A: Yeah, it's says T-Pot, 233-0822. Then there's Tiffany, T-Pot's girlfriend, 360-9176.

Q: I'll tell you what. Just read the names off. That will be a little bit quicker.

A: Then there's Little Shank and Mack, Leo, DJ, Kelly and Shirelle, Amber and Alycia, Michelle and Dizzy.

Q: Okay. What are those...who wrote those names down?

A: Uh, Blue, uh, Blue has 'em written down on another piece of paper that he keeps and he gave those to me.

Q: Okay.

A: I wrote these down.

Q: Okay. But you wrote those down?

A: Uh huh.

Q: Okay. Great. And, there's some other names on the back...

A: Uh, Kelly and Shirelle, uh, Alice and T-Bone's mom and...Woodpecker...Jeremiah.

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Q: What's the...what's the significance of having Alice, T-Bone's mom on there?

A: I don't know. This was already wrote on here.

Q: Okay.

A: When I got the paper.

Q: Okay. It was already written on there?

A: Uh huh.

Q: And that's the telephone number there?

A: Yeah. 547-4920.

Q: And the name underneath it is?

A: Uh, Burnside. Then there's Jeremiah AKA Woodpecker.

Q: Okay. And are there any other names on...on the back that you did not write?

A: Uh, Leo.

Q: And...

A: 432-3727.

Q: Okay. And then the rest of 'em you wrote on there?

A: Yeah.

Q: Okay. Is there anything else you can tell me that may be able to help me out in my investigation?

A: Uh, not right off hand.

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Q: Okay. Do you happen...now, I know you gave me the names earlier of, uh, T-Pot and G Stone, and Dizzy. Do you happen to know their names, their full names at all?

A: Not off hand.

Q: Okay. You only know 'em by, by their street names?

A: Uh huh.

Q: Okay. And did you have...also, um, do you know where they live at all?

A: Um, Dizzy or G Stone lives way out there on Tropicana. And G Stone lives out there on Tropicana somewhere.

Q: Okay. West Tropicana or East Tropicana?

A: He just says way out there on Tropicana.

Q: Okay. So you've never been by there, you just know...

A: Half the people I don't even know. He just want me to call and hook up with 'em.

Q: Okay. Alright. Anything else you can think of?

A: Not right now.

Q: Now when we first sat down and talked, I explained to you that there wouldn't be any promises made to you. Is that correct?

A: Yes.

Q: And, uh, that the only thing I would do is go to the judge and tell him that you helped us out, correct?

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A: Yes.

Q: Okay. So I just want to make fair and...I mean I want to make that clear that, uh, we don't have any promises of any, anything, okay?

A: Okay.

Q: Alright. I appreciate your time...

A: Uh, will you need me to testify if I get out?

Q: There's a possibility.

A: Okay.

Q: Okay. I, I can't, uh, I can't say yes or no but I, I...all I can say is yeah, there's, there's a good possibility.

A: Okay.

Q: Okay. That will be the end of the tape. It is currently 1339 hours. Thank you.

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I HAVE READ THIS STATEMENT CONSISTING OF 13 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT CLARK COUNTY DETENTION CENTER ON THE 17TH DAY OF DECEMBER, 1998 AT 1339 HOURS.

WITNESS: _____

WITNESS: _____

JOHN ROBERT HOLMES

/kb
98v1046

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EVENT: 980923-1035

SPECIFIC CRIME: INTIMIDATING A WITNESS

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: TANESHA BANKS

DOB: 08-20-80

SOCIAL SECURITY #: 576-37-6349

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: 2651 Napa
Las Vegas, NV 89115

HOME PHONE:

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by Detective T. Thowsen, P#1467, LVMPD Homicide Detail, on 09-23-98 at 1300 hours. The persons present during this interview are Tanesha Banks and Detective Thowsen.

- Q. Tanesha, first off, you aware this statement is being tape recorded?
- A. Yes.
- Q. Can you tell me, uh, if you are currently the witness in a homicide case?
- A. Yes.
- Q. And who is the victim in the homicide?
- A. Uh, Michael Beasley.
- Q. And what relation was Michael Beasley to you?

EXHIBIT " 2 "

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TANESHA BANKS

A. He was my son's father.

Q. And you've given statements in that homicide. Is that correct?

A. Yes.

Q. And who is the suspect in that that is under arrest right now?

A. Brandon Nasby.

Q. And since you became a witness in that, there was occasion in the past that's already been documented where, uh, someone came to your house. Is that correct?

A. Yes.

Q. And can you briefly state again what happened on that particular night?

A. I was attacked by Brittany Adams. Uh, she came to the house and she wanted, she took me outside and she wanted to know, uh, what happened with Michael and I told her I didn't know and she said to me that, "Everybody's saying you're, you're saying Blue did it." And I said, "I don't know anything." And she said, "Well, you need to keep your mouth shut about Blue and this is a message from Blue." And hit me in my face and that's the last thing I remember.

Q. You were knocked unconscious?

A. Yes.

Q. And who is Blue?

A. Brandon Nasby.

Q. That's his nickname?

A. Yes. His gang name.

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Q. Okay. Since that incident, uh, do you know where Brandon Nasby has been?

A. In jail.

Q. Okay. Can you tell me what happened last night?

A. Uhm, he called me from jail. I thought he was my friend, so that's why I accepted the call. And he didn't identify himself (sic) right away. He just started talking, uh, saying that, uh, he didn't do it, he didn't kill Michael and he doesn't know who did and he needs to get outta here and I can't testify against him because he will have me touched, and which means killed, and he has people already on the streets that are looking for me to kill me and that he has my address, my name and my social security number, which he read off to me.

Q. He read off your social to you?

A. Yes, he did.

Q. Did he say where he got that information?

A. Uhm, I asked him and he said through the grapevine. That's what he said.

Q. Okay. And how did you know where the call was coming from?

A. Because, ah, my friend, when he calls me from the jailhouse, it's always three five, uh, three one five numbers.

Q. And do you have something at your house that tells you what number's calling?

A. Yes, Caller ID.

Q. And did you look at your Caller ID?

A. Yes, I did.

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- Q. And is that the same Caller ID that you showed me a few minutes ago?
- A. Yes.
- Q. And you showed me two numbers at two different times. The first number you showed me was the phone number 315 with the area code 702 prefix, 4415, that came in at 7:14 p.m. on 09-22-98. Is that correct?
- A. Yes.
- Q. And that's the phone conversation that you've been talking about.
- A. Yes.
- Q. How long did he talk to you altogether do you think?
- A. Ahm, about nine minutes.
- Q. Did he ever tell you who it was on the phone?
- A. Yes. He eventually did when I asked.
- Q. What did he say?
- A. He said, "This is Blue Loc."
- Q. And that is--
- A. _____ is Brandon, his nick-- a gang nickname.
- Q. And after talking with him for nine minutes, do you recognize his voice?
- A. Yes, I did after.
- Q. Is there any doubt in your mind who the person is on the other end of the phone?
- A. No.
- Q. And who's that person?

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A. Brandon Nasby.

Q. The second, uh, phone number that you showed me was Area Code 702, 315-4489 that came in at 7:26 p.m. Can you tell me about that phone call?

A. I had left the house because, uh, my mother wasn't here, I had nobody talk to, so I went to talk to my neighbor about it to see what I should do. And when I came back in the house, my sister said she had accepted the call because again she thought it was my friend. And he told her, "This is Blue," and she's--she was shocked and she said, "Well, she's not here." And he says, "I just talked to her." And he-- she said, "Well, she--he's--she's not here." So I guess the phone conversation ended.

Q. Okay. And what's your sister's name?

A. Malia Banks.

Q. How do you spell that?

A. M-A-L-I-A.

Q. And how old is she?

A. She's ten.

Q. Okay. Have you had any other further, any further phone calls?

A. No.

Q. Did you, uh, call the police to report it?

A. Yes, I did. I called the non-emergency number.

Q. And what did they tell you?

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TANESHA BANKS

A. They told me they couldn't do anything for me, that my best interest _____ to be to either go rent a motel or stay with a friend for the night because they didn't have enough units to watch my house 24 hours.

Q. Did you call anyone else?

A. Yes. I called, ah, you guys.

Q. Detective Buczek?

A. Yeah. And he told me that he's glad that I called and to call in the morning and he would call the-- call one of you guys in the morning and he would call the D.A.'s office.

Q. Okay. Is there anything else that's happened that you haven't mentioned?

A. No.

Q. That will be the end of the statement. The same persons are present. The time is 1306. That's all. Thank you.

I HAVE READ THIS STATEMENT CONSISTING OF 6 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT 2651 NAPA, LAS VEGAS, NEVADA 89115 ON THE 23RD DAY OF SEPTEMBER, 1998 AT 1306 HOURS.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

TT/im
983378

**PLEADING
CONTINUES
IN NEXT
VOLUME**