APPENDIX A

Affirmed and Opinion filed March 13, 1997.

In The

Fourteenth Court of Appeals

NO. 14-94-01171-CR

LEXTER KENNON KOSSIE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 679,887

OPINION

Lexter Kennon Kossie appeals his conviction for aggravated robbery. In his first point of error, appellant argues that the evidence was insufficient to prove that he committed the charged offense. In his second point of error, appellant argues the ineffective assistance of trial counsel. We find both points of error without merit and affirm the judgment of the trial court.

The evidence at trial showed that on the night of the offense, appellant entered a restaurant and ordered a fish sandwich. Discovering he did not have enough money for the sandwich, he ordered the complainant, an employee of the restaurant, to open the register. When she did not immediately do so, appellant opened his jacket and revealed the handle

of a handgun tucked into the waistband of his pants. The complainant then opened the register, and appellant grabbed the money.

Appellant was charged with aggravated robbery. At trial he took the stand and admitted taking the money from the register but claimed that the complainant was an acquaintance of his and that she freely opened the cash register for him. The prosecutor admitted a photocopy of a letter appellant wrote to complainant prior to trial which encouraged her to admit her alleged complicity in the crime. Disregarding his attorney's advice, appellant told her not to object to the admission of this letter into evidence. The prosecutor also introduced evidence of appellant's prior convictions. There is no indication that the trial court ruled on appellant's motion in limine to prevent any reference to these convictions because the proposed order in the record is not signed by the court. The defense attorney's objections to this evidence when it was introduced at trial were overruled. The jury ultimately convicted appellant of aggravated robbery.

In his first point of error, appellant complains that the evidence was insufficient to support his conviction. Specifically, appellant asserts that the state failed to prove that appellant used *and* exhibited a deadly weapon as asserted in the indictment. In order to prove the offense of aggravated robbery, the State was required to first prove the elements of robbery by showing that, with the intent of obtaining or maintaining control of another's property, the defendant intentionally or knowingly threatened the victim or placed her in fear of imminent bodily injury or death. TEX. PENAL CODE § 29.02 (a)(2). In addition, the State must also prove an aggravating element by showing that in committing the robbery, he used or exhibited a deadly weapon during the course of the robbery.[1] TEX. PENAL CODE § 29.03 (a)(2).

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[1] Because the State charged, in the indictment, that appellant used *and* exhibited a deadly weapon during the offense, it is necessary to note that by introducing sufficient evidence that appellant *exhibited* a deadly weapon, the State's evidence suffices to establish appellant's *use* of a deadly weapon, as well. The terms "use" and "exhibition" in deadly weapon cases are used interchangeably and "no artificial distinction between the two should be imposed." *Maxwell v. State*, 756 S.W.2d 855, 858 (Tex. App.--Austin 1988, pet. ref'd).

In reviewing the sufficiency of the evidence to support a criminal conviction, we must view all the evidence in the light most favorable to the jury's verdict and decide whether any rational trier of fact could have found every element of the offense beyond a reasonable doubt. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App.), *cert. denied*, 114 S. Ct. 116 (1993). Applying this standard to the evidence in this case, we hold that the evidence was sufficient to support a conviction for aggravated robbery.

Appellant admitted at trial that he took the money out of the cash register. Thus, the evidence conclusively established that he obtained control of another's property. In addition, the complainant testified that when she saw the gun displayed by appellant, she feared for her life. The complainant's obvious fear was attested to by other employees of the restaurant, as well. This testimony is sufficient to establish the elements of ordinary robbery beyond a reasonable doubt. Although obscure, the gist of appellant's complaint appears to be the sufficiency of the evidence to prove *aggravated* robbery based on appellant's use or exhibition of a deadly weapon in the course of committing the robbery.

To prove that appellant used or exhibited a deadly weapon during the robbery, the State introduced the complainant's testimony describing how the appellant pulled back his jacket displaying the handle of a gun tucked into the waistband of his pants. A firearm is a deadly weapon per se. TEX. PENAL CODE § 1.07 (a)(17)(A). This court has held that it is not necessary for the defendant to display the entire weapon to establish his intent to threaten imminent bodily injury, nor is it necessary for the victim to see more than the butt end of the pistol to identify it as a deadly weapon. *Jones v. State*, 810 S.W.2d 824, 827 (Tex. App.—Houston [14th Dist.] 1991, no pet.). In *Jones* this court found, on very similar facts, the evidence sufficient to support an aggravated robbery conviction. *Id.* at 827-28; *see also Maxwell v. State*, 756 S.W.2d 855, 858 (Tex. App.--Austin 1988, pet. ref'd) (holding that the essential element of aggravated robbery is the threat or engendered fear of imminent bodily injury or death generated by the *presence* of a deadly weapon). We will not stray from that holding today. Accordingly, we overrule appellant's first point of error.

In his second point of error, appellant argues that he received ineffective assistance from trial counsel in two respects. First, he contends that trial counsel's representation was deficient because she did not object to the State's introduction, without a proper predicate, of the photocopy of the letter appellant wrote to the complainant prior to trial. Second, he argues that trial counsel should have filed a motion in limine to prevent the State's use of appellant's prior criminal record and, in addition, should have objected based on *Theus v. State*, 845 S.W.2d 874 (Tex. Crim. App. 1992), when this evidence was, in fact, introduced at trial.

In order to prevail on a claim for ineffective assistance of counsel, appellant has the burden of showing by a preponderance of the evidence that counsel's performance was deficient and that appellant's defense was prejudiced by her deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We are required to indulge a strong presumption that counsel's performance falls within the wide range of reasonable, professional assistance and that the challenged conduct may, under the circumstances, constitute sound trial strategy. *Id.* at 689; *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). Appellant is not entitled to perfect or errorless counsel and isolated instances in the record reflecting errors of omission or commission do not constitute ineffective assistance of counsel. *Bridge v. State*, 726 S.W.2d 558, 571 (Tex. Crim. App. 1986).

Applying this standard to counsel's failure to object to the introduction of appellant's letter into evidence, we find that counsel's performance was reasonable and not deficient. Appellant's own sworn testimony reveals that his attorney informed him that the letter was objectionable and incriminating, yet he insisted that he wanted the letter admitted to support his defensive position in the case. Thus, trial counsel acted in accordance with appellant's request. Appellant may not now prevail on a claim of ineffective assistance of counsel when his only complaint is that he got what he asked for. *See McFarland v. State*, 845 S.W.2d 824, 848 (Tex. Crim. App. 1992), *cert. denied*, 113 S. Ct. 2937 (1993).

In addition, we find that trial counsel's performance was not deficient regarding the admission of evidence of appellant's prior criminal offenses. Specifically, appellant complains that counsel did not file a motion in limine to prevent the admission of these

offenses and did not object when the State questioned the appellant about his previous crimes. The record clearly establishes, however, that trial counsel did file a motion in limine pertaining to this evidence and did object, twice, to the State's questions on this matter. Her motion in limine was not granted, and the trial court overruled her objections.

Appellant argues that counsel's objections were insufficient because she did not cite a specific case in support of her motion and her objection. In making this argument, appellant has taken the requirement that counsel object with specificity too far. An objection is sufficiently specific if the asserted ground for excluding the evidence is clear to the judge and opposing counsel. *Lankston v. State*, 827 S.W.2d 907, 908 (Tex. Crim. App. 1992). Here, the record clearly indicates that all parties were aware that counsel's objection was directed at the admissibility of appellant's prior offenses. The court overruled this objection on the ground that counsel "opened the door" to evidence of appellant's prior convictions when, evidently as part of her trial strategy to depict her client as open and honest, she asked appellant on direct examination whether he had ever been in trouble before and appellant admitted that he had. If appellant believes that specific case law dictates that the judge erroneously admitted the evidence, he should seek relief by challenging the judge's ruling rather than arguing the ineffective assistance of his attorney. We overrule appellant's second point of error.

The judgment of the court below is affirmed.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed March 13, 1997.

Panel consists of Chief Justice Murphy and Justices Anderson and O'Neill.

Do not publish — TEX. R. APP. P. 90.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-20421

In re: LEXTER K. KOSSIE,

Movant

A True Copy
Certified order issued Aug 15, 2017

Clerk, U.S. Court of Appeals, Fifth Circuit

Motion for an order authorizing
the United States District Court for the
Southern District of Texas, Houston to consider
a successive 28 U.S.C. § 2254 application

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:

Lexter K. Kossie, Texas prisoner # 700661, moves for authorization to file a successive 28 U.S.C. § 2254 application. In his motion, Kossie contends that the district court erred in construing his Federal Rule of Civil Procedure 15(a) motion as an unauthorized successive. Alternatively, he contends that his motion should have been construed as a proper Federal Rule of Civil Procedure 60(b) motion because he has demonstrated "extraordinary circumstances" warranting the reopening of his habeas proceedings.

Because Kossie's § 2254 application had been denied by final judgment almost nine years before he filed his Rule 15(a) motion to amend, the district court did not have jurisdiction to consider the motion. *See Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003); *United States v. Early*, 27 F.3d 140, 141-42 (5th Cir. 1994). In his motion, Kossie sought to raise a new claim of ineffective assistance of counsel. Thus, the district court was correct in

construing it as an unauthorized successive § 2254 application. *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005); 28 U.S.C. § 2244(b)(3)(A). This court may authorize the filing of a successive § 2254 application only if the applicant makes a prima facie showing that his claim was not presented in a prior application and (1) his claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (2) his claim relies on a new factual predicate. § 2244(b)(2), (b)(3)(C).

Kossie's ineffective assistance of counsel claim is based on alleged errors that occurred at the time of trial and could have been raised in his previous § 2254 application. *See* § 2244(b)(2)(B). To the extent that Kossie contends that he should be allowed to file a successive § 2254 application in light of *Trevino v. Thaler*, 133 S. Ct. 1911 (2013), and *Martinez v Ryan*, 132 S. Ct. 1309 (2012), his argument is unavailing. We have held that "*Martinez* does not provide a basis for authorization under § 2244(b)(2)(A), as the Court's decision was an 'equitable ruling' that did not establish 'a new rule of constitutional law.'" *Adams v. Thaler*, 679 F.3d 312, 323 n.6 (5th Cir. 2012) (quoting *Martinez*, 132 S. Ct. at 1319); *see also In re Sepulvado*, 707 F.3d 550, 554 (5th Cir. 2013) (recognizing that *Martinez* set forth an equitable ruling rather than a new rule of constitutional law). Because *Trevino* was merely an application of *Martinez*'s equitable rule, it likewise did not establish a new rule of constitutional law. *See Trevino*, 133 S. Ct. at 1915-21.

Accordingly, IT IS ORDERED that Kossie's motion for authorization to file a successive § 2254 application is DENIED. We have previously warned Kossie that he would face sanctions, including monetary sanctions and denial of access to the judicial system, if he continued to file frivolous or repetitive challenges to his aggravated robbery conviction. *See In re Kossie*, No. 08-20172

(5th Cir. Apr. 29, 2008); *In re Kossie,* No. 15-90023 (5th Cir. Oct. 19, 2015); *In re Kossie,* No. 15-90115 (5th Cir. March 16, 2016). We have also sanctioned Kossie $100 for failing to heed our warnings. *See In re Kossie,* No. 14-20361 (5th Cir. July 23, 2014). Because Kossie continues to ignore our warnings, IT IS FURTHER ORDERED that a SANCTION IS IMPOSED. Kossie is ORDERED to pay a monetary sanction in the amount of $300, payable to the clerk of this court. Kossie is BARRED from filing in this court or in any court subject to this court's jurisdiction any pleadings that challenge the aforementioned conviction and sentence until the sanction is paid in full, unless he first obtains leave of the court in which he seeks to file such challenge. Kossie is further CAUTIONED that any future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction will subject him to additional sanctions.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re: LEXTER KENNON KOSSIE § Misc. No. 2:18-mc-1459

ORDER

Lexter K. Kossie, Texas prisoner # 700661, moves for leave to proceed after being sanctioned by the Fifth Circuit. (D.E. 1). This Motion is **DENIED**. The Fifth Circuit ordered as follows:

> We have previously warned Kossie that he would face sanctions, including monetary sanctions and denial of access to the judicial system, if he continued to file frivolous or repetitive challenges to his aggravated robbery conviction. We have also sanctioned Kossie $100 for failing to heed our warnings. Because Kossie continues to ignore our warnings, IT IS FURTHER ORDERED that a SANCTION IS IMPOSED. Kossie is ORDERED to pay a monetary sanction in the amount of $300, payable to the clerk of this court. Kossie is BARRED from filing in this court or in any court subject to this court's jurisdiction any pleadings that challenge the aforementioned conviction and sentence until the sanction is paid in full, unless he first obtains leave of court in which he seeks to file such challenge. Kossie is further CAUTIONED that any future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction will subject him to additional sanctions.
>
> *In re: Lexter K. Kossie*, No. 17-20421 (5th Cir. Aug. 15, 2017) (Order) (emphasis in original).

In his present motion, Kossie states he has not paid the $300.00 sanction but seeks leave to proceed with another habeas proceeding challenging his conviction. (D.E. 1, Page 1). The Fifth Circuit's order is clear that Kossie is barred from filing any pleadings in this Court, which is within the Fifth Circuit's jurisdiction, until the sanction has been

paid in full, unless he first is given leave to do so. Kossie's Motion for Leave is **DENIED**. The Clerk of Court is **DIRECTED** to **CLOSE** this case.

ORDERED this 8th day of November, 2018.

Jason B. Libby
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re: LEXTER KENNON KOSSIE § Misc. No. 2:18-mc-1459

ORDER

Pending is Movant's Motion for Leave to File Objections to the Magistrate Judge's Order. (D.E. 3). Movant's Motion is **DENIED** for the reasons stated in the undersigned's November 8, 2018 Order. (D.E. 2). This case is **CLOSED**.

ORDERED this 7th day of December, 2018.

Jason B. Libby
United States Magistrate Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19-90003

In re: LEXTER KENNON KOSSIE,

Petitioner

Motion for Permission to Proceed as a Sanctioned Litigant

ORDER:

Lexter Kennon Kossie, Texas prisoner # 700661, who was convicted in 1994 of aggravated robbery and sentenced to life imprisonment, moves for permission to proceed after having been sanctioned. Kossie's repeated, unsuccessful efforts to attack his conviction and sentence have resulted in the imposition of sanctions by this court totaling $400 (of which $300 remains unpaid), and he is barred from filing in this court or any court subject to this court's jurisdiction any pleadings that challenge his conviction and sentence until those sanctions are paid in full unless he first obtains leave of the court in which he seeks to file his pleadings. *See In re Kossie*, No. 17-20421 (5th Cir. Aug. 15, 2017) (unpublished order); *In re Kossie*, No. 14-20361 (5th Cir. July 23, 2014) (unpublished order).

In his motion, Kossie indicates that he wishes to file a 28 U.S.C. § 2241 petition. He asserts that, if granted permission to proceed, he will pursue his otherwise procedurally defaulted claims of ineffective assistance of counsel, specifically, that trial counsel was ineffective during the punishment phase in failing to (1) prepare for sentencing; (2) discuss any sentencing strategy with

Kossie; (3) advise Kossie of his right to testify at sentencing and determine whether he wished to exercise that right; (4) investigate, develop, or present mitigating evidence at sentencing; and (5) inquire whether Kossie had any character witnesses to testify on his behalf and present such testimony at sentencing. Kossie acknowledges that he cannot meet the requirements for authorization to file a successive 28 U.S.C. § 2254 application. Consequently, he contends that the § 2254 remedy is inadequate and ineffective and that he should be allowed to seek relief under § 2241.

In general, a habeas petition under § 2241 allows a prisoner to attack the manner in which his sentence is being executed. *See Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000). Nevertheless, in limited circumstances, a § 2241 petition that attacks custody resulting from a *federally* imposed sentence may be entertained under the savings clause of 28 U.S.C. § 2255 if the petitioner establishes that the remedy provided for under § 2255 is inadequate or ineffective to test the legality of his detention. *See Reyes-Requena v. United States*, 243 F.3d 893, 900-04 (5th Cir. 2001); *Tolliver*, 211 F.3d at 878. Kossie, however, is a state prisoner. Thus, the savings clause of § 2255 does not apply to him, *see* § 2255(e), and his contention that he is entitled to challenge his conviction and sentence through a § 2241 petition is meritless.

Accordingly, the motion to proceed as a sanctioned litigant is DENIED. Kossie is again CAUTIONED that the filing of frivolous or repetitive challenges to his aggravated robbery conviction and sentence in this court or any court subject to this court's jurisdiction will subject him to additional and progressively more severe sanctions.

/s/ James E. Graves, Jr.

JAMES E. GRAVES
UNITED STATES CIRCUIT JUDGE

APPENDIX E

GENERAL ORDERS OF THE COURT

testimony began. At 3:15 p.m. court recessed for a 15 minute break. At 3:40 p.m. Court resumed testimony outside the presence of the jury. At 3:47 p.m. the jury returned to open court and testimony continued at 4:55 PM. Interest and Court recessed for the day.

NOV 2 9 1994

The Defendant: Kossie Appeared

In Person With Counsel: Sherra Miller

~~Ted Bennett~~ Appeared For The State

~~Court Reporter~~: Cynthia Lee

~~Judge~~ Presiding: Jimmie James

At 9:45 a.m. court resumed testimony; at 10:25 am defense rested and court recessed for 15 minutes. ~~Court~~ at 11:10 am the court resumed testimony with both the state and defense presenting final argument. at 11:47 am both sides rested and closed. Jury begin deliberations at this time at 1:05 pm jury return with a verdict. Def found guilty of aggravated robbery. at 1:47 p.m. ~~the~~ defense ~~[redacted]~~ begin opening argument for the punishment phase x Defendant sentenced to life. ten days time waived; Defendant sentenced to not less than _____ years nor more than 45 in the Texas Department of Corrections.

C3308 D PAGE 2 11-29-94 Def gave written notice of appeal. Appeal bond set

Page (

APPENDIX F

THE STATE OF TEXAS §
§ AFFIDAVIT OF JOANN KOSSIE
COUNTY OF HARRIS §

BEFORE ME: the undersigned authority, on this day personally appeared **JOANN KOSSIE**, a person known to me to be over the age of eighteen (18) and fully competent in all respects to make this **Affidavit.** After being duly sworn, upon her oath, **JOANN KOSSIE**, deposed and said:

"My name is **JOANN KOSSIE**, I am the wife of **LEXTER KENNON KOSSIE**, the defendant in the above-referenced Cause No. and I am also personally acquainted with the facts of Lexter's conviction whereas he was convicted and sentenced to life in prison for an aggravated robbery which occurred on November 13, 1993, in a Burger King restaurant located in Humble, Texas.

"Since Lexter's release from prison in 1986, he has been in and out of several drug treatment facilities for abuse of alcohol and crack cocaine. Whenever he was on crack and alcohol he was like a man insane. Sometimes he would spend his entire pay check on crack. Then he would stay up days and nights pawning, begging, borrowing, stealing and selling everything he could get his hands on to buy more crack.

"In my opinion, once Lexter was under the influence of crack the craving for more crack made him lose all self-control and had he not been under the influence of crack he would not have committed the offense in which in was convicted for in Cause No.679887. I personally have witnessed Lexter be a law abiding citizen when he was not on crack and at no time did he do the insane things that he does while under the influence of crack cocaine.

"Had I been consulted by defense attorney prior to Lexter's sentencing trial, I would have been able to provide trial testimony in regards to Lexter's extensive crack cocaine and alcohol addiction in which the jury could have possibly considered in mitigating punishment. I would have also been able to provide trial testimony in regards to our marriage and the three (3) children we had at that time of ages 10 month, 3 and 13 years old, how great a husband and father he was to me and our children when he was not on crack, and I am willing to do so in the future if needed.

"I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct."
Further **Affiant** saith not.

SIGNED ON THIS 5th day of March 2015.

x JoAnn Kossie
JOANN KOSSIE (**Affiant**)

SUBSCRIBED AND SWORN TO BEFORE ME BY **JOANN KOSSIE** on this 5th day of March 2015.

x Stacy Lancey
Notary Public in and for
Harris County, Texas

STACY LANCEY
MY COMMISSION EXPIRES
April 15, 2019

APPENDIX G

THE STATE OF TEXAS §
§ AFFIDAVIT OF LUCINDA KOSSIE
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared **LUCINDA KOSSIE**, a person known to me to be over the age of (18) eighteen and fully competent in all respect to make this **Affidavit.** After being duly sworn, upon her oath, **LUCINDA KOSSIE**, deposed and said:

"My name is **LUCINDA KOSSIE**, I am the mother of **LEXTER KENNON KOSSIE**, the defendant in the above-referenced Cause No. I am also personally acquainted with the facts of Lexter's conviction whereas he was convicted and sentenced to life in prison for an aggravated robbery which occurred on November 13, 1993, in a Burger King restaurant located in Humble, Texas.

"Prior to Lexter robbing the Burger King he had admiited himself into several drug abuse facilities, namely: St.Joseph Hospital, Herman Hospital, and West Oak Hospital, for his chronic abuse of alcohol and crack cocaine. After an endless battle with his addiction his parole officer had him admitted at the Texas House a treatment facility for parolees. Lexter was still unable to overcome his dependency on alcohol and crack cocaine. I did not personally see Lexter pawning, stealing or selling things to get crack but as a mother I knew he was and that one day he would get into serious trouble because of his dependency on crack.

"In my opinion once Lexter was under the influence of crack he lost all self-control and had he not been under the influence of crack on November 13, 1993, he would not have committed that robbery offense. Crack had away of making Lexter's behavior irrational and to the point where I questioned his sanity.

"Had I been consulted by the defense attorney prior to Lexter's sentencing trial, I would have been able to provide trial testimony in regards to Lexter's extensive drug and alcohol abuse which the jury would have considered for mitigating his punishment. I am still, willing to do so in the future if needed.

"I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."
Further **Affiant** saith not.

SIGNED ON the 6th day of March, 2015.

X Lucinda Kossie
LUCINDA KOSSIE **(Affiant)**

SUBSCRIBED AND SWORN TO BEFORE ME BY **LUCINDA KOSSIE** on this 6th day of March 2015.

X
Notary Public in and for
Harris County, Texas

NOTARY PUBLIC STATE OF TEXAS
LATAUNYA DAVIS
My Commission Expires
February 8, 2019

APPENDIX H

I. AFFIDAVIT OF HARRY J. BONNELL, M.D.

I, Harry J. Bonnell, M.D., having been asked by Lexter Kossie, TDCJ#700661, declare as follows:

1. I am a medical doctor, currently employed as a Forensic Pathologist licensed to practice Medicine in the State of California. A true and correct copy of my curriculum vitae is attached as **Exhibit A**.

2. I attended Georgetown University Medical School in Washington, D.C., and graduated from that program in 1979. I have taught at the University of Washington, Madigan Army Medical Center, King County Corrections Center, Uniformed Services University of Health Sciences, University of Cincinnati College of Medicine, and the School of Medicine of the University of California, San Diego.

3. From 1991-2001, I was the Chief Deputy Medical Examiner for the Office of the Medical Examiner in San Diego, California. I have also been Chief Deputy Coroner and Director of Forensic Pathology of Hamilton County, Ohio, Staff Pathologist in the Forensic Sciences Department at the Armed Forces Institute of Pathology, and Assistant Medical Examiner of King County, Washington.

4. I have personally performed over 7000 autopsies and provided sworn testimony more than 585 times in the Superior Courts of twenty states, six Federal Court jurisdictions and eight military courts..

5. In preparing this affidavit, I extensively reviewed the literature on cocaine as well as my personal observations. Cocaine is a central nervous stimulant that may cause restlessness, euphoria, dizziness, dyskinesia, tremor, dysphoria and insomnia. Chronic usage may lead to personality changes, irritability, hyperactivity and psychosis. This can result in the craving for cocaine to take control of rational thinking and make the person more capable of committing crimes and other illegal berhaviors.

6. Had I been consulted by defense prior to trial, I would have been available to consult and provide trial testimony as required, and am willing to do so in the future if needed. I am not being reimbursed in any manner for rendering this opinion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 29th day of December 2014 in San Diego, California.

HARRY J. BONNELL, M.D.

Jurat

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 29th *day of* December *20*14 *by* Harry J. Bonnell

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____ *(Notary seal)*

JULIO SIMOES
COMM. #1960159
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. DEC 9, 2015