

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

DEC 28 2001

BY JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

THE STATE OF NEVADA,

Petitioner,

vs.

No. 38987THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, and THE
HONORABLE MARK E. GIBBONS,
District Judge,

District Court No.C172534

Respondents,

and

ALFRED P. CENTOFANTI, III,

Real Party in Interest.

PETITION FOR WRIT OF MANDAMUSSTEWART L. BELL
Clark County District Attorney
Nevada Bar No. 000477
Clark County Courthouse
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Nevada Attorney General
Nevada Bar No. 000192
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265GLORIA NAVARRO
Clark County Special Public Defender
Nevada Bar # 5434
309 South Third Street, 4th Floor
P.O. Box 552316
Las Vegas, Nevada 89155-2316
(702) 455-6285

Counsel for Petitioner

Real Party in Interest

01-21803

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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5 THE STATE OF NEVADA,

6 Petitioner,

7 vs.

8 THE EIGHTH JUDICIAL DISTRICT COURT
9 OF THE STATE OF NEVADA, IN AND FOR
10 THE COUNTY OF CLARK, and THE
HONORABLE MARK E. GIBBONS,
District Judge,

11 Respondents,

12 and

13 ALFRED P. CENTOFANTI,

14 Real Party in Interest.

No. _____

District Court No. C172534

15 **PETITION FOR WRIT OF MANDAMUS**

16 TO: THE HONORABLE JUSTICES OF THE
17 SUPREME COURT OF THE STATE OF NEVADA

18 THE STATE OF NEVADA, Petitioner herein, by and through
19 STEWART L. BELL, District Attorney, and his deputy, CHRISTOPHER
20 LAURENT, respectfully represents:

21 **I**

22 Respondent is now and has, at all times mentioned herein, been the District
23 Judge of the Eighth Judicial District Court of the State of Nevada, Department VII,
24 in and for the County of Clark.

25 **II**

26 ALFRED P. CENTOFANTI, III, Real Party in Interest, hereinafter referred
27 to as the defendant, was charged by way of Indictment filed January 10, 2001, with
28 Open Murder with Use of a Deadly Weapon.

III

On December 27, 2001, the district court denied the State's Motion for Discovery of notes, report and tests conducted by the defendant's declared psychiatric experts. The district court furthermore, denied the State's motion for an independent psychiatric evaluation of the defendant in light of the fact the defendant has noticed two psychiatric experts.

IV

The State requested that the court stay the proceedings so it could appeal to this court. Said stays were denied.

V

The State has not yet received the transcripts of the argument and order but has faxed this Petition up to the Court as this case is set to start on January 2, 2001.

VI

This petition is brought pursuant to NRS 34.150 et seq. and based on the following points and authorities and appendix.

VII

The State of Nevada has no plain, speedy, or adequate remedy in the ordinary course of law.

ISSUES PRESENTED

It is the position of the petitioner State of Nevada that the ruling of the respondent district judge was not in conformity with the jurisprudence of this Court and said ruling constitutes an arbitrary or capricious exercise of discretion.

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RELIEF SOUGHT

The petitioner State of Nevada prays that this Court issue a writ of mandamus directed to the respondent district judge vacating his order denying the State's motion for discovery of notes, results and test of the defendant's experts as well as an order allowing the State the opportunity to conduct an psychiatric examination the defendant as he has already noticed the court that he will be presenting psychiatric testimony.

DATED this 27th day of December 2001.

STEWART L. BELL
Clark County District Attorney
Nevada Bar No. 000477

By 

CHRISTOPHER LAURENT
Chief Deputy District Attorney
Nevada Bar No. 005043

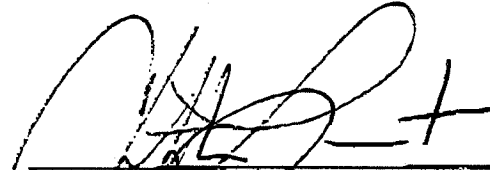
Office of the Clark County District Attorney
Clark County Courthouse
200 South Third Street, Suite 701
Post Office Box 552212
Las Vegas, Nevada 89155-2211
(702) 455-4711

AFFIDAVIT

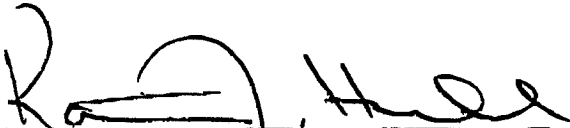
STATE OF NEVADA }
COUNTY OF CLARK } SS

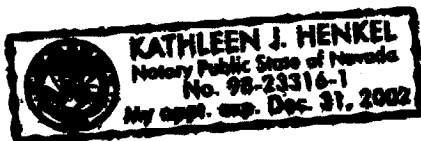
CHRISTOPHER LAURENT, being first duly sworn, deposes and states:

That he is the Deputy District Attorney acting for STEWART L. BELL,
District Attorney for the County of Clark, State of Nevada, and Petitioner in the
above-captioned case; that he has read the foregoing PETITION FOR WRIT OF
MANDAMUS and knows the contents thereof and that the same is true and correct
to his own knowledge.


CHRISTOPHER LAURENT
Chief Deputy District Attorney
Nevada Bar No. 005043

Subscribed and sworn to before me
this 27 day of December 2001.


Notary Public, County of Clark,
State of Nevada



**POINTS AND AUTHORITIES IN SUPPORT
OF PETITION FOR WRIT OF MANDAMUS**

STATEMENT OF THE CASE

On January 10, 2001, a True Bill charging the defendant with open murder was returned to the district court. On January 17, 2001, the defendant had his initial arraignment in district court and a trial date of July 9, 2001 was set. Defendant is currently out on bail but under house arrest.

The trial date was vacated at the defendant's request and a trial date in October was set with a calendar call of September 27, 2001. That date was also vacated at the defendant's request. On September 14, 2001, the defendant represented by Mr. Bloom moved to continue the October trial. Mr. Bloom claimed that he could not be completely prepared on October 1, to try this case.

On October 29, 2001, the Court heard the State's motion to compel discover. The minutes reflect that Mr. Bloom's understanding to discover was as follows:

[A]nything the defense is going to use at trial must be provided and they will do so, whatever form it is in, and advise they have continued to provide discovery and are giving it to the State as soon as it is available.

Said motion was granted.

The court also heard the State's motion to require parties to declare witnesses 21 day prior to trial. The court granted the State's motion and witnesses were to be disclosed 21 days prior to trial.

On November 7, 2001, the defendant once again moved to continue the trial date. The defendant indicated that he needed to have the defendant seen by a psychologist and that was problematic as the defendant could not travel. The Court ordered the trial date vacated and the ordered the defendant to provide notice of witnesses at least 21 days prior to trial.

The State has consistently and continually requested discovery under NRS 174.234. The defendant's first response was an e-mail dated December 17, 2001.

1 **EXPERT DESIGNATION**

2 I am designating the following experts for the
3 case. I have indicated the general nature of their
4 testimony and I have further indicated that I have
5 already provided you CV's for Fox, Eisele, and
6 Frazier, and CV's for Lipson and Heller are coming.

7 No reports from any expert have been prepared as
8 each of them are in the midst of evaluations and trial
9 preparation. Do not hesitate to contact me if you have
10 any questions regarding these experts.

11 Richard Fox - Ballistics/Criminalist (CV provided)
12 John Eisele - Pathologist (CV provided)
13 Glen Lipson - Psychological Evaluation of Defendant
14 (CV coming)
15 Scott Frazier - (CV provided) Human factors: Flight of
16 Fright Syndrome
17 Dr. Beatrice Heller: 3636 4th Avenue, SD 92101 (CV
18 to follow) - Psychological evaluation
19 G. Michael Newman - Karate Expert
20 Toxicologist - Re-test of recedent samples (in process)

21 Exhibit 1. The State voiced its complaints to the defendant's proffered notice as it
22 failed to meet the requirements of NRS 174.233(2)(a), which requires a "brief
23 statement of regarding the subject matter on which the expert is expected to testify
24 and the substance of his testimony." The defendant has failed to provide the
25 substance of that testimony. The court ordered the defendant to comply with NRS
26 174.233 and the defendant submitted Exhibit 2, which still fails to provide any
27 substance of any testimony the expert is intending to call.

28 On December 27, 2001, the district court denied the State's motion for
discovery of the reports, tests and notes of the experts as well as the State's request
for an independent psychiatric examination of the defendant. The State requested a
stay of the proceeding so that it could take an interlocutory appeal through
extraordinary writ.

STATEMENT OF THE FACTS

The defendant, a licensed attorney in the State of Nevada, married Gina Eisenman on February 14, 1999. On July 25, 2000, their first son, Nicholas, was born. Gina also brought a nine (9) year old son, Francisco "Quito" Sanchez, from a previous relationship to the marriage.

On the morning of December 5, 2000, police were called the Centofanti's home at 8720 Wintry Garden Avenue in Las Vegas as a result of a 911 call. The defendant and Gina had gotten into an argument over the fact Gina had arrived at home in the early morning hours on December 5, 2000, after being out all night. The argument over Gina's absence escalated and the defendant got on the phone to call Gina's boss to accuse him of having an affair with Gina. In order to stop the defendant from embarrassing her at her place of work, Gina broke a picture frame over the defendant's head and ripped his shirt. Gina told police that the defendant held a gun to her head and told her to beg for her life. He threatened to kill Gina, the kids and himself. As a result of the struggle over the gun, Gina received a split lip.

The defendant denied the allegations regarding the gun to officers stating that Gina held the gun and tried to fire it at him. This, however, is inconsistent with the information provided to Mark Smith when he called 911.

TRANSCRIPTION OF MR. SMITH'S 911 CALL

DISPATCH: Metro Police, 152
MARK: Yes hello, my name is Mark Smith, I'm a social worker in New York City. I have a Gina Centosanti [sic] on the line. She just told me that her husband pointed a gun at her and pulled the trigger, that the weapon did not fire. There are two minor children in the household.
DISPATCH: Okay, is calling us?
MARK: No she's not, I'm calling you.
DISPATCH: I know, why isn't she calling us?
MARK: I have no idea ma'am. I'm a social worker I have a duty to warn, I'm letting you know.
DISPATCH: Okay, what's the address she's at?
MARK: 8720 Wintry Garden Avenue

1 DISPATCH: Wintry Garden?
MARK: Yes.
2 DISPATCH: You have any info on him?
MARK: Uh, other than his name, no. His name is, oh jeez, what is
3 his name. Hang on for one second, got it here
somewhere.
4 DISPATCH: Do you have her phone number?
MARK: Yes, (702) 838-9814
5 DISPATCH: Okay, let me get what I can from you and then I'll try to
call her.
6 MARK: Ma'am.
DISPATCH: Yes.
7 MARK: She is significantly frightened of her husband, you cannot
call.
8 DISPATCH: She won't say anything.
MARK: No.
9 DISPATCH: Okay, do you have his name?
MARK: No I don't have his name ma'am.
10 DISPATCH: Okay, is that all you, is that it, do we have, and there's
two small children in the house?
11 MARK: There are two small children in the house, she ...
DISPATCH: What is you call back number?
12 MARK: My number's 800-448-4358.
DISPATCH: And that is a home, do you know?
13 MARK: Yes.
DISPATCH: Okay, we'll get somebody out there.
14 MARK: Thank you.
DISPATCH: Uh-huh.
15

16 However, due to the fact Gina had admitted to breaking the picture frame
17 over the defendant's head, she was arrested for Battery Domestic Violence. GJT,
18 pp. 80-87.

19 On December 6, 2000, the defendant applied for and received a Temporary
20 Protective Order against Gina. His basis for the Temporary Protective Order was
21 the Battery Domestic Violence that occurred the day before. GJT, p. 123.

22 The defendant finally agreed to the divorce. On December 11, 2000, the
23 defendant filed for a divorce with the aid of an attorney. Gina was not represented
24 by counsel. The divorce was uncontested and on December 12, 2000, the final
25 decree of divorce was entered in which the defendant was given primary physical
26 custody of Nicholas and the family residence on Wintry Garden Avenue. In the
27 meantime, Gina had obtained an apartment on the other side of town and proceeded
28 on with her life.

1 As a result of the domestic violence incident on December 5, 2000, three (3)
2 guns, including the murder weapon in this case, were taken into safekeeping by
3 Metro. On several occasions from December 5 to December 20, the defendant
4 contacted Metro attempting to get these guns back. Due to the fact the defendant
5 had a clean background check and Gina was deemed the primary aggressor in the
6 domestic violence, the guns were returned to the defendant. The day the guns were
7 returned to the defendant is the day he shot Gina. GJT, pp. 109-113.

8 This day was December 20, 2000. This was a Wednesday and was the day
9 that Gina was scheduled to pick up Nicholas for visitation. Gina called Trisha
10 Miller and told her that she would be going to pick up Nicholas after all and then
11 would meet them for dinner around 7:00 o'clock at a strip hotel. Shortly before
12 7:00 p.m. on December 20th, Gina arrived at the defendant's home at 8720 Wintry
13 Garden Avenue to pick up her son. The defendant's parents, Alfred Centofanti, Jr.,
14 and Camille Centofanti were watching television on the second floor of the house.
15 Camille and Alfred Jr. heard no arguing or yelling prior to hearing gunshots and did
16 not even know that Gina had arrived at the home. GJT, pp. 35-36, 41, 57.

17 During the time that Camille and Alfred, Jr. were upstairs watching TV, the
18 defendant and Gina were alone in the downstairs family room. The defendant
19 produced a 9mm Ruger and shot Gina numerous times in the head, chest, arm,
20 finger, and back. Specifically, Gina sustained a gunshot wound to the temple,
21 cheek and jaw, some of which were at point blank range. She also sustained a
22 gunshot wound to the upper left arm and left breast and right finger with indications
23 of at least one (1) of these shots being at point blank range. Gina also had a
24 gunshot entry wound in her lower back and a gunshot wound to the back of her left
25 arm. GJT, pp. 12-15.

26 When Alfred Jr. and Camille heard gunshots, they ran downstairs to find the
27 defendant with the 9mm Ruger in his hands. Camille called 911 and took the
28 defendant and Alfred Jr. next door to the neighbors' house. Camille told the

1 neighbors that the defendant had shot Gina. Upon the arrival of patrol officers, it
2 was discovered that Virginia Centofanti was dead. GJT, pp. 31-34, 52-58.

3 ARGUMENT

4 **THE DISTRICT COURT ORDER DENYING THE STATE'S MOTION FOR** 5 **DISCOVERY AND AN INDEPENDENT PSYCHIATRIC EXAMINATION** 6 **OF THE DEFENDANT WAS AN ABUSE OF DISCRETION**

7 A writ of mandamus is available to control an arbitrary or capricious exercise
8 of discretion by the district court. Crutcher v. District Court, 111 Nev. 1286, 903
9 P.2d 823 (1995); Mays v. District Court, 111 Nev. 1172, 901 P.2d 639 (1995). A
10 writ of mandamus will not lie where petitioner has an adequate remedy at law by
11 way of appeal. The denial the State's pretrial motions are not appealable orders.
12 See generally NRS 177.015. The right to appeal is statutory. Where no statute
13 permits an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352,
14 792 P.2d 113 (1990). Inasmuch as the order of the district court at issue here is not
15 appealable by the State before or after trial, petition for mandamus is appropriate.

16 **The State Is Entitled to the Discovery of the Expert's Note, Test Results and** 17 **Reports**

18 Under NRS 174.234 and NRS 174.245, the district court was in error when it
19 denied the State's motion for discovery of the note, test result and findings of
20 defendant's psychiatric examinations. The court based its ruling on the defendant's
21 argument that requiring the defendant to follow the statute would cause him to violate
22 his 5th Amendment right against self-incrimination. This Court when discussing the
23 previous reciprocal discovery statute cited Williams v. Florida, 399 U.S. 78 (1970).
24 The United States Supreme Court stated in the context of having the defense notice the
25 state of an alibi the following:

26 [a]t most, the rule only compelled the petitioner to
27 accelerate the timing of his disclosure, forcing him to
28 divulge at an earlier date information that the petitioner
from the beginning planned to divulge at trial. Nothing
in the Fifth Amendment privilege entitles a defendant as
a matter of constitutional right to await the end of the
State's case before announcing the nature of his defense,
any more than it entitles him to await the jury's verdict

1 on he State's case-in-chief before deciding whether or
2 not to take the stand himself.
3 Binegar v. Eighth Judicial District Court, 915 P.2d 889 (Nev. 1996). The Statutes
4 clearly contemplate that the defendant is required to provide:

5 2. If the defendant will be tried for one or more
6 offenses that are punishable as a gross misdemeanor or
7 felony and a witness that a party intends to call during
8 the case in chief of the state or during the case in chief of
9 the defendant is expected to offer testimony as an expert
10 witness, the party who intends to call that witness shall
11 file and serve upon the opposing party, not less than 21
12 days before trial or at such other time as the court
13 directs, a written notice containing:

14 (a) A brief statement regarding the subject matter
15 on which the expert witness is expected to testify and the
16 substance of his testimony;

17 (b) A copy of the curriculum vitae of the expert
18 witness; and

19 (c) A copy of all reports made by or at the
20 direction of the expert witness.

21 NRS 174.234(2).

22 NRS 174.245 Disclosure by defendant of evidence
23 relating to defense; limitations.

24 1. Except as otherwise provided in NRS 174.233
25 to 174.295, inclusive, at the request of the prosecuting
26 attorney, the defendant shall permit the prosecuting
27 attorney to inspect and to copy or photograph any:

28 (a) Written or recorded statements made by a
witness the defendant intends to call during the case in
chief of the defendant, or copies thereof, within the
possession, custody or control of the defendant, the
existence of which is known, or by the exercise of due
diligence may become known, to the defendant;

(b) **Results or reports of physical or mental
examinations, scientific tests or scientific experiments
that the defendant intends to introduce in evidence
during the case in chief of the defendant, or copies
thereof, within the possession, custody or control of
the defendant, the existence of which is known, or by
the exercise of due diligence may become known, to
the defendant; and**

(c) Books, papers, documents or tangible objects
that the defendant intends to introduce in evidence
during the case in chief of the defendant, or copies
thereof, within the possession, custody or control of the
defendant, the existence of which is known, or by the
exercise of due diligence may become known, to the
defendant.

1 2. The prosecuting attorney is not entitled,
2 pursuant to the provisions of this section, to the
discovery or inspection of:

3 (a) An internal report, document or memorandum
4 that is prepared by or on behalf of the defendant or his
attorney in connection with the investigation or defense
of the case.

5 (b) A statement, report, book, paper, document,
6 tangible object or any other type of item or information
that is privileged or protected from disclosure or
inspection pursuant to the constitution or laws of this
7 state or the Constitution of the United States.

8 NRS 174.245 (emphasis added). The State routinely requests this information but does
9 not receive it. It is well know that the State can not appeal the defendant's failure to
10 comply with discovery orders once the trial is over. As such a stay of the proceedings
11 is necessary as well as the issuance of an extraordinary writ to ensure compliance with
12 the law.

13 **The State is Entitled to an Independent Evaluation of the Defendant**

14 Over the years, courts have consistently held that compulsory psychiatric
15 examinations do not violate the Fifth Amendment of the United States Constitution.
16 Our Nevada Supreme Court has not had occasion to pass upon the issue of whether an
17 individual who claims an insanity defense or other psychological defense may be
18 compelled to attend a psychiatric examination by a State's expert. However, there is
19 a great wealth of federal cases that provide that such an order does not violate an
20 accused's Fifth or Sixth Amendment rights. United States v. Byers, 740 F.2d 1104
21 (D.C. Cir. 1984); United States v. Cohen, 530 F.2d 43 (5th Cir. 1976); United States
22 v. Bohle, 445 F.2d 54 (7th Cir. 1971); United States v. Albright, 388 F.2d 79 (4th Cir.
23 1964).

24 In Pope v. United States, 372 F.2d 710 (8th Cir. 1967), the defendant was
25 charged with bank robbery and murder. He alleged that he was insane at the time of
26
27
28

1 the incident. In upholding the District Court's compulsory examination, the Court
2 stated:

3 We therefore specifically hold that by raising the issue of
4 insanity, by submitting to psychiatric and psychological
5 examination by his own examiners, and by presenting
6 evidence as to mental incompetency from the lips of the
7 defendant and those examiners, the defendant raised that
8 issue for all purposes that the government was appropriately
9 granted leave to have the defendant examined by experts of
10 its choice and to present their opinions.

11 Id. At 721.

12 The Ninth Circuit has also ruled that courts have the inherent power to compel
13 criminal defendants to submit to psychiatric examinations by the State's experts when
14 the defendant claims an insanity type of defense. United States v. Wade, 489 F.2d 258
15 (9th Cir. 1973); United States v. Handy, 454 F.2d 885 (9th Cir. 1972). In United
16 States v. Handy, supra, the trial court ordered that:

17 If defendant does not comply with this order, he shall be
18 precluded at trial from presenting testimony upon the
19 issue of his alleged mental capacity by any expert by who
20 he has been interviewed.

21 Id. at 888.

22 The Ninth Circuit held that this sanction was appropriate under the
23 circumstances. The court reasoned that:

24 It would indeed be anomalous if defendant were permitted
25 to offer psychiatric testimony to support his defense of
26 insanity, and by refusing to submit to an examination by a
27 Court appointed psychiatrist preclude the government from
28 offering testimony to the contrary.

Id. At 889.

Moreover, the Sixth Amendment right to counsel does not apply to such
psychiatric examinations. United States v. Cohen, supra; Hollis v. Smith, 571 F.2d 685
(2nd Cir. 1978); United States v. Albright, supra. In holding that a defendant's

1 attorney may be prohibited from attending the defendant's psychiatric examination, the
2 Court stated:

3
4 It is difficult to imagine anything more stultifying to a
5 psychiatrist, as dependent as he is upon the cooperation
6 of his patient, than the presence of a lawyer objecting to
the psychiatrist's questions and advising his client not to
answer this question and that.

7 Id. at 692.

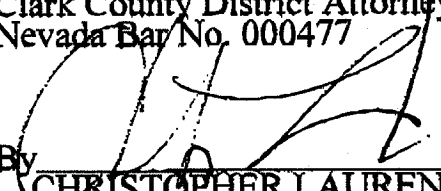
8 It is clear, that the concepts of fairness entitle the State an opportunity to conduct
9 an independent psychiatric examination of the defendant if he is going to be relying of
10 that type of expert testimony. "It would indeed be anomalous if defendant were
11 permitted to offer psychiatric testimony to support his defense of insanity, and by
12 refusing to submit to an examination by a Court appointed psychiatrist preclude the
13 government from offering testimony to the contrary." United States v. Handy, 454
14 F.2d 885 (9th Cir. 1972).

CONCLUSION

Based on the foregoing, the State respectfully requests this Court issue a Writ of Mandamus to order the Defendant to submit to a psychiatric and/or psychological examination by a Psychiatrist or Psychologist of the State's choosing. The purpose of the discovery statutes is to ensure that each party can be ready for trial. The defendant has already indicated that he intends to employ psychiatric testimony at trial. The State is entitled to the test results the report and an independent evaluation. After all, as far as the psychiatrists are concerned the defendant is a piece of physical evidence and the State is requesting the results of tests to be introduced and an opportunity to test the evidence itself.

Dated December 27, 2001.

STEWART L. BELL
Clark County District Attorney
Nevada Bar No. 000477


By 
CHRISTOPHER LAURENT
Chief Deputy
Nevada Bar No. 005043

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing Petition for Writ of Mandamus was made December 28, 2001, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Chief Judge Mark E. Gibbons
District Court Department VII
200 South Third Street
Las Vegas, NV 89155

Gloria Navaro
Clark County Special Public Defender
309 South Third Street, 4th Floor
Post Office Box 552316
Las Vegas, Nevada 89155-2316




Employee, Clark County
District Attorney's Office

1 CERTIFICATE OF FACSIMILE TRANSMISSION

2 I hereby certify that service of Writ of Mandamus, was made this 27th day of
3 December, 2001, by facsimile transmission to:

4
5 Gloria Navaro
6 Special Deputy Public Defender
7 FAX # 455-6273

8 
9 Secretary, District Attorney's Office

From: Allen Bloom <sasha@adnc.com>
To: Becky Goettsch <goettsb@ccgwgate.co.clark.nv.us>
Date: 12/17/01 10:38AM
Subject: Re: To D.A.: Witness List AND Expert List AND Available Discovery re: Centofanti case

Hi Becky,

I will be happy to bring the discovery to any service/kinko's you want. how do you want to arrange for copying costs. you can then advise me how you want it shipped and i'll arrange to ship it for you, next day service, if you wish.

To save on our costs, we did not make another copy for las vegas.

Re: experts: toxicologist: we are trying to make arrangements to have the lab work re-tested. i expect we will use the services of dan berkabile(sp?) lab

Dr Glen Lipson is a psychologist. He began his examination of the defendant just last Wednesday and he has to do another day of testing, which is schedule. His evaluation is not finished, therefore I can't give you any report. I can't even tell you for sure if he will testify, as I don't know his results and can't tell if you will have anything to do to the evidentiary base for the jury. As I indicated, I am getting his CV for you, a process complicated that he went to China and will be gone for another week, but I think I can get it from another source later today. His testimony, if any, will revolve around his examination of Mr. Centofanti.

Dr. Heller: I have designated her, though she hasn't worked on the case yet. She will doing an evaluation of Ms Centofanti. We have not obtained all the records regarding Ms Centofanti yet.

Re: Michael Newman: he is an investigator here in San Diego, who interviewed some of the witnesses. He is a designated potential witness. He happens also to be a karate expert. If he testifies as an expert. As you already know, Ms. Centofanti had karate training and if he testifies, he will speak about the physical capabilities of a person trained to a particular level of karate expertise.

I believe, in fact, my designation of experts was both timely and just as comprehensive as your designation, and quite frankly, was the full extent of my knowledge on the matter. In fact, I designated these experts before I was even sure we could use them and before they completed their work as a courtesy to you. I am not looking to continue this matter, though your comment regarding "third trial setting" is a bit of an overstatement, considering when the funding order came in, the limited role that the Special Public Defender can play in the case, etc. Of course, I'm free to discuss all of that prior to friday if you wish

Please get back to me as soon as you need.

I am,

Sincerely yours,

Allen Bloom

EXHIBIT 1

----- Original Message -----

From: Becky Goettsch <goettsb@co.clark.nv.us>

To: <sasha@adnc.com>

Cc: Christopher Laurent

<LAURENC.DACRIMINAL.JUSTGWA@ccgwwgate.co.clark.nv.us>; Gloria Navarro

<SPDCC11.DCADMIN1.COCA@ccgwwgate.co.clark.nv.us>

Sent: Monday, December 17, 2001 9:36 AM

Subject: To D.A. Witness List AND Expert List AND Available

Discoveryre:Centofanti case

> About the 700 pages of discovery: We need that ASAP. I suggest you bring it with you on Dec. 21st at the Petrocelli hearing - either make a copy, bring it with you, and bill us (I don't care what service you use) - or bring a copy for us to inspect and we will copy it ourselves in our office. Another option is if Gloria has a full copy of the discovery, she can bring it over to my office any time this week and I will inspect and copy the documents.

>

> It should be noted that I only have a CV for Dr. John Eisele. I have no CV for any other expert you have designated. I also do not have any reports from any expert. I was a bit surprised at your expert list since this is the first I have heard of Glen Lipson, Beatrice Heller, Michael Newman, and an "unknown" toxicologist. I will be doing a Motion to Strike your experts based on the fact that although this is the third trial setting, you have still not complied with the designation and notice requirements under Nevada law.

>

>

>

> >>> Allen Bloom <sasha@adnc.com> 12/13/01 02:38AM >>>

> Dear Becky and Chris,

>

> The late hour notwithstanding, I have finally been able to complete an

> initial Expert List, Witness List, and provide you information regarding

> available Discovery.

>

> EXPERT DESIGNATION:

>

> I am designating the following experts for the case. I have indicated

> the general nature of their testimony and have further indicated that I have

> already provided you CV's for Fox, Eisele, and Frazer, and CV's for Lipson

> and Heller are coming.

>

> No reports from any experts have been prepared as each of them are in the

> midst of evaluations and trial preparation. Do not hesitate to contact me

> if you have any questions regarding these experts.

>

> RICHARD FOX - Ballistics/Criminalist (CV provided)

> JOHN EISELE - Pathologist (CV provided)

> GLEN LIPSON: Psychological Evaluation of Defendant (CV coming)

> SCOTT FRAZER - (CV provided) Human factors: Flight or Fright syndrome

> DR. BEATRICE HELLER: 3636 4TH AVENUE SD 92101 (CV TO FOLLOW) -

> Psychological evaluation

> G. MICHAEL NEWMAN - Karate Expert

> TOXICOLOGIST - RE-TEST OF DECEDENT SAMPLES (IN PROCESS)

>

> WITNESSES:

>

> As you know, trial preparation is on-going. The following people are
> potential witnesses on the case. I do not have addresses for all of them.
> Many of them are police officers and I have simply designated them by
badge
> number. Reports have been prepared on some of the witnesses. I have
> indicated if a report has been prepared for them after their name. Those
> Reports are available for your copying along with a number of other pages
> which is discussed below.

>

> All D.A. Witnesses
> All Metro officers who responded to scene on 12/20 and 12/5
> Sgt. S. Hilliard 2429 - Metro
> Sgt. C. Callaway 3793- Metro
> Off. T. Googian 5987- Metro
> Off K. Loper 6709- Metro
> Off R. Anderson 6006- Metro
> Off. Bledsoe 6588- Metro
> W. Willson - LVMPD 5274
> D. Fieselman - Metro 5257
> J. Barett - 6842 - Metro
> J. Steik - 2550 - Metro
> K. Blasko - Metro 2295
> Lt. W. Peterson - Metro 1913
> R. Heriford - Deputy Coroner Investigator
> LVFD Paramedic Kline
> LVFD Paramedic Smith
> Casteel - Hites Mortuary Attendant
> Miller - Hites Mortuary Attendant
> T. Watson - Public Administrator
> Diana Lynn Brandt: 2269 Cstleberry lane, LV, Nev.
> James Lee Lazar - 6330 S. Sandhill Rd., LV, Nv 89120
> Robert Eisenman - 3373 tulane Ct. SD 92122
> Pancho Eisenman - Address unknown
> All Metro officers who accompanied Virginia back to 8720 Wintry Garden on
> 12/6
> Placido Delaney - 1934 K Ave. #C; national City, Cal (Report available)
> Shirely Muscara - 8721 Wintry Garden; LV, Nv (Report Available)
> Rosa Alcocer - 215 Alvarado; Chula Vista, Cal. (Report Available)
> Ricardo Dominguez - 1934 K Ave., #C; national City, Cal. (Report
available)
> Louise Krueger - Address Unknown, Las Vegas, NV (Report available)
> Hector Calixto - Address Unknown, Las Vegas, NV (Report Available)
> Eugene Eisenman, M.D.- Address Unknown, Las Vegas, NV (Records available)
> Scott Sessions, M.D. - Address Unknown, Las Vegas, NV (Records available)
> Richard Escajeda, M.D.- Address Unknown
> Troy Isaacson - Address Unknown - (Report available)
> All Metro officers who observed defendant at CCDC
> M. Siciliano
> Dr. Desmaries - CCDC
> Lt. Kirkland - CCDC
> Unangst - CCDC
> Leoni - CCDC

- > K. Hefner - LVMPD
- > Angelo Ciavarella - Address unknown - (Report/Records available)
- > Joan Lombardo - Address unknown
- > Roberto Rodriguez - Metro 4937
- > Thomas Johnson - Metro 3171 (327)
- > John Mendoza - address unknown (349)
- > Eric Peltola - address unknown (349)
- > John Leaper - address unknown (349)
- > Lito Karaniwan - address unknown (349)
- > Bill Sullivan - address unknown (349)
- > Angela Moore 4028 - Metro
- > Michael Edmiston - 7240 - Metro
- > Melissa Huffmaster - 7254 - Metro
- > Mr. Oldham - Address unknown
- > Dr John Holtzen - 3150 N. Tenaya Way, #240 LV NV 89128
- > Dr. Brendan Johnson - 3150 N. Tenaya Way, #240, LV Nev
- > PMK - Southwest Institute - 2931 N. Tenaya #204, LV NV 89128
- > PMK - Lab Medicine Consultants - PO Box 98604; LV Nev 891938604
- > Dr. Charles Chiang - Address Unknown
- > Don Leach - 2975 S. Rainbow Blvd. #C LV Nv 89146
- > Paula Clark - Chase Bank; LV., Nevada
- > Carmen O'Brian - 6019 W. Dakin, Chicago, Ill. 60634
- > Matt Sica - Address Unknown - (Record available)
- > PMK - Rite Aid Pharmacy - Lake Mead Blvd., LV. Nv
- > PMK - Spectramed, Inc. - 3075 E. Flamingo Rd #104; LV NV 89121
- > PMK - LaPetite Academy - 2121 Harbor Island Dr, LV NV 891
- > Peter Schulz - 750 B Street, Ste 2740; SD 92101 - (Report available)
- > Ed Kainen - Bank of America Bldg; 4th Avenue; LV, NV - (Report available)
- > Scott K. Canepa - Address Unknown
- > J. Randall Jones - Address Unknown
- > Janet Pancoast - Address Unknown
- > Peter Brown - Address Unknown
- > Tomas Mazeika - Address Unknown
- > Julie Shok - Address Unknown
- > Craig Rankin - Address Unknown
- > Robert Johnson - Address Unknown
- > William Killip - Address Unknown
- > Whitney Wilcher - Address Unknown
- > Nicholas Salerno - Address Unknown
- > Robert Pool - Address Unknown
- > Megan Mahoney - Address Unknown
- > Leonard Fink - Address Unknown
- > James Barker - Address Unknown
- > Nicholas Wieczorek - Address Unknown
- > Lindsay Standtlander - Address Unknown
- > Pat Murphy - Address Unknown
- > Shelli Carlos - Address Unknown
- > John Myers - Address Unknown
- > Mike Edwards - Address Unknown (Report available)
- > Carl Flick - Howard Hughes Pkwy; LV, Nv (Report available)
- > John Schlichting - Address Unknown (Report available)
- > Peter Christianson - Attorney (declaration to motion)
- > Mary Prevost - Attorney (declaration to motion)
- > Dan Albregt - Attorney (declaration to motion)
- > Father Patrick Rudolf - Joseph Husband and Mary Church
- >

>

> DISCOVERY

>

> Available at my office are the reports on all of the people so indicated

> above and other records, many of which are personal materials from Mr.

> Centofanti. The total number of pages total approximately 700 pages

> Please indicate to me, either by return email or by phone call, how you

> would like to arrange for the copying and delivery of these documents. In

> light of the fact that you do not have a representative here in San Diego to

> handle the logistics, I will be happy to offer the services of my clerk to

> facilitate the copying and delivering the documents if you advise as to

> which service you wish to use to do the copying. You may contact me or my

> clerk - Stephanie Sato - at my office phone to make these arrangements.

>

> CONTINUING OBLIGATION TO PROVIDE UPDATES

>

> As I mentioned, the investigation and expert analysis is on-going and

I

> will continue to provide you updates of all items as they become available

>

> MOTIONS

>

> The defense has several in limine motions / memorandums of law which it

> will file. In order to speed the trial process as much as possible, I will

> file the motions as soon as possible rather than wait until the date of

> January 2. The first motions will likely be filed Friday or Monday at the

> latest

>

>

> Sincerely,

>

>

>

> Allen Bloom

>

>

ALLEN R. BLOOM

ATTORNEY AT LAW
1551 FOURTH AVENUE, SUITE 801
SAN DIEGO, CALIFORNIA 92101-3156
TELEPHONE (619) 235-6808
CALIFORNIA STATE BAR NO. 65235

PHILIP J. KOHN

CLARK COUNTY SPECIAL PUBLIC DEFENDER
NEVADA STATE BAR #0556

GLORIA NAVARRO

DEPUTY SPECIAL PUBLIC DEFENDER
NEVADA STATE BAR #5434
308 SOUTH THIRD STREET, 4TH FLOOR
P O BOX 652316
LAS VEGAS, NEVADA 89155-2316
TELEPHONE (702) 455-8265

ATTORNEYS FOR DEFENDANT**DISTRICT COURT
CLARK COUNTY, NEVADA****STATE OF NEVADA,**

Plaintiff

versus

ALFRED P. CENTOFANTI, III,

Defendant

CASE NO.

C172534

Dept No.

VII

Hon. Mark Gibbons, Judge
Presiding

DATE:

12/27/01

TIME:

9:00 a.m.

SUPPLEMENTAL**NOTICE OF EXPERT WITNESSES (NRS 174.234)
STATEMENT OF SUBJECT MATTER (NRS 174.089)**

This document is provided as a supplement to the information already provided to the prosecution by the defense in this case. It is believed that virtually all of this information has already been provided both orally and

EXHIBIT 2

1 in written form to the prosecution, but it is being provided in this form as
2 per the court's direction on December 21, 2001.

3 The following will be a list of the witnesses already designated by the
4 defense and, in accordance with Nevada law (NRS 174.089), "a brief
5 statement regarding the subject matter on which the witness is expected to
6 testify and (the substance of his testimony"

7 DR. JOHN EISELE - A pathologist and a medical doctor with extensive
8 experience in conducting autopsies. He has qualified as an expert in many
9 courts in San Diego and other jurisdictions. He is an expert in the area of
10 pathology. He has acted as a coroner in San Diego and other countries. His
11 CV has already been provided to the prosecution. (He will give opinions what?
12 relating to his expertise of pathology.) He is expected to testify regarding - what?
13 the autopsy findings of the decedent. He is expected to testify regarding the
14 nature of the wounds suffered by decedent, the cause of death, the - what?
15 incapacitating nature of the wounds, the rapidity of incapacitation of
16 decedent viz the wounds, and matters related to the injuries to the decedent
17 including stippling, angle of wounds, etc.

18 RICHARD FOX - A criminalist, blood spatter, ballistics, and crime scene
19 analyst. He is an expert in all of the above areas and will give opinions
20 related thereto. He is expected to testify regarding the ejection what?
21 characteristics of the weapon in this case; the firing capabilities of the
22 weapon in this case; the processing of the crime scene; the fact that the
23 general stippling impact of a weapon of the type used herein is that
24
25
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27
28

1 stippling is usually seen 6 to 24 inches from the target; and other matters
2 related to the crime scene and the ejection qualities of the weapon. His CV
3 has been presented to the prosecution.
4

5 LT. STEVEN FRANKS - Lt. Franks is a Lieutenant with the Las Vegas
6 Metropolitan Police Department. He has been present at hundreds of
7 shootings over the course of his 30+ years with the department. He
8 has acted as a firearms training officer with Metro, training other
9 officers on various aspects of gun usage on the range and in the midst
10 of "hostile" fire. He has reviewed hundreds, perhaps thousands, of
11 incidents of police officer involved shootings, as well as been present at
12 hundreds of officer-involved shootings, as well as been present at
13 many, many shooting scenes. Because of the holiday season, he has not
14 been able to provide his CV to the defense as of the writing of this
15 document, but his background as a police officer is well known to the
16 prosecution. Every effort has been made to attain his CV and I expect
17 it will be available within a few days.
18

19
20 Lt. Franks is an expert in the psychology of stress-related
21 shootings or "hostile firings" and he will give opinions related thereto.
22 He is expected to testify about two primary areas, (1) the traumatic
23 impact that is commonly experienced by someone who, for the first
24 time, has been in a gun fight or had a gun pointed or fired at them and
25 (2) the psychological dynamics of shootings in confrontations with
26 potentially fatal consequences, ie "with hostile or deadly firing" of
27
28

1 weapons. Specifically, he will testify how his extensive experience
2 demonstrates that in almost all situations, with all persons, even police
3 officers who are extensively trained with the use and firings of handguns,
4 that officers suffer a dramatic impact on them creating remarkable reactions
5 of fear and heightened awareness when they first experience someone
6 shooting at them. Also, he will testify how his extensive experience
7 demonstrates that in almost all situations, with all persons, even police
8 officers who are extensively trained with the use and firings of handguns as
9 well as trained and experienced in "shoot-out" circumstances, that officers
10 will experience "panic type burst" shootings where they will be grossly
11 inaccurate in recalling some details of the shooting, particularly the number
12 of shots they fired.
13
14

15 DR. GLENN LIPSON - Dr. Lipson is a psychologist licensed to practice in
16 California and Nevada. He is an expert in psychology and will give
17 opinions in that regard. His CV has been provided to the prosecution. He
18 has examined the defendant. The second of his two days of examination of
19 the defendant was today, December 26, 2001, and the results of his findings
20 are unknown. Dr. Lipson will testify as to his findings related to
21 psychological aspects of the defendant. He will also testify regarding his
22 extensive experience in the treatment of many police officers who have been
23 engaged in high stressful situations such as gun fights and will relate that
24 experience to aspects of the psychology of the defendant. He will testify as
25 to the "catatonic" or "shock" type symptoms that the defendant exhibited
26
27
28

1 following the shooting on December 20, 2000. He has qualified as an expert
2 in this area on many, many occasions in a number of courts.

3 DR. SCOTT FRASER - Dr. Fraser is a psychologist and researcher in the
4 area of human factors, ie the impact that high stressful situations has on the
5 human body, commonly referred to as the "flight or fright" syndrome. Dr.
6 Fraser has not examined the defendant and will testify as to the
7 physiological aspects of high stress on the human body. He has conducted
8 extensive research on this subject; he is familiar with extensive research on
9 this subject; he has qualified as an expert on this subject on many, many
10 occasions in many different jurisdictions. He is a member of the University
11 of Southern California School of Medicine and lectures medical students on
12 this subject. He has made presentations to many, many expert groups on
13 this subject throughout his career. His CV has been provided to the
14 prosecution and several articles which are part of the foundation of his
15 testimony have been provided to the prosecution.

16 DAN BERKABLE OF AMERICAN TOXICOLOGY LAB - Mr. Berkable's
17 laboratory will be re-testing the body samples of the decedent, screening
18 them for drugs, etc. He has not completed his testing. He has qualified as
19 an expert in hundreds of cases in Las Vegas and has been utilized by the
20 D.A.'s office as an expert. Because of the holiday, his CV has not been
21 received, but it should be available within the next few days. It is believed
22 that the prosecution is well aware of the history of Mr. Berkable.

1 G. MICHAEL NEWMAN - Mr. Newman is an expert in karate, having been
2 an instructor and received decades of training in the area. He will testify
3 regarding the physical abilities of someone who has achieved a particular
4 level of training and certification in karate, but only if foundational
5 information is determined regarding decedent's expertise in karate. He does
6 not have a CV in this area.

7
8 DR. BEATRICE HELLER - Dr. Heller is a licensed psychologist in the state
9 of California. She will testify as to the psychological aspects of the post-
10 partum behavior of the decedent, but only if information about the gang
11 background and criminal record of the decedent will be available. Those
12 records have not yet been obtained. Her CV has been provided to the
13 prosecution.
14

15 It is believed that this notice far exceeds the explanation and provided
16 by the prosecution in their designation of experts and fully complies with
17 the statutory requirements.
18

19
20 Dated: December 25, 2001

Respectfully submitted,

21
22 
23 Allen Bloom

24
25
26 Gloria Navarro
27 Attorneys for Defendant
28



OFFICE OF THE DISTRICT ATTORNEY

Clark County, Nevada

STEWART L. BELL
District Attorney

J. CHARLES THOMPSON
Assistant District Attorney

MICHAEL DAVIDSON
Assistant District Attorney

FACSIMILE TRANSMISSION

Fax No: 1-775-684-1601
Telephone No:

TO: Janette Bloom
FROM: English, Margie
DATE: Thursday, December 27, 2001 at 5:00:30 PM

MESSAGE:

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Clark County Courthouse • 200 South Third Street • Las Vegas, Nevada 89155 • (702) 455-4707

THE STATE OF NEVADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, and THE
HONORABLE MARK E. GIBBONS,
District Judge,

Respondents,

and

ALFRED P. CENTOFANTI, III,

Real Party in Interest.

No. _____

District Court No.C172534

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of EMERGENCY MOTION FOR STAY OF
DISTRICT COURT PROCEEDINGS, was made December 27, 2001, by facsimile
transmission to:

Gloria Navaro
Special Deputy Public Defender
FAX # 455-6273

Chief Judge Mark E. Gibbons
District Court Department VII
FAX # 455-2430

By: _____/S/
Employee of the District

Attorney's Office

FACSIMILE TRANSMISSION

Fax Phone No. (702) 383-8465)

DATE: December 27, 2001

TO: Nevada Supreme Court

ATTENTION: (FAX NO. 687-3155) Jeanette Bloom

FROM: CHRISTOPHER LAURENT, Chief Deputy District Attorney

SUBJECT: EMERGENCY STAY OF DISTRICT COURT PROCEEDINGS
AND PETITION FOR WRIT OF MANDAMUS

MESSAGE:

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