

2005

Utah v. Tiedemann : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
EDGAR TIEDEMANN, : Case No. 20050676-SC
Defendant/Appellant. :

BRIEF OF APPELLANT

Interlocutory appeal from orders entered in the Third Judicial Court in and for Salt Lake County, State of Utah, the Honorable Judith S. Atherton, Judge, presiding. Appellant is incarcerated.

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW	1
PRESERVATION OF ARGUMENT	2
RULES, STATUTES AND CONSTITUTIONAL PROVISIONS	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
SUMMARY OF THE ARGUMENT.....	5
ARGUMENT	6
 <u>POINT I. OFFICERS OBTAINED INCRIMINATING STATEMENTS IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL PROVISIONS AND IN VIOLATION OF <i>MIRANDA</i></u>	 6
 A. <u>TIEDEMANN DID NOT WAIVE HIS <i>MIRANDA</i> RIGHTS; AND HE SPECIFICALLY INVOKED HIS RIGHT TO REMAIN SILENT</u>	 6
 B. <u>THE TOTAL CIRCUMSTANCES HERE SUPPORT AN ILLEGAL INTERROGATION</u>	 9
 (1) <u>The Waiver and Confessions Lacked Voluntariness</u>	 15
 (2) <u>Tiedemann Unequivocally Invoked the Right to Remain Silent During the Interrogation.</u>	 27
 <u>POINT II. THE GOVERNMENT'S DESTRUCTION OF EVIDENCE IN A CRIMINAL CASE DISADVANTAGES A DEFENDANT; FUNDAMENTAL FAIRNESS REQUIRES DISMISSAL OF A CASE OR SANCTIONS WHEN THE GOVERNMENT DESTROYS EVIDENCE. ALSO, UNDER A STATE ANALYSIS, WHEN THE GOVERNMENT DESTROYS EVIDENCE THE COURT SHOULD APPLY A BALANCING TEST FOR A REMEDY.</u>	 35

A. <u>THE GOVERNMENT'S WILLFUL DESTRUCTION OF THE EVIDENCE VIOLATES FEDERAL DUE PROCESS</u>	35
B. <u>UNDER A STATE LAW ANALYSIS, THIS COURT MAY APPLY A BALANCING TEST FOR A REMEDY WHEN STATE AGENTS DESTROY POTENTIALLY EXCULPATORY EVIDENCE</u>	42
CONCLUSION	50

Addendum A: Orders from this Court granting interlocutory appeal

Addendum B: Relevant Provisions

Addendum C: Trial Court's July 22, 2005 order

Addendum D: Trial Courts September 22, 2005 order

Addendum E: A list of destroyed evidence

Addendum F: Transcript of interrogation

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<u>Arizona v. Youngblood</u> , 488 U.S. 51 (1988)	36, 37, 39, 41, 44, 45, 46, 47, 50
<u>Beecher v. Alabama</u> , 389 U.S. 35 (1967)	16
<u>Blackburn v. Alabama</u> , 361 U.S. 199 (1960)	17, 18, 19, 20, 24, 25, 26
<u>Brady v. Maryland</u> , 373 U.S. 83 (1963)	35, 37, 48
<u>California v. Trombetta</u> , 467 U.S. 479 (1984)	35, 36, 39, 41, 48
<u>Chambers v. Mississippi</u> , 410 U.S. 284 (1973)	40
<u>Christiansen v. Harris</u> , 163 P.2d 314 (Utah 1945)	43
<u>Christopher v. Fla.</u> , 824 F.2d 836 (11th Cir. 1987), <u>cert. denied</u> , 484 U.S. 1077 (1988)	30
<u>Colorado v. Connelly</u> , 479 U.S. 157 (1986)	16, 17, 26
<u>Commonwealth v. Henderson</u> , 582 N.E.2d 496 (Mass. 1991)	47
<u>Davis v. U.S.</u> , 512 U.S. 452 (1994)	8, 33
<u>Edwards v. Arizona</u> , 451 U.S. 477 (1981)	27, 28
<u>Emspak v. U.S.</u> , 349 U.S. 190 (1955)	30
<u>Foote v. Ut. Bd. of Pardons</u> , 808 P.2d 734 (Utah 1991)	43
<u>Hammond v. State</u> , 569 A.2d 81 (Del. 1989)	47, 48, 49, 50
<u>Henry v. Dees</u> , 658 F.2d 406 (5th Cir. 1981)	16
<u>Hulbert v. State</u> , 607 P.2d 1217 (Utah 1980)	44
<u>Labrum v. Bd of Pardons</u> , 870 P.2d 902 (Utah 1993)	43, 44
<u>Lee v. Gaufin</u> , 867 P.2d 572 (Utah 1993)	42
<u>Mayes v. State</u> , 571 S.W.2d 420 (Ark. 1978)	32

	<u>Page</u>
<u>Michigan v. Mosely</u> , 423 U.S. 96 (1975).....	8, 23, 28, 29, 30, 33
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	1, 6, 7, 8, 9, 10, 15, 17, 21, 22, 23, 27, 28, 29, 30, 32, 33, 34
<u>People v. Washington</u> , 486 N.Y.S.2d 660 (N.Y. Sup. 1985).....	16, 17, 25
<u>Russell v. State</u> , 460 N.E.2d 1252 (Ind. App. 1984).....	16
<u>Sims v. Collection Div. of the Utah State Tax Comm'n</u> , 841 P.2d 6 (Utah 1992)	42, 43
<u>Smith v. Illinois</u> , 469 U.S. 91 (1984)	27, 28, 32, 34
<u>State v. Brickey</u> , 714 P.2d 644 (Utah 1986)	43
<u>State v. Clark</u> , 460 A.2d 449 (Vt. 1983)	16
<u>State v. Copeland</u> , 765 P.2d 1266 (Utah 1988).....	42
<u>State v. Crump</u> , 834 S.W.2d 265 (Tenn. 1992), <u>cert. denied</u> , 506 U.S. 905 (1992)	30
<u>State v. Delisle</u> , 648 A.2d 632 (Vt. 1994)	47
<u>State v. Ferguson</u> , 2 S.W.3d 912 (Tenn. 1999).....	47
<u>State v. Galli</u> , 967 P.2d 930 (Utah 1998)	8
<u>State v. Graham</u> , 642 S.W.2d 880 (Ark. 1982).....	16
<u>State v. Gulbransen</u> , 2005 UT 7, 106 P.3d 734.....	37
<u>State v. Holden</u> , 964 P.2d 318 (Utah Ct. App. 1988) <u>cert. denied</u> , 982 P.2d 88 (Utah 1998)	39
<u>State v. Howell</u> , 707 P.2d 115 (Utah 1985)	43
<u>State v. Knight</u> , 734 P.2d 913 (Utah 1987).....	45
<u>State v. Lafferty</u> , 749 P.2d 1239 (Utah 1988) <u>vacated on other grounds</u> , <u>Lafferty v. Cook</u> , 949 F.2d 1546 (10th Cir. 1991).....	44

	<u>Page</u>
<u>State v. Larocco</u> , 794 P.2d 460 (Utah 1990)	42
<u>State v. Leyva</u> , 951 P.2d 738 (Utah 1997)	7, 8, 15, 22
<u>State v. Lipsky</u> , 608 P.2d 1241 (Utah 1980)	43
<u>State v. Martin</u> , 2002 UT 34, P.3d 805	50
<u>State v. Mead</u> , 2001 UT 58, 27 P.3d 1115	49
<u>State v. Morales</u> , 657 A.2d 585 (Conn. 1995)	47
<u>State v. Morgan</u> , 2001 UT 87, 34 P.3d 767.....	44
<u>State v. Norfolk</u> , 381 N.W.2d 120 (Neb. 1986)	7
<u>State v. Osakalumi</u> , 461 S.E.2d 504 (W. Va. 1995).....	47
<u>State v. Pena</u> , 869 P.2d 932 (Utah 1994), <u>abrogated on other grounds</u> as stated in <u>Campbell v. State Farm</u> , 2001 UT 89, 65 P.3d 1134	2
<u>State v. Ramirez</u> , 817 P.2d 774 (Utah 1991).....	43
<u>State v. Rettenberger</u> , 1999 UT 80, 984 P.2d 1009.....	1, 7, 8, 15, 16, 21, 22, 23, 26, 27
<u>State v. Shaffer</u> , 725 P.2d 1301 (Utah 1986)	45, 46, 49
<u>State v. Smith</u> , 2005 UT 57, 122 P.3d 615.....	45
<u>State v. Strain</u> , 779 P.2d 221 (Utah 1989).....	15, 16
<u>State v. Thompson</u> , 810 P.2d 415 (Utah 1991).....	43
<u>State v. Troyer</u> , 910 P.2d 1182 (Utah 1995)	1
<u>State v. Williams</u> , 295 S.E.2d 493 (N.C. App. 1982)	16
<u>State v. Wood</u> , 868 P.2d 70 (Utah 1993) <u>disavowed on other grounds</u> , <u>State v. Mirquet</u> , 914 P.2d 1144 (Utah 1996)	28
<u>Thorne v. Dept of Pub. Safety</u> , 774 P.2d 1326 (Alaska 1989).....	47
<u>Townsend v. Sain</u> , 372 U.S. 293 (1963)	17
<u>U.S. v. Hernandez</u> , 574 F.2d 1362 (5th Cir. 1978)	32

Constitutional Provisions

U.S. Const. amend. V	2, 7, 35
U.S. Const. amend. VI.....	2
U.S. Const. amend. XIV, § 1.....	2, 35
Utah Const. art. I, § 7	2, 6, 35, 42, 43, 44, 45, 46, 48
Utah Const. art. I, § 12	7
Utah Const. article I, § 24	42

Rules

Utah R. Crim. P. 16 (2005)	49
----------------------------------	----

Statutes

Utah Code Ann. § 76-5-203 (Supp. 1991)	2, 41
Utah Code Ann. § 76-5-205 (1990)	41
Utah Code Ann. §76-5-206 (1990)	41
Utah Code Ann. § 76-5-405 (1990 & Supp. 1992).....	41
Utah Code Ann. §76-5-406 (1990 & Supp. 1992).....	41
Utah Code Ann. § 78-2-2 (2002)	1

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THE STATE OF UTAH, :
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v. :
EDGAR TIEDEMANN, : Case No. 20050676-SC
Defendant/Appellant. :

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(h) (2002) (providing appellate jurisdiction over interlocutory appeals in criminal cases). Appellant Edgar Tiedemann requested permission to appeal from an interlocutory order. On October 24, 2005, this Court granted the request in an order attached as Addendum A.

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

A. Whether the trial court erred in failing to suppress statements obtained in violation of the state and federal constitutions and Miranda v. Arizona, 384 U.S. 436 (1966).

Standard of Review: A bifurcated standard applies to the first issue. This Court will review a trial court's factual findings for clear error, State v. Troyer, 910 P.2d 1182, 1186 (Utah 1995), and its legal rulings for correctness. See State v. Rettenberger, 1999 UT 80, ¶10, 984 P.2d 1009.

B. Whether the state's destruction of potentially exculpatory evidence in this case constitutes a violation of Tiedemann's due process rights.

Standard of Review: The second issue is a question of law, which this Court will

review for correctness. See e.g. State v. Pena, 869 P.2d 932, 936 (Utah 1994), abrogated on other grounds as stated in Campbell v. State Farm, 2001 UT 89, ¶13, 65 P.3d 1134.

PRESERVATION OF ARGUMENT

The first issue on appeal was preserved in the record at 246-267; 337-358; and 638:5-9, 13-19. The second issue was preserved at 388-404; and 638:19-28, 32-34.

RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

The following provisions are relevant and set forth at Addendum B: U.S. Const. amends. V, VI, and XIV, § 1; Utah Const. art. I, § 7.

STATEMENT OF THE CASE

Nature of the Case, Course of the Proceedings, Disposition in the Court Below

In November 2002, the state charged Tiedemann with three counts of murder under Utah Code Ann. § 76-5-203 (Supp. 1991), stemming from events that occurred in November 1991. (R. 1-5). The defense requested discovery (see R. 24-27), and on October 6, 2003, the trial court bound Tiedemann over for trial on the charges. (R. 99).

On December 6, 2004, Tiedemann filed a motion to suppress statements made during a police interrogation in November 1991. (R. 246-267; see also 337-358). The trial court took the matter under advisement and set the case for an 8-day trial to begin in January 2006. (R. 513-14; 581-83). On December 20, 2004, Tiedemann filed a motion to dismiss based on the state's destruction of exculpatory evidence in the case in 1993. (R. 388-404). The trial court took that matter under advisement as well. (R. 513-14).

On July 22, 2005, the trial court issued a memorandum decision and order denying the defendant's request to suppress the interrogation statements (R. 585-595), and on

September 27, 2005, the trial court issued a second decision denying the defendant's request to dismiss the case due to the destruction of exculpatory evidence. (R. 599-607). A copy of the trial court's July 22 order is attached as Addendum C, and a copy of the September 27 order is attached as Addendum D.

Tiedemann filed a timely petition and amended petition from the issuance of each interlocutory order (see e.g. R. 598, 608-610; Addendum A, hereto). On October 24, 2005, this Court granted the petitions for this appeal. (See Addendum A). The trial is stayed pending resolution of the issues here. Tiedemann is incarcerated.

STATEMENT OF FACTS

The state charged Tiedemann with three counts of murder for the deaths of Susan Sessions, Charles Timberman, and Scott Bunnell, Jr. (R. 1-5). It alleged that on November 1, or November 2, 1991, Tiedemann shot the victims at his trailer home at 3874 Hummingbird, West Valley City. (Id.) Susan Sessions and Charles Timerberman died at the scene; Scott Bunnell died in February 2001. (Id.; R. 438).

On November 2, 1991, police took Tiedemann into custody and recovered evidence from the trailer home, including blood and tissue samples, fingerprints, drugs, paraphernalia, and items of clothing and bedding. (See R. 389; 477-78). They also recovered weapons, and interrogated Tiedemann for a confession. (See R. 3-4).

The state originally charged Tiedemann on November 5, 1991, with two counts of aggravated murder, one count of attempted aggravated murder, one count of aggravated kidnapping, and one count of aggravated sexual assault (Case No. 911013168). (R. 526-29; 477; 519). The original trial court ordered competency evaluations. (R. 519).

After evaluations, the court found Tiedemann to be incompetent. (R. 519-20; 532). His mental illnesses included mild dementia, which was partially "substance-induced, and partially due to cerebrovascular trauma in 1988; organic mood disorder [] (depression with mood congruent psychotic features); and inhalant dependence." (R. 532).

Tiedemann also suffered from a neurological disorder due to a brain injury he suffered in 1988; he had "difficulty understanding and expressing ideas conveyed through verbal language;" and he suffered from a Mixed "Personality Disorder with Paranoid, Schizoid and Antisocial Features." (R. 532). "The combination of organic brain damage, intractable craving for Toluene, and personality disorder [made] it highly unlikely that Mr. Tiedemann [would] ever be able to function in a rational legal manner outside a supervised residential living facility." (R. 532-33). Due to the mental illnesses, "the defendant has lost the capacity to comprehend his position, to understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, and to cooperate with his counsel to the end that any available defense may be interposed." (R. 534). Tiedemann also exhibited difficulty concentrating on tasks and understanding verbal instructions, and he had difficulty with word retrieval and concentration. (R. 540).

Tiedemann's long-term clinical prognosis in 1992 was abysmal. (R. 536). His condition would "remain incompetent in the foreseeable future in the absence of more vigorous psychopharmacologic treatment of his depression and psychosis." (R. 532).

Due to the psychological evaluations in 1992, the state determined to dismiss the original charges against Tiedemann. It also represented that it would not file charges in the future. (R. 477-78; see 558). "As a result, the West Valley City Police Department

ultimately destroyed the evidence that was collected at the crime scene." (R. 478 (state's pleadings)). A list of destroyed evidence is attached as Addendum E.

In October 2002, an attorney in Utah County advised the Salt Lake District Attorney's office that Tiedemann would be released from the state hospital. (R. 562). Apparently the hospital was unable to secure federal aid for Tiedemann's treatment and further placement due to his foreign citizenship. (See R. 562; 636:19).

In November 2002, the state filed the underlying charges here against Tiedemann. (R. 1-5; 478; see also 636:19). The state has not disputed in filings with the trial court that Tiedemann suffered diminished mental capacity at the time of the police interrogation in November 1991. (See e.g. R. 470). Likewise, the state has not disputed the "defendant's claim of intoxication" at the time of the interview in November 1991. (R. 471). It also has not disputed the destruction of potentially exculpatory evidence. (R. 477-78).

Additional facts relating to the issues on appeal are set forth below. Tiedemann is incarcerated. A trial is stayed pending resolution of the issues in this interlocutory appeal.

SUMMARY OF THE ARGUMENT

Officers obtained confessions from Tiedemann during an interrogation. The confessions were unlawful in two respects. First, Tiedemann was intoxicated and mentally impaired; he disclosed to officers that he did not know if he was capable of understanding and answering questions. Also, Tiedemann was deemed to be mentally incompetent shortly after the interrogation. Officers disregarded the circumstances, and engaged in tactics designed to keep Tiedemann talking in order to obtain a confession. The waiver and confessions here were not voluntary and must be suppressed. Second,

Tiedemann invoked the right to remain silent during questioning. Officers failed to honor his request. That violates Miranda. The confessions must be suppressed on that basis.

Next, if the government destroys potentially exculpatory evidence in a criminal prosecution, a federal due process analysis requires the defendant, who is seeking relief, to prove that the government acted in bad faith. In this case, state agents knowingly and willfully destroyed all physical evidence related to the shootings; their conduct supports bad faith. In addition, the evidence was potentially exculpatory. The destruction of evidence constitutes a violation of Tiedemann's due process rights under a federal analysis. Tiedemann is entitled to relief: the charges must be dismissed.

In the alternative, this Court may look to article I, section 7 of the state constitution and adopt a different analysis when police destroy evidence related to a criminal prosecution. Specifically, this Court may determine that the defendant is not required to prove bad faith. Instead, this Court may adopt an analysis that considers several factors for a remedy, including the state's culpability in destroying the evidence, the significance of the evidence, and the prejudice to defendant. Other jurisdictions have adopted such an assessment. On that basis, this Court may remand for further proceedings.

ARGUMENT

POINT I. OFFICERS OBTAINED INCRIMINATING STATEMENTS IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL PROVISIONS AND IN VIOLATION OF *MIRANDA*.

A. TIEDEMANN DID NOT WAIVE HIS *MIRANDA* RIGHTS; AND HE SPECIFICALLY INVOKED HIS RIGHT TO REMAIN SILENT.

The federal constitution provides that no person "shall be compelled in any cri-

minal case to be a witness against himself." U.S. Const. amend. V; see also Utah Const. art. I, § 12. Under the law, a person in custody must be advised, prior to questioning that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda v. Arizona, 384 U.S. 436, 479 (1966); id. at 444. Also, before a statement may be taken, an officer must obtain a clear and unequivocal waiver of these rights from the accused. See State v. Leyva, 951 P.2d 738, 743 (Utah 1997).

Unless an accused is informed of his rights and he "knowingly and intelligently waive[s] these rights and agree[s] to answer questions or make a statement," Miranda, 384 U.S. at 479, the government may not present the statement in evidence at trial. Id.

An accused's ability to knowingly and intelligently waive his rights per Miranda is assessed under the totality of the circumstances. See State v. Norfolk, 381 N.W.2d 120, 127 (Neb. 1986). An intelligent, voluntary waiver occurs when the defendant possesses the capacity to understand the warnings and to act in response to them. See id. at 125.

Also, voluntariness is met if the officer obtains a waiver without coercion. Coercion invalidates the voluntariness of the waiver and/or the confession. Coercion in the confession may be established with evidence of the details of the interrogation and/or the suspect's condition or circumstances. See e.g. Rettenberger, 1999 UT 80 at ¶¶14-15. If an officer knows that a defendant is mentally disabled, and nevertheless exploits his condition for a waiver or confession, those facts may support coercion. See id. at ¶45.

This Court has ruled that the government has "a heavy burden" to establish that a

defendant waived his Miranda rights before questioning. See Leyva, 951 P.2d at 743. Also, the government must establish the voluntariness of a confession. Rettenberger, 1999 UT 80 at ¶45.

Once the government has established an initial waiver, the suspect then bears the burden to establish that a subsequent invocation of rights was clear and unequivocal. See Leyva, 951 P.2d at 743; State v. Galli, 967 P.2d 930, 935 n.4 (Utah 1998); Davis v. U.S., 512 U.S. 452, 459 (1994). "[T]he suspect 'must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.'" Leyva, 951 P.2d at 743 (citing Davis, 512 U.S. 459).

If a suspect later invokes his rights, officers are required to "scrupulously honor[]" the request. Michigan v. Mosely, 423 U.S. 96, 104 (1975).

If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes this privilege cannot be other than the product of compulsion, subtle or otherwise.

Miranda, 384 U.S. at 473-74 (note omitted).

In this case, the officers violated Tiedemann's right not to incriminate himself in at least two respects. First, Tiedemann was incapable of making a knowing and voluntary waiver of his rights per Miranda. When the interrogation began, Tiedemann disclosed that he was intoxicated and he did not know if he was capable of answering questions. Officers were aware of the circumstances and disregarded them in pursuit of obtaining a confession. That renders the interrogation illegal. (See infra, Point I.B.(1), herein).

Second, Tiedemann invoked the right to remain silent during questioning and the officers failed to stop the interrogation. Those circumstances render the confessions unlawful. (See infra, Point I.B.(2), herein). Each matter is addressed in turn below.

B. THE TOTAL CIRCUMSTANCES HERE SUPPORT AN ILLEGAL INTERROGATION.

In this case, officers interrogated Tiedemann at the police station on the day of the shootings. The interrogation was videotaped and transcribed in part. The transcript is attached as Addendum F; the video is included in the record. (R. 611).

The interrogation started at 1:58 p.m. with Detective Ron Edwards and Sergeant Ed Spann. Edwards explained that Tiedemann signed a paper, which gave officers permission to search his home (see R. 611, video at 1:58 and transcript at 3 (stating Tiedemann signed a waiver for his home)). Also, Edwards explained that Tiedemann waived his rights per Miranda and was not intoxicated. (See R. 611, video at 1:58 to 2:01). Tiedemann corrected Edwards, stating he was intoxicated on Toluene. (Id.) Edwards asked how long Tiedemann had been on Toluene, and he responded, "since 1962." (Id.) His substance abuse was long-term.

Edwards asked whether Tiedemann was incapable of answering questions. He responded, "Sometimes. I don't know." (Id.) This part of the interrogation is not included in the transcript. (Compare R. 611, video; with transcript); Addendum F, hereto.

After Tiedemann notified the officers of his impaired state, and after they observed his condition, the video stopped and started again 12 minutes later at 2:13 (see R. 611, video). The interrogation began a second time at 2:15. (Id.)

With the second interrogation, Edwards recited Miranda warnings. (See R. 611, video and transcript at page 1). He made no mention of the consent form that Tiedemann apparently signed for his home. (Id.) Also, he and Spann asked if Tiedemann understood his rights and if he "still wish[ed] to speak to [them] at this time." (See R. 611, video and transcript at 1). Tiedemann answered, "Ya," to both questions. (See R. 611, video and transcript at 1). His condition on the video tape appeared subnormal: he was sagging with his head down, and generally out of it. (R. 611, video).

Edwards then asked Tiedemann, "Are you intoxicated" (id.), even though he could observe Tiedemann's condition and had already established that fact in the first part of the interrogation. (See R. 611, video from 1:58 to 2:01). Tiedemann again responded in the affirmative. He stated he was on Toluene. (See R. 611, video and transcript at 1). This time Edwards did not stop the interrogation. Instead, he brushed the information aside and moved on to discuss the shootings at Tiedemann's address, as follows:

RE [Ron Edwards]: Are you intoxicated?

ET [Edgar Tiedemann]: On toluene.

RE: What's toluene?

ET: Toluene. It's, it's a paint thinner.

RE: It's a paint thinner?

ET: Ya.

RE: Okay, do you know why we're going to talk to you?

ET: Ya.

RE: What are we going to talk to you about?

ET: The murders out there.

RE: What murders?

ET: The murders out there at West Valley.

RE: Who are they?

ET: Suzie, Chuck and Scotty.

RE: *Whose [sic] Suzie?*

ET: *She's the woman I love.*

(R. 611, video). At this point, Tiedemann began to cry.

RE: That you love?

ET: Ya.

RE: What happened to her?

[Silence].

(See R. 611, video). Tiedemann then informed officers, "I don't want to talk about it."

(See R. 611, video and transcript at 2). The officers did not discontinue the interrogation.

They continued questioning:

ET: *I don't want to talk about it.*

RE: You don't want to talk about it?

ET: No.

ES: Edgar?

ET: What.

ES [Ed Spann]: What don't you want to talk about?

ET: I love that woman so much.

ES: What is it that you don't want to talk about?

[Silence].

ES: You said murders in West Valley, where in West Valley?

ET: . . . inaudible . . . Hummingbird Street.

ES: I'm sorry, where?

ET: 1308 [sic] Hummingbird Street.

ES: 1308 Hummingbird, who lives there?

ET: Me.

RE: Who lives with you?

ET: Suzie and Scotty and they just moved in today or last night, I don't know.

RE: Okay, what don't you want to talk about?

[Silence]

RE: Edgar?

[Silence]

RE: What don't you want to talk about, Ed?

(See R. 611, video). Tiedemann did not respond. He cried as Spann stated the following:

ES: *Edgar, we're not going to force you [to] talk about anything. We're asking you questions. As Detective Edwards stated, you can answer this question, not answer that question, answer this question, not answer that question. You don't have to answer any of our questions at all. You can stop at anytime.*

(R. 611, video and transcript at 2 (emphasis added)). Tiedemann said, "Okay." (R. 611, video). The officers continued:

ES: He made that clear to you, right?

ET: Ya.

ES: Okay. You stated you wanted to talk to us, what part do you and what part don't you want to talk to us about?

[Silence]

RE: Edgar do you remember me reading your rights earlier and you signing a waiver for us to search your home?

ET: Ya.

RE: Okay, we were called to your home on a gunshot. We got in there and seen some people. Who shot them?

(See R. 611, video). Tiedemann confessed to the shootings. As officers continued to interrogate him, he began to repeatedly state, "I don't know." (See R. 611, video and transcript at 4). Edwards then questioned Tiedemann further about his intoxication.

RE: How long have you been sniffing that solvent?

ET: Since 1962.

RE: Tonight how long? Or today?

ET: All day.

RE: Do you know what today's date is?

ET: You told me but I don't remember.

RE: Do you know what day of the week it is?

ET: No.

RE: What was yesterday?

ET: I don't have any idea.

(See R. 611, video and transcript at 4).

Officers then asked Tiedemann about employment; they continued to question him about the shootings and obtained additional confessions from him; and they asked questions about Tiedemann's history. (R. 611, video and transcript at 4-33). As they asked again about Scott Bunnell, Susan Sessions, Charles Timberman, and events leading up to and shortly after the shootings, they increased the pace of the interrogation. (See R.

611, video and transcript at 5).

Officers also asked if Tiedemann had "mental problems." He told them he had "all kinds." He told them he thinks he is "Adolf Hitler." (See R. 611, video and transcript at 9). Edwards asked if Tiedemann heard voices, and he asked, "Who was telling you to go shoot them?" Tiedemann answered, "The devil." (See R. 611, video and transcript at 13-14). Tiedemann appeared intoxicated, exhausted, disoriented or confused, and out of it with head lowered, sometimes crying.

Near the conclusion of the interrogation, officers asked Tiedemann to affirm that he made incriminating statements of his own free will. The recording reflects the following: Tiedemann stated that Susan Sessions and her sister Deborah used heroin the night of the shooting. Spann asked where:

ES: They were doing heroin before they got to your house?

ET: Yeah.

RE: Who with?

ET: I don't know.

RE: With him?

ET: I don't know.

RE: Is Debbie a prostitute, too?

ET: I think so.

ES: So you asked Suzie to sleep with you and she called you disgusting?

ET: Ya, I guess so.

ES: Well no, it is true or not?

ET: I thinks it is.

ES: Okay, I'm just telling you what you told me.

ET: Ya.

RE: Edgar?

ET: Huh?

RE: Why did you shoot them?

ET: I don't know.

RE: Why did you shoot Scotty and Chuck then?

ET: I don't know. I just, I don't know.

RE: Have we made any threats to you during this interview?

ET: No.

RE: Have we promised you anything?

ET: No.

RE: Are you making this statement on your own free will?

ET: Ya.

(See R. 611, video and transcript at 33-34). Tiedemann stated he wanted to be "put to death by lethal injection," he acknowledged he would be charged with capital homicide and he reiterated to officers that he was under the influence of Toluene. (See R. 611, video and transcript at 35). Edwards then asked, "How do you feel?" Tiedemann answered, "Lousy." He also stated that he "sometimes" understood what the officers said. (See R. 611, video and transcript at 35). The interrogation concluded at 3:00 p.m.

In trial court proceedings, the defense asked the court to suppress the confessions where the waiver and confessions were involuntary. (R. 339-58). Also, the defense argued that when Tiedemann invoked his right to silence shortly after the interrogation began, the officers failed to scrupulously honor the request. (Id.) In a memorandum decision dated July 22, 2005, the trial court denied the motion to suppress. (R. 585-595).

With respect to the voluntariness of Tiedemann's waiver and confessions, the court stated that the officers did not use false statements or half-truths; they did not use the false-friend technique; they did not use threats or promises; the interrogation took place in an hour; and the officers did not deny "special requests of the defendant. There is no evidence of any ethical misconduct by the police." (R. 591). The court considered there to be no coercion. (R. 591-92).

Also, the court referenced Tiedemann's diminished mental capacity, that he was under the influence of Toluene. and he suffered other mental impairments. (See R. 592).

However, the court was not compelled by those facts and determined that the factors relevant to lack of voluntariness were not present in the instant case. (R. 593). It stated, "Prior to his interrogation, defendant had not been found incompetent or 'insane,' and similar coercive factors were absent." (R. 593-94).

With respect to whether Tiedemann invoked his Miranda rights during the interrogation, the court determined that after Tiedemann advised officers that he "did not want to talk about it," officers asked further questions that Tiedemann answered. (See R. 590). Based on that, the court should have ruled that officers failed to honor Tiedemann's request. Instead, it ruled that Tiedemann did not invoke his rights during questioning. (Id.)

The trial court's rulings are in error. Tiedemann requests that this Court reverse the rulings since the confessions were illegally obtained. (See infra, Point I.B.(1) & (2)).

The trial court here did not observe witnesses as they testified, and it was not required to make credibility determinations concerning witnesses and their testimony. (See R. 638). The trial court reviewed the interrogation and had filings from 1991 and 1992. Those filings are available to this Court for review. (See R. 611; 530-53 (expert reports)).

(1) The Waiver and Confessions Lacked Voluntariness.

Under the law, the state must establish the voluntariness of a waiver and confession under the totality of the circumstances. See Rettenberger, 1999 UT 80 at ¶¶14-15, 45; State v. Strain, 779 P.2d 221, 225-26 (Utah 1989). The state must prove that the suspect's waiver was clear, unequivocal, knowing and intelligent. See Leyva, 951 P.2d at 743. Also, the confession must be voluntary. Rettenberger, 1999 UT 80 at ¶45.

Utah courts look to both the tactics of the officers and the characteristics of the

accused in considering voluntariness. See Strain, 779 P.2d at 225-26. For example, if officers use abusive physical tactics, that supports coercion. See Beecher v. Alabama, 389 U.S. 35 (1967) (officers held a gun to the suspect's head). Likewise, if officers exploit a suspect's vulnerabilities or are insensitive to special circumstances, that supports coercion. See e.g. Rettenberger, 1999 UT 80 at ¶26 (recognizing that techniques that bear no resemblance to abusive coercion may nevertheless be coercive, depending on the suspect's circumstances).

The voluntariness assessment considers the suspect's perceptions and understanding, and it includes objective factors such as the age, maturity, intelligence, schooling, mental condition, and intoxication of the suspect. See e.g. Colorado v. Connelly, 479 U.S. 157, 163-65 (1986); State v. Williams, 295 S.E.2d 493, 498 (N.C. App. 1982); Henry v. Dees, 658 F.2d 406, 409 & 411 (5th Cir. 1981).

Courts have found involuntary waivers and confessions where officers exploited or disregarded a suspect's deficiencies, vulnerabilities, or impairments to pursue a confession. See Rettenberger, 1999 UT 80 at ¶45 (stating that defendant's confession was involuntary to the extent his will, "already vulnerable due to certain known mental disabilities and deficiencies, was overborne by the suggestive and coercive techniques" of interrogators); Russell v. State, 460 N.E.2d 1252 (Ind. App. 1984) (defendant was a patient in a mental institution); Henry, 658 F.2d at 408 & 411; State v. Graham, 642 S.W.2d 880 (Ark. 1982); see also State v. Clark, 460 A.2d 449 (Vt. 1983) (recognizing that the government must establish a proper waiver where defendant's mental capacity may be affected by intoxication); People v. Washington, 486 N.Y.S.2d 660, 662-63 (N.Y.

Sup. 1985) ("The court finds that defendant's intoxication seriously impaired his ability to understand the nature of his waiver and the results that would flow from it").

In Colorado v. Connelly, 479 U.S. 157, the United States Supreme Court considered an officer's obligations during interrogation when faced with a mentally-disturbed suspect. In that case, the defendant approached an officer and told him that he wanted to confess to a murder. Id. at 160. The officer was bewildered. He provided Miranda warnings, and the defendant insisted that he understood his rights and wanted to talk. Id. at 160. Connelly confessed to the murder of a woman. Id.

The officer later learned that the defendant was psychotic. Id. at 161. However, he was unaware at the time of the confession of defendant's mental impairment. Id.

Under the circumstances, the U.S. Supreme Court refused to find that the officer engaged in coercive conduct. The Court ruled that "[a]bsent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." Id. at 164 (footnote omitted).

The Court nevertheless recognized that a confession may be coerced where an officer knows of a suspect's deficiencies at the time of questioning and exploits the circumstances. See id. at 164-65 (citing Blackburn v. Alabama, 361 U.S. 199, 207-08 (1960); Townsend v. Sain, 372 U.S. 293, 298-99 (1963)).

In another case, Blackburn v. Alabama, 361 U.S. 199, the defendant was charged in 1948 with robbery. At the time of the offense, he already had suffered "a lengthy siege of mental illness." Id. at 200.

He had served in the armed forces during World War II, but had been discharged

in 1944 as permanently disabled by a psychosis. He was thereupon placed in an institution and given medical treatment over extended periods until February 14, 1948, when he was released from a Veterans Administration hospital for a ten-day leave in the care of his sister. He failed to return to the hospital and consequently was discharged on May 24, 1948. The robbery of which he stands convicted occurred during this period of unauthorized absence from a mental ward. Blackburn's medical records further disclose that from 1946 he was classified by the Veterans Administration as 100 percent "incompetent" and that at the time of his discharge from the hospital both his diagnosis of "schizophrenic reaction, paranoid type" and his characterization as "incompetent" remained unchanged.

Id. at 200-01. Shortly after the offense, Blackburn confessed. Id. During the interrogation, he answered questions "like any normal person." Id. at 204. "The Chief Deputy conceded that Blackburn said he had been a patient in a mental institution, but claimed that Blackburn also stated he had been released, and avowed that Blackburn 'talked sensible and give (sic) sensible answers,' was clear-eyed, and did not appear nervous." Id.

After the arrest, the judge had the defendant examined by three physicians, and concluded that he was insane "either at the time of the commission of (the) offense or at the present time." Id. at 201. The judge committed Blackburn to the state hospital where he remained for more than four years for treatment. Id. at 201-02. When Blackburn was deemed competent, his case went to trial. Id. There he maintained his insanity; he claimed he could not remember the crime, his arrest, his confession, his commitment to the hospital or his treatment; and he denied the truth of his confession. Id. at 202.

When the prosecutor sought to admit the confession into evidence, the defense objected and referenced the physicians' reports and records from the competency hearings. Id. The prosecutor countered the reports with evidence of an additional physician, Dr. Richards, who was a staff member at the state hospital. Id. at 203. The

doctor's answers were in harmony with other reports regarding the finding that Blackburn had been insane. Id. However, during "cross-interrogatories,"

[the doctor] executed an astonishing about-face by opining that Blackburn had been "normal" since he first saw him, that his mental condition was "normal" on the date of the crime and "good" on the date of the confession, and that he had never seen Blackburn suffer "psychotic episodes." Even this portion of the deposition is not without incongruity, however, for Dr. Richards' response to one cross-interrogatory was that he did not believe Blackburn had experienced lucid intervals.

Id. at 203-04. The parties also presented evidence concerning the circumstances of the interrogation, where it lasted 8 or 9 hours with a one-hour break for dinner. Id.

The trial court admitted the confession into evidence. Id. at 205. The jury convicted the defendant of the offense and the state appellate court affirmed. On review to the U.S. Supreme Court, it reversed the conviction. Id. The Court looked to the circumstances of the interrogation, id. at 207-08 (acknowledging the length of the interrogation in a tiny room filled with officers and without friends, relatives, or legal counsel for the defendant), and it considered the defendant's mental condition. It determined that the circumstances supported "the strongest probability that Blackburn was insane and incompetent at the time he allegedly confessed." Id. at 207. It stated the following:

[C]oercion can be mental as well as physical[. T]he blood of the accused is not the only hallmark of an unconstitutional inquisition. A number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of "persuasion." A prolonged interrogation of an accused who is ignorant of his rights and who has been cut off from the moral support of friends and relatives is not infrequently an effective technique of terror. Thus the range of inquiry in this type of case must be broad, and this Court has insisted that the judgment in each instance be based upon consideration of "the totality of the circumstances."

Id. at 206 (note and cite omitted).

It also recognized the following:

It is, of course, quite true that we are dealing here with probabilities. It is possible, for example, that Blackburn confessed during a period of complete mental competence. Moreover, these probabilities are gauged in this instance primarily by the opinion evidence of medical experts. But this case is novel only in the sense that the evidence of insanity here is compelling, for this Court has in the past reversed convictions where psychiatric evidence revealed that the person who had confessed was 'of low mentality, if not mentally ill,' Fikes v. State of Alabama, supra, at page 196, 77 S.Ct. at page 284, 1 L.Ed.2d 246, or had a 'history of emotional instability,' Spano v. People of State of New York, supra, 360 U.S. at page 322, 79 S.Ct. at page 1206, 3 L.Ed.2d 1265. And although facts such as youth and lack of education are more easily ascertained than the imbalance of a human mind, we cannot say that this has any appreciable bearing upon the difficulty of the ultimate judgment as to the effect these various circumstances have upon independence of will, a judgment which must by its nature always be one of probabilities.

Id. at 208 (note omitted). The confession was deemed to be involuntary and inadmissible. Id. at 210.

The lessons of the above cases apply here.

In this case, officers were advised of and observed Tiedemann's intoxicated and mental condition at the beginning of and during the interrogation. (See R. 611, video). Notwithstanding, they proceeded with questioning for a confession, disrespecting his requests to not talk about the shootings; moving forward with the interrogation while Tiedemann cried; persisting with repeated questions at times; accelerating the pace or trading off with questions. (Id.) Their tactics were intended to keep Tiedemann talking in order to obtain a confession. The totality of the circumstances here fails to support voluntariness. Thus, the interrogation was unlawful.

Turning first to the trial court ruling, the court stated the following:

Here, the interrogators did not make use of false statements or half-truths. They

did not use the false friend technique by implying they were acting in the best interest of the defendant by the simple use of his first name. The detectives did not use any threats or promises to entice the defendant into a confession. The entire interrogation took place within one hour, and during the investigation, the interrogators did not deny any special requests of the defendant. There is no evidence of any ethical misconduct by the police. In short, the record shows that the detectives' interrogation was absent any suggestive and coercive techniques.

(R. 591-92). With respect to Tiedemann's condition, the trial court stated,

The defendant's prolonged use of Toluene, the stroke he suffered in 1982, or a head injury received as a child might be the cause of his generalized cerebral damage resulting in severe impairment of intellectual functions and an 82 I.Q. (Memorandum in Support of Defendant's Motion to Suppress, p. 14.) The defendant's reference that he believes he is Adolph Hitler indicates that he knows Hitler is dead and he does not have an actual belief that he is Hitler. His reference to Satan telling him to commit the criminal act may also stem from his religious beliefs. "A perception of coercion flowing from the 'voice of God' is a matter to which the Federal Constitution does not speak."

(R. 592-93). The court also stated that prior to the interrogation Tiedemann had not been found to be incompetent "and similar coercive factors were absent." (R. 593-94).

The trial court's discussion of the interrogation in this case failed to consider several relevant circumstances. See Rettenberger, 1999 U T 80 at ¶19 (stating that the trial court failed to consider the "totality of the circumstances" in its analysis).

Specifically, the interrogation took place at police headquarters in an interrogation room. Tiedemann did not have the support of relatives or legal counsel, although he was being interrogated for aggravated and capital offenses. (See R. 611, video and transcript). The trial court's analysis made no mention of those circumstances. (R. 591-94).

In the initial moments of the interrogation, the officers represented in the tape recording that they gave Miranda warnings to Tiedemann, he waived the warnings, and he was not intoxicated. Tiedemann corrected the officers. (R. 611, video at 1:58 to

2:01). He advised that he was intoxicated on Toluene and had abused the substance since 1962. When officers asked if Tiedemann were *incapable of answering* questions, Tiedemann responded affirmatively. He stated, "Sometimes. I don't know." (R. 611, video at 1:58 to 2:01).

That exchange cannot be construed to support that Tiedemann provided a knowing and voluntary waiver. Indeed, the officers recognized problems with continuing and they stopped the interrogation. (R. 611, video at 2:01). When the officers began the recording again 12 minutes later, even though they had been advised that Tiedemann was intoxicated and incapable of understanding and answering questions, they made no attempt to resolve the matter. But see Leyva, 951 P.2d at 743-44 (recognizing that the state must establish that the suspect understood, and clearly and unequivocally waived his rights per Miranda: "[i]f the suspect responds ambiguously or equivocally," the officer must focus on clarifying the suspect's intent and understanding). Instead, they avoided the subject entirely to proceed with an interrogation. (See R. 611, video and transcript). The trial court's analysis failed to take those circumstances into consideration in assessing the voluntariness of the waiver and confessions. (See R. 591-94).

In the second attempt at the interrogation, officers provided the warnings, asked if Tiedemann "wish[ed] to speak" to them, and asked if Tiedemann were intoxicated. (R. 611, video and transcript at 1). Tiedemann again disclosed his intoxicated condition. (Id.) Officers would have observed that Tiedemann's demeanor was subnormal. He was slumped down with his head lowered; at times during the interrogation he cried, and/or he appeared confused and exhausted and was unable to answer questions (R. 611, video).

Officers brushed aside Tiedemann's obvious impairments and inebriated condition to proceed with questioning for a confession. (Id.)

Also, officers persisted with questions even after Tiedemann invoked his right to remain silent shortly into the interrogation (infra Point I.B.(2); R. 611, video and transcript at 2-3). Indeed, in an effort to get Tiedemann talking, they represented that he could answer some questions and not others. (R. 611, video and transcript at 3). That was misleading. It does not adequately reflect Miranda. See Miranda, 384 U.S. at 479 (stating a suspect has the right to remain silent); Mosely, 423 U.S. at 101, 103-04 (stating an invocation of the right to remain silent must be honored); (infra, Point I.B.(2)). The tactic was intended to overcome Tiedemann's will so that he would continue talking. See Rettenberger, 1999 UT 80 at ¶20 (recognizing that police misrepresentations designed to overcome a defendant's will render a confession involuntary). That was improper.

The officers persisted with questioning for an hour, at times trading off or increasing the pace to keep it moving. (R. 611, video and see e.g. transcript at 3, 5-6, 7-8). They were steadfast and determined. Their tactics were designed to exploit Tiedemann's impaired condition, to keep him talking even after he had expressed that he did not want to talk about the shootings (see id.; infra, Point I.B.(2)), and to take advantage of the circumstances to extract a confession. That constitutes misconduct. See Rettenberger, 1999 UT 80 at ¶45 (ruling that the officers' various tactics were used to exploit defendant's deficiencies, rendering the defendant's statements involuntary). The trial court did not adequately consider the circumstances in its analysis. (R. 591-94).

The trial court's analysis failed to consider what the officers observed and knew

about Tiedemann's condition when they engaged in an interrogation for a confession. (See R. 591-94). It failed to properly consider that Tiedemann had disclosed to officers his inability to understand and answer questions, his intoxicated state, and his mental condition. (See R. 591-94; R. 611, video). It also failed to take into consideration that officers would have observed Tiedemann's deficiencies, and they nevertheless exploited them for the waiver and confessions. (See R. 591-94; R. 611, video).

Next, the circumstances support "the strongest probability that [defendant was] incompetent at the time he allegedly confessed." Blackburn, 361 U.S. at 207. Shortly after the interrogation, Tiedemann was declared incompetent. (See R. 532, 534). Physicians described Tiedemann as "alert, but distractible. He alternated between attention to task to a somewhat vacant stare. His verbal response time was delayed and it was clear that his comprehension for complex questions or directions was impaired." (R. 534). "He demonstrate[d] significant impairment in judgment, attention and concentration, and a mild deficit of immediate memory." (Id.) Also, there was "significant impairment of his ability to understand and follow simple commands." (Id.) He exhibited difficulty concentrating on tasks and understanding verbal instructions. "[I]nstructions had to be repeated and explained several times " (R. 540).

He was "only partially able to cooperate" with experts (R. 535). Also, his Toluene addiction resulted in "repetitive episodes of acute delirium." (R. 534).

While experts were not required to assess Tiedemann's mental state on the day of the interrogation, their findings after working with him from November 1991 to January 1992, were undisputed and the prognosis was hopeless and grim. (R. 537, 545, 552-53).

There is nothing in this record to suggest that an assessment of Tiedemann's mental condition and intoxication for the date of interrogation would have been more optimistic and uplifting. (See R. 531-53). Indeed, since the experts' reports came after Tiedemann spent months living in a controlled environment with treatment and without access to Toluene, it is improbable to believe anything but that Tiedemann's condition at the time of interrogation was incompetent and mentally ill. See Blackburn, 361 U.S. at 201, 207 (considering experts' reports to support the strongest possibility that defendant was incompetent at the time of the confession).

Tiedemann ultimately was committed to the Utah State Hospital in 1992, where he was medicated and treated for 10 years. Experts opined that given the nature of the brain damage in early 1992, he may not be rehabilitated. (R. 536-37, 545).

In this case, the trial court disregarded those circumstances in its analysis. Yet they are relevant. See Blackburn, 361 U.S. at 202, 207-08 (considering reports from trial competency proceedings); Washington, 486 N.Y.S.2d 660 (considering intoxication).

The trial court here recognized that Tiedemann suffered "generalized cerebral damage resulting in severe impairment of intellectual functions and an 82 I.Q." that may be due to drug use, and/or a stroke or head injury (R. 592); it recognized instability during the interrogation where Tiedemann at times provided detailed answers, but at other times did not provide clear answers (R. 586, 593); and it considered Tiedemann's references to Hitler and the devil.¹ (R. 592-94). Those facts together with the total

¹ The trial court was not persuaded by Tiedemann's reference to Hitler. However, it believed that Tiedemann's reference to Satan may be real and may stem from religious

circumstances surrounding Tiedemann's condition "indisputably establish[] the strongest probability" that defendant was incompetent "at the time he allegedly confessed."

Blackburn, 361 U.S. at 207.

Here, Tiedemann advised officers of his condition; they were aware that he was incapable of understanding and responding to their questions, and the officers observed Tiedemann's demeanor during the interrogation. (R. 611, video and transcript). To the extent the officers may have considered it possible that—notwithstanding the signs of impairment—Tiedemann was competent when they proceeded with the interrogation (but see R. 611, video), they cannot be excused for ignoring his disclosures and their observations when incompetence, in fact, ultimately was established. (See e.g. R. 532).

Surely in the present stage of our civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane; and this judgment can without difficulty be articulated in terms of the unreliability of the confession, the lack of rational choice of the accused, or simply a strong conviction that our system of law enforcement should not operate so as to take advantage of a person in this fashion.

Blackburn, 361 U.S. at 207.

"[A]s interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the 'voluntariness' calculus." Rettenberger, 1999 UT 80 at ¶15 (citing Connelly, 479 U.S. at 164). Thus, under the totality of circumstances analysis, the trial court was required to consider the factors relevant to the defendant's mental condition. Also, it was required to

beliefs. (R. 592). It then discounted that reference on the basis that the federal constitution does not protect against coercion flowing "from the 'voice of God.'" (Id.) Significantly, Tiedemann did not claim in this case that such a voice coerced him into confessing; his claims of coercion related specifically to the officers' conduct.

consider that officers were informed and aware of the defendant's vulnerabilities, and they exploited them with subtle techniques. See e.g. id. at ¶¶15-16.

The trial court here "erred in failing to conduct a 'totality of circumstances' examination of [defendant's] confession to determine whether the interrogators exploited [his] disabilities and deficiencies in such a way that his 'will was overborne.'"

Rettenberger, 1999 UT 80 at ¶19 (cite omitted).

Officers were informed from the beginning that Tiedemann would not be able to understand and answer questions, and they were advised of his long-term substance abuse and intoxication. (R. 611, video at 1:58 to 2:01). They made no effort to resolve those matters or his inability to understand and answer questions for a clear, unequivocal, voluntary waiver and confession. Instead they proceeded with questioning. (R. 611, video). That constitutes coercion. See e.g. Rettenberger, 1999 UT 80 at ¶25 (stating that evidence must reveal some physical or psychological force or manipulation designed to induce the accused to talk when he otherwise would not have done so) (cite omitted). The trial court's ruling should be reversed.

(2) Tiedemann Unequivocally Invoked the Right to Remain Silent During the Interrogation.

If a suspect initially waives his rights per Miranda, he may indicate "in any manner, at any time prior to or during questioning, that he wishes to remain silent, [and] the interrogation must cease." Miranda, 384 U.S. at 473-74; see also Edwards v. Arizona, 451 U.S. 477, 479 (1981) (statement that defendant "want[ed] an attorney before making a deal" was sufficient to warrant termination of interrogation); Smith v. Illinois, 469 U.S.

91, 93, 96-97 (1984) (defendant's statement, "Uh, yeah, I'd like to do that," in response to the officer's advice that defendant could have attorney present constituted invocation of Miranda rights requiring cessation of questioning); State v. Wood, 868 P.2d 70, 83 (Utah 1993) ("Edwards dealt with a clear, unequivocal request for counsel"), disavowed on other grounds, State v. Mirquet, 914 P.2d 1144, 1147 n.2 (Utah 1996).

In Edwards, 451 U.S. 477, the defendant was interrogated on two occasions. Both times he waived his Miranda rights. Id. at 479. At the conclusion of the first interrogation, defendant stated he wanted to "make a deal" with officers. Id. When he was told officers had no authority to negotiate, he initiated a call, hung up after a moment, then stated "I want an attorney before making a deal." Id. Questioning ceased until the next day when officers interrogated him a second time. Id. The Arizona court ruled that defendant waived his rights per Miranda. Id. at 479-80. The Supreme Court reversed. The reference to an attorney in Edwards for the purpose of "making a deal" was sufficiently unequivocal to warrant suppression of the statements. Id.

In Michigan v. Mosely, 423 U.S. 96 (1975), officers arrested the defendant Mosely in connection with a series of robberies and took him to headquarters for questioning. The defendant signed a Miranda form. Id. at 97. Detective Cowley began questioning, then defendant invoked his right to remain silent. Id. He stated that he did not want to answer questions about the robberies. Id. at 97. Cowley ceased the interrogation and took Mosely to a holding cell. Id.

Cowley then arranged for a second officer, Sergeant Hill, to interrogate Mosely two hours later about an unrelated homicide. Id. at 98. Cowley did not tell Hill about

Mosely's invocation of the right to remain silent. Hill began the interrogation by advising Mosely of his rights. "Mosley read the notification form both silently and aloud, and Detective Hill then read and explained the warnings to him and had him sign the form." Id. at 98. Mosely then implicated himself in the homicide. Id. He ultimately was convicted of murder and appealed, challenging the confession. Id. at 99.

In reviewing the matter, the United States Supreme Court recognized that if a suspect indicates during questioning that he wishes to remain silent, his request must be scrupulously honored, and the interrogation must stop. "At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." Id. at 100 (citing Miranda, 384 U.S. at 473-74).

However, the questioning may continue, as it did in Mosely's case, after a reasonable hiatus and readmonition of Miranda rights. The Court found that the second interrogation there was lawful where there was a sufficient break in circumstances to separate the first interrogation from the second. Mosely, 423 U.S. at 104-05. Specifically, Cowley immediately stopped the first interrogation when defendant invoked the right to remain silent; he did not attempt to persuade Mosely to reconsider his decision; the second or subsequent interrogation occurred after a "significant period of time" had elapsed (*i.e.*, two hours); the subsequent interrogation was conducted by a different officer, Hill, who was not involved in the first interrogation; the subsequent interrogation concerned different charges; and Hill began the later interrogation with a clear and express recitation of the rights per Miranda and a waiver by the defendant. Id.

Applying the relevant principles here, Tiedemann unequivocally invoked the right to remain silent. (R. 611, video and transcript at 2).

During questioning Tiedemann clearly stated to officers, "I don't want to talk about it." (R. 611, video and transcript at 2). That constituted an unequivocal invocation of his rights per Miranda. See e.g. Mosely, 423 U.S. at 97 (when defendant stated that he did not want to talk about the robberies, the officer ceased the interrogation); Emspak v. U.S., 349 U.S. 190, 194 (1955) (stating that a suspect is not required to use a ritualistic formula or talismanic phrase to invoke his rights); see also State v. Crump, 834 S.W.2d 265, 266, 269 (Tenn. 1992) (defendant told police he had nothing to say; police failed to scrupulously honor invocation), cert. denied, 506 U.S. 905 (1992); Christopher v. Fla., 824 F.2d 836, 840-41 (11th Cir. 1987) (defendant's statement, "I got nothing else to say," constituted invocation), cert. denied, 484 U.S. 1077 (1988).

Notwithstanding the invocation, the officers here did not scrupulously honor the request. They continued questioning. (R. 611, video and transcript at 2-3). The trial court characterized the continued questioning as follows:

When Det. Edwards asked, "What happened to her (Suzie)?" the defendant said, "I don't want to talk about it." Immediately afterward, when asked, "What don't you want to talk about?" he remained silent. *Immediately thereafter*, when asked, "*Who is Suzie?*" he responded without delay, "*The woman that I love.*" The defendant readily answered other questions throughout the interrogation, *except when asked, "What happened to Suzie?"*

(R. 586 (emphasis added); see also 590). The trial court considered the continued questioning to be appropriate. (R. 586; 590). It refused to suppress the confessions that followed. That was error. The trial court misconstrued the interrogation, and it

misapplied the law in this case.

To start with the interrogation, the video shows that Edwards asked if Tiedemann knew why he and Spann were talking to him. Tiedemann answered affirmatively. Edwards then asked "[w]hat are we going to talk to you about?" Tiedemann answered, "[t]he murders out there" in West Valley. Edwards then asked "Who are they?" Tiedemann answered, "Suzie, Chuck, and Scotty." The video recording continued as follows:

RE [Edwards]: *Whose [sic] Suzie?*

ET [Tiedemann, crying]: *She's the woman I love.*"

RE: That you love?

ET: Ya.

RE: What happened to her?

[Silence].

ET: *I don't want to talk about it.*

RE: *You don't want to talk about it?*

ET: *No.*

ES [Spann]: Edgar?

ET: What.

ES: *What don't you want to talk about?*

ET: *I love that woman so much.*

ES: *What is it that you don't want to talk about?*

[Silence].

ES: You said murders in West Valley, where in West Valley?

ET: . . . inaudible . . . Hummingbird Street.

ES: I'm sorry, where?

ET: 1308 [sic] Hummingbird Street.

ES: 1308 Hummingbird, who lives there?

ET: Me.

RE: Who lives with you?

ET: Suzie and Scotty and they just moved in today or last night, I don't know.

RE: Okay, *what don't you want to talk about?*

[Silence]

RE: *Edgar?*

[Silence]

RE: *What don't you want to talk about, Ed?*

[Silence; Tiedemann crying].

ES: *Edgar, we're not going to force you [to] talk about anything. We're asking you questions. As Detective Edwards stated, you can answer this question, not answer that question, answer this question, not answer that question. You don't have to answer any of our questions at all. You can stop at any time.*

ET: Okay.

ES: He made that clear to you, right?

ET: Ya.

ES: Okay. *You stated you wanted to talk to us, what part do you and what part don't you want to talk to us about?*

[Silence]

RE: *Edgar, do you remember me reading you're rights earlier and you signing a waiver for us to search your home?*

ET: Ya.

RE: Okay, we were called to your home on a gunshot. We got in there and seen some people. Who shot them?

ET: *Me.*

RE: You did?

ET: Ya.

RE: Why did you shoot them?

ET: I shot Suzie cause I love her and I shot the other two.

(R. 611, video and transcript at 2-3).

After Tiedemann's invocation and then the confirmation (ET: "I don't want to talk about it." RE: "You don't want to talk about it?" ET: "No"), officers were required under the law to cease the interrogation. Miranda, 384 U.S. at 474. Continued questioning was inappropriate. Statements obtained thereafter "cannot be other than the product of compulsion, subtle or otherwise." Id.; Mayes v. State, 571 S.W.2d 420, 422 (Ark. 1978) (defendant expressed that he did not want to talk to the officer; continued questioning constituted a clear violation of Miranda); see also U.S. v. Hernandez, 574 F.2d 1362, 1368 (5th Cir. 1978); U.S. v. Olof, 527 F.2d 752, 753-54 (9th Cir. 1975); Smith, 469 U.S. at 100 (post-request responses may not be used to cast doubt on a defendant who invokes his Miranda rights).

Instead of honoring Tiedemann's request, the officers persisted in their efforts to wear down his resistance. They repeatedly asked him questions. (R. 611, video and transcript at 2-3). Even as the officers continued their questions, Tiedemann attempted to exercise his rights by remaining *silent* in the face of the officers' inquiries. (R. 611, video and transcript at 2-4). Yet, the officers were relentless. (Id.)

The officers failed to take measures to ensure that any continued interrogation was not the result of compulsion or coercion: they failed to wait until a significant period of time had passed before engaging in further interrogation; they persisted in questioning Tiedemann about the shootings and particularly about Susan Sessions and the harm to her; and they failed to present a new recitation of rights per Miranda before they engaged in further questioning. See Mosely, 423 U.S. at 104-105.

In fact, the officers here misled Tiedemann about his rights. Instead of waiting and then later providing fresh warnings and obtaining a waiver before continuing (see Mosely, 423 U.S. at 104-05), the officers advised Tiedemann that he could "answer this question, not answer that question, answer this question, not answer that question." (R. 611, video and transcript at 2-3). That was deceptive. The officers demonstrated here that they would not honor a suspect who did not answer questions: they continued to press Tiedemann after he stated he did not want to talk about the shootings. (Id.) In addition, the officers' advice was erroneous. If a suspect were to answer some questions and not others, a court may not construe that act to support an invocation of Miranda rights. See Davis, 512 U.S. 459 (equivocal statements and actions do not constitute

invocation of Miranda). The officers provided misleading advice.

After making several efforts to encourage Tiedemann to talk after invoking his right to remain silent, the officers finally prevailed in luring Tiedemann back into the conversation by misleading him. (See R. 611, video and transcript at 3). Once Tiedemann's resistance wore down and they persisted with the interrogation, much of the interview focused on Susan Session. (See R. 611, video and transcript at 3-10, 12-18, 20-27, 29-34, (discussing Suzie)). Thus, where the trial court explicitly determined that Tiedemann did not want to talk about the harm to "Suzie" (R. 590), it should have suppressed statements made thereafter. Instead it ruled that all subsequent statements were admissible. (See R. 590).

Although Tiedemann provided responses to subsequent questions, his responses cannot be used to support intent to cooperate. Where he invoked the right to remain silent, a subsequent response cannot be used to undermine the invocation or to render it vague or ambiguous. See e.g. Smith, 469 U.S. at 97-98 (stating that once a defendant invokes his rights per Miranda, if officers continue questioning, courts may not look to the responses to find the invocation ambiguous; subsequent responses must be suppressed since the officers failed to scrupulously honor the request).

Statements obtained by the officers after Tiedemann invoked the right to remain silent must be suppressed as violative of Miranda, 384 U.S. at 473-74. In this case, the trial court failed to properly apply the law. (See R. 590 (refusing to suppress subsequent statements)). Tiedemann respectfully requests that this Court reverse the trial court ruling and order suppression of the confessions, where they were unlawful.

POINT II. THE GOVERNMENT'S DESTRUCTION OF EVIDENCE IN A CRIMINAL CASE DISADVANTAGES A DEFENDANT; FUNDAMENTAL FAIRNESS REQUIRES DISMISSAL OF A CASE OR SANCTIONS WHEN THE GOVERNMENT DESTROYS EVIDENCE. ALSO, UNDER A STATE ANALYSIS, WHEN THE GOVERNMENT DESTROYS EVIDENCE THE COURT SHOULD APPLY A BALANCING TEST FOR A REMEDY.

A. THE GOVERNMENT'S WILLFUL DESTRUCTION OF EVIDENCE VIOLATES FEDERAL DUE PROCESS.

The state and federal constitutions provide that a person shall not be deprived of life, liberty or property without due process of law. U.S. Const. amend. V & XIV, § 1; Utah Const. art. I, § 7. In a series of decisions, the United States Supreme Court has set forth the test to determine whether the government's destruction of evidence rises to the level of a due process violation. In Brady v. Maryland, 373 U.S. 83 (1963), the Court ruled that the Due Process Clause of the Fourteenth Amendment is violated if the government suppresses material, exculpatory evidence – regardless of whether the government acted in good or bad faith. Id. at 87.

Next, in California v. Trombetta, 467 U.S. 479 (1984), the Court considered the constitutional ramifications when officers collected breath samples for intoxilyzer testing, then destroyed the samples after testing. In Trombetta, the tested samples contained no apparent *exculpatory* value to the defendant. Also, officers did not ordinarily preserve the samples in their day-to-day operations. Id. at 483.

The Supreme Court began its analysis of the matter as follows:

Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed “what might loosely be called the area of

constitutionally guaranteed access to evidence.” Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system.

Id. at 485 (cites omitted).

With regard to preserving evidence, the Court ruled that the government had a duty to preserve if evidence may play a "significant role in the suspect's defense." Id. at 488. Also, the government would be required to preserve evidence that had apparent exculpatory value if the defendant would be "unable to obtain" evidence comparable thereto through "other reasonably available means." Id. In Trombetta, the destruction of breath samples after testing did not violate due process. The parties there had access to test results, and the defendants could challenge the results by examining the process even "without resort to preserved breath samples." Id. at 489-90.

In Arizona v. Youngblood, 488 U.S. 51 (1988), the Court considered the failure of the police to properly preserve untested evidence. In that case, a boy was taken to the hospital for tests after he was sexually assaulted. Id. at 52-53. A physician treating the boy collected samples for testing. Id. at 53. Officers also collected the boy's clothing. The officers refrigerated the specimen samples, but not the clothing. Id. The boy identified the defendant Youngblood as the assailant. Id.

When a criminologist later tested the refrigerated specimen, he concluded that sexual contact had occurred with the boy. Id. However, later tests for blood type were inconclusive. Id. at 54. The state disclosed the information to the defense. Id. at 55.

Thereafter, the case went to trial. Youngblood's "principal defense was that the

boy had erred in identifying him as the perpetrator of the crime." Id. at 54. Experts for both parties testified as to what technicians may have learned from the samples if they had tested them shortly after police gathered the evidence or if the police had refrigerated the clothing. Id. The jury then convicted the defendant and he appealed to the state court. After reversal there, the government sought review in the United States Supreme Court.

The Supreme Court ruled that for due process purposes, a defendant must show that police acted in bad faith when they failed to preserve potentially exculpatory evidence.

We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.*, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, *failure to preserve* potentially useful evidence does not constitute a denial of due process of law.

Id. at 58 (emphasis added). Thus, while bad faith is not a consideration when the state fails to *disclose* material exculpatory evidence, see Brady, 373 U.S. at 87, "the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant."

Youngblood, 488 U.S. at 57; see also State v. Gulbransen, 2005 UT 7, ¶47, 106 P.3d 734 (stating that under a federal analysis the defendant carries the burden to show that police acted in bad faith in losing the evidence; also, finding that the defendant never raised the issue of bad faith and he did not present evidence concerning "the intentions of the police

officers or the State Crime Lab with regard to the evidence").

In this case, the uncontested facts are as follows: On November 2, 1991, police collected physical evidence in connection with an investigation into the shootings at 3874 Hummingbird Street. (R. 389; see 477-78, 601). The items included two handguns, ballistic evidence, "Code R" data from Deborah Sutherland, blood and tissue samples, gunshot residue tests from Deborah Sutherland and Tiedemann, fingerprints, drugs, paraphernalia, and items of clothing and bedding. (R. 389; see 477-78, 601; see also Addendum E, hereto).

Tiedemann ultimately was charged with capital murder. (R. 389, 477). In early 1992, Tiedemann was declared to be incompetent. On June 11, 1992, the state dismissed the charges. (R. 389; see 477-78; 601). Thereafter, Tiedemann corresponded with the Salt Lake District Attorney's Office to inquire if prosecutors intended to pursue charges against him. (R. 389). "The State did not anticipate re-filing the charges because it did not appear that Tiedemann would ever be found competent. As a result, the West Valley City Police Department ultimately destroyed the evidence that was collected at the crime scene." (R. 478). From February 1993, through 1994 most of the physical evidence related to the case was destroyed without ever being tested. (R. 390; see also 601).²

In the fall of 2002, the state learned that Tiedemann would be released from the

² In 1992, Title 77, Chapter 26 discussed the duties of the Bureau of Criminal Identification, in part, to collect information and evidence about individuals accused and convicted of a crime. In July 1993, those laws were repealed. Today, Title 53, Chapters 1 through 10 concern the collection and retention of evidence in a criminal case. Since those provisions were not in effect when the government destroyed the evidence here, Tiedemann has not analyzed the government's duty in this case under Utah statutory provisions.

Utah State Hospital. (See R. 478; 562-63). Since Tiedemann was unable to get further treatment from the hospital (see R. 562), the state "re-filed" homicide charges against him. (See R. 478; 601).

In trial court proceedings, the defense moved to dismiss the charges due to the destruction of potentially exculpatory evidence. (R. 388-404). The trial court denied the motion. It ruled that the defense failed to establish bad faith under a federal analysis. (R. 603). That ruling is in error.

The circumstances of this case support that the destruction of evidence constituted a due process violation. (See R. 388-394). The government acted in bad faith and destroyed evidence that could play a significant, constitutional role in the defense. (R. 393 (identifying possible value of the evidence to the defense)). Also, the state does not contest that evidence comparable to that which was collected at the scene cannot be obtained by any other means. (See R. 477-80).

"Bad faith requires that a defendant prove more than mere negligence; a defendant must show that 'the police . . . by their conduct indicate that the evidence could form a basis for exonerating the defendant.'" State v. Holden, 964 P.2d 318, 323 (Utah Ct. App. 1988) (cites omitted), cert. denied, 982 P.2d 88 (Utah 1998). In this case, the government acted willfully when it destroyed the evidence. This is not a case where the police gathered information and then failed to refrigerate it (see Youngblood, 488 U.S. at 53), or destroyed it as a matter of routine after testing (see Trombetta, 467 U.S. 479). In this case, officers processed a crime scene and collected evidence that they considered to be relevant to a criminal case. Government agents preserved the evidence for years; after

Tiedemann was found to be incompetent and the prosecution determined not to proceed with charges against him, the government destroyed the evidence. (See Addendum E, hereto). The destruction was deliberate (R. 638:29, 30 (agents determined to destroy the evidence, and got the "rubber stamp")); the government destroyed potentially exculpatory evidence with the intent that it would not go to trial. (See e.g. R. 478 (stating that evidence was destroyed "[a]s a result" of the decision not to proceed with charges)).

The prosecution's decision now to proceed with charges where it has destroyed most of the evidence is also in bad faith. While the state claims that it is disadvantaged in its case by the destroyed evidence (see R. 480), it nevertheless has determined to proceed based on Deborah Southerland's testimony. (See e.g. R. 630). Since Southerland's testimony cannot be analyzed/compared with physical evidence from the scene, Tiedemann is hampered in his assessment of the matter and in cross-examining the state's key witness where her testimony may be in conflict with the physical evidence. (See R. 393; 638:25).

The physical evidence had the potential of disproving Southerland's claims or explanations of how events transpired for cross-examination and confrontation purposes. See e.g. Chambers v. Mississippi, 410 U.S. 284, 294 (1973) ("The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process"). For example, if the ballistics evidence, blood and tissue samples, gunshot residue and fingerprint evidence were such that it would support that Southerland was involved in the shootings, that evidence would serve to impeach Southerland's credibility and her claims regarding Tiedemann's actions. (See e.g. R. 630:5-37 (claiming that Tiedemann acted alone)). Where she is the primary

witness for the prosecution in the case, such impeachment evidence would be pertinent to cross-examination and it likely would have an impact on jurors and the level of the offense or offenses they may be willing to consider to render a verdict. See Utah Code Ann. §§ 76-5-203 (Supp. 1991) (defining murder); 76-5-205 (1990) (defining reckless manslaughter); 76-5-206 (1990) (defining negligent homicide).

The same can be said of the Code R examination. Where Southerland claimed that Tiedemann sexually assaulted her (R. 630:26-27), information in the Code R may have shown that Southerland did not suffer trauma, tenderness, redness, or bruising to the genitalia for forced penetration. See Utah Code Ann. §§ 76-5-405 & 76-5-406 (1990 & Supp. 1992) (defining sexual assault as non-consensual and with force, violence, or coercion). Such physical evidence, again, would be relevant to impeaching Southerland's credibility for cross-examination and confrontation purposes.

In addition, evidence tying the drugs and paraphernalia to Southerland and other individuals in the trailer may create doubt in the minds of jurors that Southerland could accurately observe events as she claimed (R. 630:5-37 (Southerland testified to events she observed)), or it may provide information concerning the extent to which the actions of others may have contributed to or caused the shootings. If others made threats to Tiedemann in their drug-induced state, he may have perceived them to be a danger, for a lesser offense. See Utah Code Ann. § 76-5-205 (1990) (defining manslaughter).

Without analyses, the defense has no way to demonstrate to the jury that items collected at the scene failed to corroborate Southerland's claims in the matter, or claims from investigating witnesses. Where the defendants in Trombetta and Youngblood had

test results and were able to cross-examine officers and technicians on their testing ability to assail credibility, none of that is available to Tiedemann.

Finally, physical and potential forensic evidence comparable to that which was collected at the scene is not available. (R. 638:30-32 (the state acknowledged it is left with a video of the scene, and statements from officers, the medical examiner, and witnesses; no physical evidence)).

Tiedemann has demonstrated that his right to a fair trial is impaired by the government's destruction of evidence collected at the scene. He has demonstrated that agents acted deliberately and in bad faith in destroying preserved evidence; he has demonstrated the potential relevance of such evidence to his case; and no evidence exists comparable to that which was destroyed. (R. 388-94; 638:19-25). Tiedemann respectfully requests that this Court reverse the trial court's ruling and dismiss the charges.

B. UNDER A STATE LAW ANALYSIS, THIS COURT MAY APPLY A BALANCING TEST FOR A REMEDY WHEN STATE AGENTS DESTROY POTENTIALLY EXCULPATORY EVIDENCE.

This Court has interpreted the Utah Constitution in ways separate from the federal constitution. It has relied on the state constitution to more fully protect the citizens of this State against government action. See e.g. State v. Copeland, 765 P.2d 1266, 1272 (Utah 1988) (relying on art. I, § 7 of the Utah Constitution to strike sentencing provisions); see also Lee v. Gaufin, 867 P.2d 572, 577 (Utah 1993) (stating that the language of article I, § 24 may lead to a different result under a state constitutional analysis); State v. Larocco, 794 P.2d 460, 469-70 (Utah 1990) (construing the Utah Constitution in the area of search and seizure law); Sims v. Collection Div. of the Utah State Tax Comm'n, 841 P.2d 6, 10,

14-15 (Utah 1992); State v. Thompson, 810 P.2d 415, 416-18 (Utah 1991).

Utah's due process provision guarantees access to information in proceedings. See e.g., State v. Howell, 707 P.2d 115, 118 (Utah 1985) (stating that art. I, § 7 requires a judge to act on reasonably reliable information in sentencing); State v. Brickey, 714 P.2d 644, 647 (Utah 1986); see also Labrum v. Bd of Pardons, 870 P.2d 902, 909 (Utah 1993) (ensuring access to information for inmate board hearings under Utah's provision).

Also, this Court has ruled that fundamental fairness requires that procedures in the guilt phase of a criminal case "be designed to insure that the decision-making process is based on accurate information." State v. Lipsky, 608 P.2d 1241, 1248 (Utah 1980). State due process bars the use of potentially unreliable information at trial. See State v. Ramirez, 817 P.2d 774, 779-80 (Utah 1991) (concluding that the standard for admissibility of eyewitness identification under art. I, § 7 of the Utah Constitution diverges from the standard under the federal due process clause). In addition, it guarantees an accused the right, among other things, to "submit evidence, examine and cross-examine witnesses." Christiansen v. Harris, 163 P.2d 314, 315 & 317 (Utah 1945).

This Court has stated that "the mandate of the due process clause of article I, section 7 of the Declaration of Rights in the Utah Constitution is comprehensive in its application to all activities of state government. It is the province of the judiciary to assure that a claim of the denial of due process by an arm of government be heard and, if justified, that it be vindicated." Foote v. Ut. Bd. of Pardons, 808 P.2d 734, 735 (Utah 1991).

In the event this Court is not persuaded that the record here supports that government agents acted in bad faith when they destroyed evidence related to the scene,

Tiedemann urges this Court to undertake an analysis independent from that developed under the federal constitution. See State v. Lafferty, 749 P.2d 1239, 1247 n.5 (Utah 1988) (recognizing this Court will engage in a state constitutional analysis if a party presents an argument for a different analysis under the state provision), vacated on other grounds, Lafferty v. Cook, 949 F.2d 1546 (10th Cir. 1991). This Court may ensure fundamental fairness to the defendant under article I, section 7. See Hulbert v. State, 607 P.2d 1217, 1223 (Utah 1980) (stating that the provisions of the constitution ensuring due process are designed to protect the individual from state action "and not the converse").

Specifically, this Court may reject the Youngblood approach. It may recognize that due process is not concerned just with bad faith actions. State due process ensures fundamental fairness. See e.g. State v. Morgan, 2001 UT 87, ¶15, 34 P.3d 767 (fundamental fairness is the touchstone of due process). A function of fundamental fairness is to preserve the "integrity of the process itself." Labrum, 870 P.2d at 909.

To that end, where the state has destroyed potentially exculpatory evidence in a case, it is unreasonable to have the due process analysis hinge on one factor: whether the defendant was able to prove that the government acted in bad faith. Youngblood, 488 U.S. at 58. That requirement is particularly onerous where the defendant did not collect the evidence, he was not involved in the decision to prosecute based on the evidence, he was not in control of the evidence or the case, and he did not destroy or mishandle the evidence. Generally the defendant is not in a position to prove the reasons for destruction or the significance of the evidence to the case. (See R. 401; 638:26 (arguing that the state was in possession and control of the information regarding the evidence)).

The state is in the best position to make the relevant showings. The state's agents collected and handled the evidence, and observed the condition of the evidence at the time it was collected. The state agents have personal knowledge concerning the evidence, how it would have related to trial, and how it appeared before destruction. (R. 638:29, 30, 31 (stating that the state agents and officers collected the evidence and destroyed it)). The state agents are in possession of information regarding the evidence, particularly its significance to the case and its reasons for destruction. See e.g. State v. Smith, 2005 UT 57, ¶19, 122 P.3d 615 (stating that the party in the better position to prove the matter must bear the burden; defendant must bear the initial burden of proving an affirmative defense); State v. Knight, 734 P.2d 913, 916-18, 921 (Utah 1987) (stating that even if the prosecution acted in good faith when it failed to produce items in discovery, it carries the burden to show why the failure did not prejudice the defense).

In a pre-Youngblood case, this Court did not require the defendant to prove that the government acted in bad faith when it destroyed evidence. See State v. Shaffer, 725 P.2d 1301 (Utah 1986). It considered and balanced several factors to determine whether the government's destruction of evidence violated due process. Id. at 1304-06.

In Shaffer, 725 P.2d 1301, the defendant claimed his rights were violated under article I, section 7 and the federal constitution when the state cremated the victim's body before the defendant could analyze the victim's hands for the presence of gunpowder residue. Id. at 1304-05. The defendant asserted that he was denied the opportunity to test the hands, id. at 1304; and he claimed that the state's failure to adequately investigate the body violated his rights to a fair trial. Id.

In assessing the matter, this Court considered several factors. It recognized that the government had a duty to preserve evidence and to disclose it to the defendant. See id. at 1304-05, 1306. It stated that the "intent or purpose of the prosecution in destroying the evidence is irrelevant," id. at 1305; and it assessed the significance of the destroyed evidence, as demonstrated in testimony from agent Donald Havekost and the medical examiner. Id. at 1304-05 (stating that the state's witnesses explained that gunpowder deposits on the victim's hands would be insignificant due to several circumstances surrounding the condition of the body). Also, in connection with the defendant's claim concerning the state's failure to investigate, the Court considered the state's reasons for disposing of the body as permitted by law, and whether the defendant established pre-judice. See id. at 1306. Based on an assessment of several considerations, this Court determined that the destruction of evidence did not violate due process. Id. at 1305-07.

Where this Court did not require the defendant in Shaffer to prove that the government acted in bad faith when it destroyed evidence, see id., it should not now require such a showing under a due process analysis for the state constitution. See Utah Const. art. I, § 7; (see R. 394, 399-400 (requesting that the trial court reject Youngblood's onerous requirement that the defendant prove bad faith; arguing that other considerations may be relevant to ensure fundamental fairness; and citing to jurisdictions that have adopted a balancing approach)). This Court may interpret Utah's due process provision to require the trial court to consider and balance several factors for a remedy when the state destroys potentially exculpatory evidence.

Courts in other jurisdictions have rejected the Youngblood litmus test of one factor

in favor of a separate state analysis. See e.g. Thorne v. Dept of Pub. Safety, 774 P.2d 1326, 1331 (Alaska 1989); State v. Morales, 657 A.2d 585, 593 (Conn. 1995) (rejecting the litmus test of bad faith set forth in Youngblood, and adopting a balancing test, which weighs the reasons for the unavailability of the evidence against the degree of prejudice to the defendant); State v. Ferguson, 2 S.W.3d 912, 916-17 (Tenn. 1999) ("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the Youngblood analysis"); State v. Osakalumi, 461 S.E.2d 504, 511, 512 (W. Va. 1995) (holding that state constitutional due process and fundamental fairness require a rejection of Youngblood); State v. Delisle, 648 A.2d 632, 642-43 (Vt. 1994) (rejecting Youngblood based on state constitutional grounds); Commonwealth v. Henderson, 582 N.E.2d 496, 497 (Mass. 1991); Hammond v. State, 569 A.2d 81 (Del. 1989) (refusing to adopt Youngblood approach; applying a balancing test).

In Hammond v. State, 569 A.2d 81, the defendant was charged with vehicular homicide as a result of an accident where his two companions were killed. Id. at 83-84. The defendant was found in the driver's seat, and he told police at the hospital that he was the driver. Id. At trial, he denied that he drove, and an expert testified that the force of the impact may have caused the operator and passenger to switch places. Id. at 84-85. An examination of the vehicle would have been important to the defense. However, the police no longer had the vehicle. See id. at 85.

In considering the due process question, the Delaware court refused to adopt the Youngblood approach. See id. at 87. Instead it affirmed an analysis under the state

constitution that evaluated the matter in the context of the entire case. Id. at 85-87. It considered whether the evidence at issue would have been material and discoverable under Brady or state law. Id. at 86. Also, the duty to preserve and the consequences of destroying evidence turned on several factors.

First, the court would consider the government's culpability in destroying the evidence. It stated, "[w]hen evidence has not been preserved, the conduct of the State's agents is a relevant consideration, but it is not determinative." Id. at 87. That is, the analysis would not hinge on the good or bad faith of the agent.

Second, the court would consider the significance of the missing evidence and the availability of secondary evidence. Id. at 87. Third, it would consider the sufficiency of the evidence to sustain a conviction. Id. Even with sufficient evidence, if the state breached its duty to preserve, defendant may be entitled to a remedy. See id. at 86, 90.

Tiedemann urges this Court to adopt a balancing test under the Utah Constitution. See Utah Const. art. I, §7; see also Trombetta, 467 U.S. at 491 ("Rules concerning preservation of evidence are generally matters of state, not federal constitutional law") (O'Connor, J., concurring). Such an analysis would evaluate the destruction of potentially useful evidence in the context of the entire case. It would balance the defendant's due process concerns with the state's interests in the proceedings; and it would balance the state's conduct against the degree of prejudice to the defendant.

Under a balancing approach, the government's negligence/culpability in destroying the evidence would be only one factor. The trial court would also consider the government's duty to preserve evidence, the significance of the destroyed evidence, the

sufficiency of the remaining evidence, and the remedy available to the defendant.

Hammond, 569 A.2d at 87-90.

Applying those standards here, government agents collected evidence at the scene and preserved it for more than a year after the shootings. (See R. 478; 638:30-31). The government had a duty to preserve the evidence. See Shaffer, 725 P.2d at 1306 (stating that the prosecution has a duty "to preserve that [evidence] which comes into [the prosecutor's] possession either as a tangible object or sense impression, if it is reasonably apparent the object or sense impression potentially constitute [sic] material evidence" (cite omitted)). The evidence would have been discoverable under Utah law. See Utah R. Crim. P. 16; (R. 25-27 (requesting Brady evidence, physical evidence and test results)).

In this case, the government destroyed the evidence "[a]s a result" of the prosecutions' decision not to pursue charges. (R. 478; 638:30 (stating the evidence got the "rubber stamp" for destruction)). Evidence was destroyed without ever being tested.

Tiedemann maintains that the evidence would have been significant to his case. Physical evidence from the scene and forensic evidence may serve to discredit the state's key witness or statements made by investigating officers about the scene. Such evidence may provide the basis for cross-examination and confrontation, or it may support a lesser offense or acquittal. See *e.g.* State v. Mead, 2001 UT 58, ¶37, 27 P.3d 1115 (recognizing that a state witness acknowledged on cross-examination at defendant's trial for murder that the "physical evidence was consistent with either an *accident* or a homicide").

If physical evidence serves to discredit the state's key witness or to impeach her testimony, that would be relevant to the jury in making credibility determinations about

the witness. Impeachment evidence can play a pivotal role. Where such impeachment evidence has been destroyed by the government, the lack of evidence may mean the difference between a guilty verdict, a verdict on a lesser offense, or an acquittal. Thus, the destruction of such evidence would be prejudicial to a defendant. See e.g. State v. Martin, 2002 UT 34, ¶48, 44 P.3d 805 (recognizing that impeachment evidence may impact on a jury's assessment and discredit the state's witness; thus, there is a likelihood of an outcome more favorable to the defendant). Defendant would be entitled to a remedy.

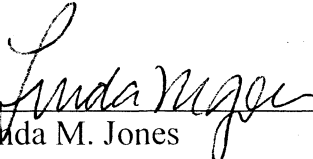
To ensure due process under the circumstances, Tiedemann is entitled to a process that considers and balances several factors, including the agents' destruction of discoverable evidence, the significance of such evidence, the prejudice to the defendant, and an appropriate remedy. See e.g. Hammond, 569 A.2d at 86-87.

Tiedemann respectfully requests that this Court adopt such an analysis under the Utah Constitution, and remand this case for further proceedings on the matter. (See R. 394, 397-98, 399-400 (arguing that the Youngblood analysis fails to adequately protect defendant's due process concerns; requesting a separate analysis under article I, section 7; citing to jurisdictions that have adopted the balancing approach)).

CONCLUSION

Tiedemann respectfully requests that this Court order suppression of the confessions, where the officers' interrogation violated the law; and he respectfully requests further proceedings to demonstrate a due process violation under the Utah Constitution, where the state destroyed potentially exculpatory evidence.

SUBMITTED this 30th day of December, 2005.



Linda M. Jones

Heidi A. Buchi

Patrick W. Corum

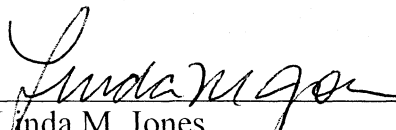
Heather Brereton

SALT LAKE LEGAL DEFENDER ASSOC.

Attorneys for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, Linda M. Jones, hereby certify that I have caused to be hand delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, 140230, Salt Lake City, Utah 84114-0230 and 4 copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, this 30th day of December, 2005.



Linda M. Jones

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals Court as indicated above this ___ day of December, 2005.

ADDENDA

ADDENDUM A

FILED
UTAH APPELLATE COURTS

OCT 24 2005

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

The State of Utah,

Respondent,

v.

Case No. 20050676-SC

Edgar Tiedeman,

Petitioner.

ORDER

This matter is before the court upon a Petition for Permission to Appeal an Interlocutory Order, filed on October 17, 2005.

IT IS HEREBY ORDERED, pursuant to Rule 5 of the Utah Rules of Appellate Procedure, the Petition is granted.

This matter shall be consolidated for briefing and argument with the prior appeal in this case. A briefing schedule will be established hereafter. In the prior order granting permission to appeal an interlocutory order, this Court inadvertently included language suspending the provision of rule 26(a) that permits the parties to stipulate to an extension of time to submit their briefs on the merits. That portion of the prior order is here revoked. The briefing shall be governed by the Appellate Rules as currently in effect, and by future orders, if any, of this Court.

FOR THE COURT:

October 24 2005
Date

Michael J. Wilkins
Michael J. Wilkins
Associate Chief Justice

FILED
UTAH APPELLATE COURTS

OCT 17 2005

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

The State of Utah,

Respondent,

v.

Case No. 20050676-SC

Edgar Tiedeman,

Petitioner.

ORDER

This matter is before the court upon a Petition for Permission to Appeal an Interlocutory Order, filed on August 10, 2005.

IT IS HEREBY ORDERED, pursuant to Rule 5 of the Utah Rules of Appellate Procedure, the Petition is granted only as to the first three issues presented. The Petition is denied with respect to the fourth issue because Petitioner failed to document any order issued on the Motion to Dismiss Based on Destruction of Exculpatory Evidence.

A briefing schedule will be established hereafter. Pursuant to rule 2, the court suspends the provision of rule 26(a) that permits the parties to stipulate to an extension of time to submit their briefs on the merits. The parties shall not be permitted to stipulate to an extension. Additionally, absent extraordinary circumstances, no extensions will be granted by motion. The parties shall comply with the briefing schedule upon its issuance.

FOR THE COURT:

October 17, 2005
Date

Michael J. Wilkins
Michael J. Wilkins
Associate Chief Justice

ADDENDUM B

U.S. CONSTITUTION

AMENDMENT V

[Criminal actions — Provisions concerning — Due process of law and just compensation clauses.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

[Rights of accused.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

AMENDMENTS

Amend. XIV, § 3

AMENDMENT XIV

Section

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]

Section

4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

ADDENDUM C

M.H. Dan

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 021912452
vs.	:	
EDGAR TIEDEMANN,	:	
Defendant.	:	

This matter is before the Court on defendant's Motion to Suppress Illegally Obtained Statements. The Motion raises three legal issues. First, whether defendant invoked his *Miranda* rights; second, whether defendant's confession was involuntary; and finally, whether defendant was competent during his interrogation.

FACTS

Detective Ron Edwards ("Det. Edwards") and Sergeant Ed Spann ("Sgt. Spann") of the West Valley Police Department, began the interrogation of defendant, Edgar Tiedemann, on November 2, 1991, at 1:58 p.m. Det. Edwards began by asking the defendant to sign the paper placed before him and explained for the benefit of the camera and the defendant that defendant had received his *Miranda* rights and was not intoxicated. The defendant corrected Det. Edwards, stating that he was intoxicated on Toluene. Det. Edwards asked the defendant how long he had been intoxicated on Toluene and

the defendant responded, stating "since 1962." When asked if he was incapable of understanding or answering questions, the defendant responded, "Sometimes, I don't know." At this point, the tape stopped and started again at 2:13 p.m.

Det. Edwards read the defendant his *Miranda* rights. The defendant said that he was intoxicated on Toluene and confirmed that he was willing to answer questions with the police and did so voluntarily. The defendant continued the interrogation with his head lowered, and he infrequently looked up into the camera.

When Det. Edwards asked, "What happened to her (Suzie)?" the defendant said, "I don't want to talk about it." Immediately afterward, when asked, "What don't you want to talk about?" he remained silent. Immediately thereafter, when asked, "Who is Suzie?" he responded without delay, "The woman that I love." The defendant readily answered other questions throughout the interrogation, except when asked, "What happened to Suzie?"

The defendant did not remember the day of the week even though Det. Edwards told him the date at the beginning of the interview, and he did not remember if the victims moved in his house during the day or night. The defendant did provide several complex answers during the interrogation, including the license number and make of his car, the year he had his stroke, the physical effects of his stroke and other detailed information.

When responding to Det. Edwards' question if he had any mental problems, the defendant said "Ya. All kinds. See, I think I'm Adolph Hitler. Adolph Hitler died in May of 1945 and I was born in 19, October 1946. I think I'm Adolph Hitler." When asked by Det. Edwards if he heard voices, the defendant stated, "I think so. I don't know." When asked by Det. Edwards who was telling him to shoot them, the defendant responded, "the devil." The defendant also responded that he was a religious person.

The defendant's interview ended at 2:58 p.m., having lasted just under one hour. During the interview, he did not request a break, did not directly request to stop the interview or request to have an attorney present.

ANALYSIS

"The Due Process Clause of the Fourteenth Amendment provides that no State shall `deprive any person of life, liberty, or property, without due process of law.'" Colorado v. Connelly, 479 U.S. 157, 163 (1986). A defendant in custody has the right to remain silent, the right to have an attorney present and the right to stop an interrogation at any time. Miranda v. Arizona, 384 U.S. 436 (1964). Under the Due Process Clause, "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned." Id.

"Voluntariness" is not the sole consideration when considering whether admission of a confession violates the Fifth or Fourteenth Amendment. State v. Rettenberger, 984 P.2d 1009, 1013 (Utah 1999). "Coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'" Connelly, 479 U.S. at 167. Analysis of whether a confession is admissible must consider the "totality of circumstances" to determine if the confession was "made freely, voluntarily and without compulsion or inducement of any sort." Withrow v. Williams, 507 U.S. 680, 689 (1993). The "totality of the circumstances" takes into account "both the characteristics of the accused and the details of the interrogation." State v. Strain, 779 P.2d 221, 225 (Utah 1989). "Courts must consider such external factors as the duration of the interrogation, the persistence of the officers, police trickery, absence of family and counsel, and threats and promises made to the defendant by the officers." Rettenberger, 984 P.2d at 1013.

"Courts must also consider such factors as the defendant's mental health, mental deficiency, emotional instability, education, age, and familiarity with the judicial system." Id. at 1014. Accordingly, the Utah Supreme Court states, "a defendant's mental condition is not in itself sufficient to make a confession involuntary." Id. The mental state of a defendant "is relevant to

the extent it made him more susceptible to mentally coercive police tactics." Id.

The court sets forth objective and subjective factors that a court should consider when conducting a "totality of the circumstances" examination. Id. at 1015. Objective factors include police misrepresentation, the false friend technique, threats and promises and other factors such as "whether the defendant is subject to extended periods of incommunicado." Id. at 1015-1018. In explaining subjective factors, the court lists whether the interrogators deny any of the defendant's requests, whether the defendant had prior experience with the judicial system, whether the defendant was particularly vulnerable to psychological manipulation, or whether the defendant was more susceptible to stress and coercion than the average person. Id. at 1019-1020.

I. Violation of Miranda

The defense argues the defendant affirmatively invoked his right to remain silent, and that right was violated when police detectives continued his interrogation. The defendant cites State v. Guiterrez, 864 P.2d 894, 897 (Utah App. 1993), to show that an effective initial waiver of the right to remain silent does not nullify a suspect's ability to subsequently invoke this right during the course of an interrogation. In Guiterrez, when the

defendant said, "I ain't going to say nothing," the Utah Court of Appeals found the defendant invoked his *Miranda* rights. Id. In Guitierrez, with continued questions and the police interrogator's suggestion that he was only using self-defense, the defendant was provoked into a confession. Id. Guitierrez is distinguishable because the interrogators were more forceful and suggestive in their questioning and the defendant was referring to the entire interview, not a particular question.

Here, the defendant did not want to talk about the specific bodily harm to Suzie, but was otherwise cooperative and willing to talk to the interrogators. The defendant answered affirmatively that he understood his *Miranda* rights, he refused to answer questions regarding the bodily harm that was inflicted upon Suzie, but unhesitatingly answered all other questions. His purposeful silence lasted only a brief period of time and only to questions regarding bodily injury to Suzie. He did not indicate, at any time, that he wished to stop the interrogation.

Accordingly, the Court finds that the defendant did not invoke his *Miranda* rights. Therefore, the Court need not reach the issue of whether the defendant's statements are still admissible for purposes of impeachment.

II. Involuntary Statements

The defense argues that the defendant's statements were not made voluntarily, in violation of federal due process. In analyzing whether the defendant's confession is voluntary, the Court will address both the objective and subjective factors of the defendant's interrogation.

a. Police Misrepresentation, False Friend Technique, Threats or Promises and Other Objective Factors

The defense argues the defendant's interrogation was subject to police coercion due to questionable interrogation techniques. Specifically, the defense cites Rettenberger to show the use of false friend technique, mental coercion, the lack of presence of counsel, family or friends. 984 P.2d at 1013. Rettenberger is clearly distinguishable in that the police coercion was much more extensive. Here, the interrogators did not make use of false statements or half-truths. They did not use the false friend technique by implying they were acting in the best interest of the defendant by the simple use of his first name. The detectives did not use any threats or promises to entice the defendant into a confession. The entire interrogation took place within one hour, and during the investigation the interrogators did not deny any special requests of the defendant. There is no evidence of any ethical misconduct by the police. In short, the record shows that

the detective's interrogation was absent of suggestive and coercive techniques. The Court finds no reason to believe the interrogation method used techniques that were sufficient to render the defendant's confession involuntary.

b. Subjective Factors That Make the Defendant More Susceptible to Manipulation

Turning to a review of the subjective factors that may make the defendant more susceptible to manipulation is a more difficult process than reviewing for police misconduct. The defense argues that the defendant's diminished mental capacity, the influence of drugs, his references to Hitler and Satan, and his lack of verbal skills and ability to express himself deem the defendant incapable of a voluntary confession.

The defendant's prolonged use of Toluene, the stroke he suffered in 1982, or a head injury received as a child might be the cause of his generalized cerebral damage resulting in severe impairment of intellectual functions and an 82 I.Q. (Memorandum in Support of Defendant's Motion to Suppress, p. 14.) The defendant's reference that he believes he is Adolph Hitler indicates that he knows Hitler is dead and he does not have an actual belief that he is Hitler. His reference to Satan telling him to commit the criminal act may also stem from his religious beliefs. "A perception of coercion flowing from the 'voice of God' is a matter

to which the Federal Constitution does not speak." Connelly, 479 U.S. at 517. In reviewing defendant's interrogation it is evident he did not answer all questions intelligently. On the other hand, the defendant provided clear and detailed answers to many of the questions.

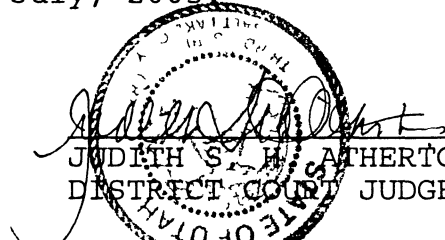
III. Incompetent

The defense argues that the defendant was incompetent, rendering him incapable of voluntarily and knowingly waiving his constitutional rights at the time of his interrogation. The defense cites Blackburn v. Alabama, 361 U.S. 199, 207 (1960), where the Supreme Court held the defendant's confession involuntary and reversed the conviction. There the defendant had a long history of mental illness, was interrogated for eight to nine hours in a small room filled with police officers with no relatives or counsel present and his confession was written by a police officer. The court found that the defendant was "insane" before, during and after the robbery. At the time of the robbery he was absent without authorization from a mental ward, where he had been placed due to his Veteran's Administration classification of 100% incompetence resulting from a diagnosis of "schizophrenic reactive, paranoid type." Id. at 201. The factors addressed by the court in Blackburn are not present in the instant case. Prior to his

interrogation, defendant had not been found incompetent or "insane," and similar coercive factors were absent.

Considering the totality of the circumstances surrounding the defendant's interrogation, including his treatment by the detectives and his mental state, the Court finds his confession did not violate his Fifth or Fourteenth Amendment rights and is admissible. The Motion to Suppress is denied.

Dated this 22 day of July, 2005.



JUDITH S. H. ATHERTON
DISTRICT COURT JUDGE

The signature is written in cursive over a circular court seal. The seal contains the text "STATE OF UTAH" and "DISTRICT COURT".

1594

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 22 day of July, 2005:

T. Langdon Fisher
Deputy District Attorney
Attorney for Plaintiff
111 E. Broadway, Suite 400
Salt Lake City, Utah 84111

Heidi A. Buchi
Attorney for Defendant
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

 MH Blair

ADDENDUM D

SEP 29 2005

SALT LAKE COUNTY

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 021912452
vs.	:	
EDGAR TIEDEMANN,	:	
Defendant.	:	

This matter is before the Court on defendant's Motion to Quash Count III, or, Alternatively, Motion to Amend Count III, and defendant's Motion to Dismiss Based on Destruction of Exculpatory Evidence. This Court has reviewed the Memoranda of counsel and heard oral argument on these Motions.

I. DEFENDANT'S MOTION TO QUASH COUNT III, OR ALTERNATIVELY
MOTION TO AMEND COUNT III

Defendant argues that Count III of the Information, the count that alleges Murder of Scott Liam Bunnell, Jr., should be dismissed because the State failed to show probable cause at the preliminary hearing. At the preliminary hearing, Deborah Southerland Pryor testified that on the evening in question she was in the bedroom of defendant's trailer when he came in, shot several times into the

bedroom, closed the door and left. She heard several shots fired in the front room, and subsequently went out to the front room and observed Mr. Bunnell's injuries. In addition, the State submitted an autopsy by Dr. Edward Leis, completed after Mr. Bunnell's death in 2001. The autopsy concluded that Mr. Bunnell had died from complications of paraplegia caused by the gunshot wound inflicted by defendant.

At a preliminary hearing "the prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it." State v. Clark, 20 P.3d 300 (Utah 2001). At a preliminary hearing "the magistrate must view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." State v. Hester, 3 P.3d 725, 728 (Utah App. 2000). This Court finds that evidence produced by the State at preliminary hearing was sufficient to bind over Count III. In the alternative, the defendant has moved the Court to amend Count III to Attempted Homicide. Having found that there is sufficient evidence to bind over Count III on the greater offense, the alternative Motion need not be addressed. Therefore, defendant's Motion is denied.

II. MOTION TO DISMISS BASED ON DESTRUCTION OF EXCULPATORY EVIDENCE

Defendant has moved this Court to dismiss the charges against him based on the State's "willful destruction of all potentially exculpatory evidence."

Defendant argues that the destruction of the evidence is in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 12, of the Utah Constitution.

In 1991, defendant was charged with two counts of Aggravated Murder, one count of Attempted Aggravated Murder, one count of Aggravated Kidnapping, and one Count of Aggravated Sexual Assault. All charges were dismissed on June 11, 1992, after defendant was found incompetent to stand trial. After that time, numerous items, including handguns, ballistic evidence, "Code R" data, blood and tissue samples, gunshot residue tests, fingerprints, drugs and paraphernalia, and clothing and bedding items were destroyed. These items were destroyed sometime between 1993 and 1994. In 2002, defendant was found competent to stand trial and charges were re-filed. Defendant is now charged with three counts of Criminal Homicide, Murder, all first degree felonies.

Under federal law, a defendant's due process rights are violated if evidence destroyed has "exculpatory value that was apparent before the evidence was destroyed and [is] of such nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." California v. Trombetta, 467 U.S. 479, 489 (1984). The destroyed evidence also must be material, and "the possibility that the [evidence] could have exculpated [defendant] if preserved or tested is not enough to satisfy the standard of constitutional materiality." Arizona v. Youngblood, 488 U.S. 51, 58 (1988). If evidence is only potentially useful, defendant bears the burden to show that police acted in bad faith in not preserving the evidence. Id. "Bad faith requires that a defendant prove more than mere negligence; a defendant must show that 'the police...by their conduct indicate that the evidence could form a basis for exonerating the defendant.'" State v. Holden, 964 P.2d 318, 323 (Utah App. 1988) (quoting Youngblood, at 109).

Defendant asserts that "bad faith should be presumed in this case unless and until the government is able to offer an explanation for the destruction of this evidence." Defendant's Memorandum at pp. 6-7. Defendant misstates the legal requirement.

As stated *infra*, the burden is upon the defendant to show that the State acted in bad faith in destroying the aforementioned property. The defendant has failed to meet that burden.

Defendant further argues that under the Utah Constitution, Article I, Section 12, defendant is afforded a higher degree of protection than under the Federal Constitution. The State argues that defendant's argument lacks merit because Utah has adopted the United States Supreme Court's standard. This Court cannot find support for the State's argument. Both cases cited by the State in support, State v. Bakalov, 979 P.2d 799 (Utah 1999), and State v. Holden, 964 P.2d 318 (Utah App. 1998), were based on the state courts adhering to federal precedent when issues are argued under the Federal Constitution. Defendant correctly notes that Utah appellate courts on occasion have been willing to consider a different interpretation of Utah Constitution, Article I, Section 14, than the Fourth Amendment of the United States Constitution addressing the matter of search and seizure. The Utah Supreme Court has stated, "choosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating the state's citizens from the vagaries of inconsistent interpretations given to the Fourth Amendment by the

federal courts." State v. Larocco, 794 P.2d 460 (1990), (quoting State v. Watts, 750 P.2d 1219, at n.8 (Utah 1988)).

In State v. Bobo, 803 P.2d 1268, 1272-73, n. 5 (Utah App. 1990), the Utah Court of Appeals suggested a three-prong analysis in determining whether the Utah Constitution should be interpreted differently from a similar provision in the United States Constitution. First, the moving party should analyze the "unique context in which Utah's Constitution developed", second, "should demonstrate the willingness of state appellate courts to regularly interpret textually similar state constitution provisions in a manner different from federal interpretation of the United States Constitution, and that it is entirely proper to do so in the federal system," and third, the moving party should cite to "other states supporting the particular construction urged by counsel." Id.

In the instant case, defendant has offered no analysis concerning the unique context in which Utah's Constitution developed, nor shown why this State's Constitution should be interpreted differently than the Fifth and Fourteenth Amendments of the United States Constitution.

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In addition, defendant has made reference to numerous cases in other state jurisdictions that have "rejected Youngblood". However, defendant has not articulated the rulings of other states correctly. For example, in State v. Morales, 657 A.2d 585, 594 (Conn. 1995), the Connecticut Supreme Court concluded:

That the good or bad faith of the police in failing to preserve potentially useful evidence cannot be dispositive of whether a criminal defendant has been deprived of due process of law. Accordingly, we, too, reject the litmus test of bad faith on the part of police which the United States Supreme Court adopted under the Federal Constitution and Youngblood. Rather, in determining whether a defendant has been afforded due process of law under the state constitution, the trial court must employ...[a] balancing test, weighing the reasons for the unavailability of the evidence against the degree of prejudice to the accused. More specifically, the trial court must balance the totality of the circumstances surrounding the missing evidence, including the following factors: The materiality of missing evidence, the likelihood of mistaken interpretation of it by witnesses or the jury, the reason for its nonavailability to the defense, and the prejudice to the defendant caused by the unavailability of the evidence. (Quoting State v. Asherman, 478 A.2d 227 (1984)).

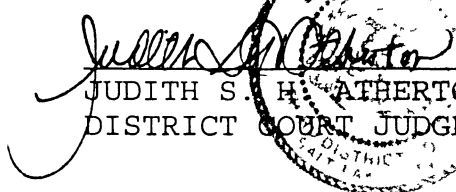
In the instant case, defendant has only urged this Court to reject the bad faith Youngblood standard, but he has not suggested a viable alternative standard.


Because defendant has failed to offer a Utah Constitutional basis, nor a viable alternative to Youngblood based on the Utah

Constitution, this Court cannot appropriately address the constitutional issue. Therefore, this Court finds defendant's Utah Constitutional argument inadequate.

Accordingly, having found no United States Constitutional basis nor Utah Constitutional basis to dismiss this case, defendant's Motion to Dismiss based upon destruction of exculpatory evidence is denied.

Dated this 19 day of September, 2005.


JUDITH S. H. ATHERTON
DISTRICT COURT JUDGE



1. 2010

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 27 day of September, 2005:

T. Langdon Fisher
Deputy District Attorney
Attorney for Plaintiff
111 E. Broadway, Suite 400
Salt Lake City, Utah 84111

Heidi Anne Buchi
Patrick W. Corum
Heather Brereton
Attorney for Defendant
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

SBurke

ADDENDUM E

IN THE SUPREME COURT OF THE STATE OF UTAH DEC 12 2005

-----oo0oo-----

State of Utah,

Plaintiff and Respondent,

v.

Case No. 20050676-SC
021912452

Edgar Tiedemann,

Defendant and Petitioner.

ORDER

The court grants the Petitioners' stipulated motion to supplement the record on appeal with the true and correct copy of the "Property Disposition Inquiry Report", which was originally included as a Addendum to the Defendant's " Motion to Dismiss Based on Destruction of Evidence," a copy of which is attached to the motion.

FOR THE COURT:

December 10, 2005
Date

Michael J. Wilkins
Michael J. Wilkins
Associate Chief Justice

PROPERTY DISPOSITION INQUIRY

TO: OFFICER T. Johnson Edwards
FROM: EVIDENCE
RE: CASE NUMBER 91-20773 Homicide 11/2/91
DATE: 4/22/94

Please review the attached Evidence Property Report and notify us of the property disposition of these items within 30 days.

NOTE: If we have not received a reply from you by: 5/22/94 this property will be disposed of at the discretion of Evidence Personnel.

Suspect: <u>Tiedemann, Edgar</u>	DOB: <u>10/29/46</u>
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____

Court Disposition: _____

WE ONLY HAVE ACCESS TO CIRCUIT COURT DISPOSITIONS, CHECKING DISTRICT COURT AND JUVENILE COURT DISPOSITIONS ARE YOUR RESPONSIBILITY!

CONTINUE TO HOLD _____ REASON _____
DESTROY/DISPOSE ☒ AUCTION _____ TRANSFER/CONVERT _____
RELEASE TO OWNER _____ NAME: _____
ADDRESS: _____

You must give the name and address when releasing to owner.

OFFICER SIGNATURE [Signature] DATE 4/27/94

57

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE VICTIM'S WALLET

CONDITION _____

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒
Edgar Ticolesman

VICTIM Timmyzmann Charles

OFFICER'S NAME & I.D. # 8115
Edwards

CHECK

- ☐ EVIDENCE
☐ FOUND
☒ SAFEKEEPING
☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

31

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-5-91

SERIAL NO. 665576

ARTICLE Jeeping J 22
Semi Automatic

CONDITION Revolver

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☐

VICTIM _____

OFFICER'S NAME & I.D. # Edwards 8018

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

- ☒ EVIDENCE
☐ FOUND
☐ SAFEKEEPING
☐ DESTROY

DESTROYED
11/22/91
631

DESTROYED
12/10/94
8352

PROPERTY TYPE

31

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO 91- 20773
DATE 11-5-91

SERIAL NO.

ST15353

ARTICLE

Standard 38 cal
RevolverTYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☐

CONDITION

VICTIM

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

OFFICER'S NAME & I.D. #

Edwards 8018

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐**DESTROYED**
12/16/92
835

PROPERTY TYPE

45

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773
DATE 11-2-91

SERIAL NO.

ARTICLE

CODE RTYPE OF CRIME SEXUAL ASSAULTSUSPECT ☐ ARRESTED ☐

CONDITION

VICTIM SOUTHERLAND, DEBBAN

OFFICER'S NAME & I.D. #

CWEEY

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐**DESTROYED**
2/22/92
5301

PROPERTY TYPE

27/50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE _____

CONDITION _____

Action

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

VICTIM _____

OFFICER'S NAME & I.D. # 8017

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE audio tape

CONDITION _____

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley

8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

4/11/00
1-101

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773DATE 1/2/91

SERIAL NO. _____

ARTICLE Blood Spunkin'TYPE OF CRIME HOMICIDE / Rape

CONDITION _____

SUSPECT ☒ ARRESTED ☐Edgar TiedemanVICTIMS Susan B. Miller,Charles T. Miller,

OFFICER'S NAME & I.D. # _____

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

3/1/90

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773DATE 1/1/91

SERIAL NO. _____

ARTICLE _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar TiedemanCONDITION MALC of KIT /1/1/91 1/1/91VICTIM Susan B. MillerOFFICER'S NAME & I.D. # 8045

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

SC

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO.

ARTICLE pair of BIK
Shoes + socks

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedemann

DESTROYED
2/22/93 5301

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley
8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

SC

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO.

ARTICLE BIK Coat

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedeman

DESTROYED
2/22/93 5301

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley
8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

074/50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE BIK pants

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

DESTROYED
2/22/93

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Crowley
8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE white underwear
mens

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

DESTROYED
2/22/93

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Crowley
8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Bedding from male

TYPE OF CRIME Homicide

VICTIMS Bed

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tideman

DESTROYED
11/2/91

VICTIM Tideman, Charles

OFFICER'S NAME & I.D. # 8019

Edwards

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Blanket on

TYPE OF CRIME Homicide

Sultan Section body

SUSPECT ☒ ARRESTED ☐

CONDITION _____

Edgar Tideman

DESTROYED
11/2/91

VICTIM Charles Tideman

Sultan Section

OFFICER'S NAME & I.D. # 8019

Edwards

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

506SR

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE

DESTROYED
2/22/93
4301

CONDITION

2 GSR'S FROM
DEPTA SOUTHCOAST
Edgar Tiedeman

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

VICTIM SUSAN SESSIONS

OFFICER'S NAME & I.D. #

Charles

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

516SR

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE

CONDITION 2 GSR

Kit to be analyzed

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

VICTIM Susan Sessions

Charles Tiedeman

OFFICER'S NAME & I.D. #

Charles

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐DESTROYED
2/22/93
4301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO.

ARTICLE Blue shirt

Long sleeve

CONDITION

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley

8031

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐DESTROYED
2/22/93
501

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE Blue case

for Scotty's heels

CONDITION

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM Edgar Tiedemann

Susan Bunnell

OFFICER'S NAME & I.D. # 8019

Edgar

CHECK

☐ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☒DESTROYED
2/22/93
501

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Piece of bone

from foot of Bennett's bed

CONDITION _____

TYPE OF CRIME HOMICIDE

SUSPECT ☐ ARRESTED ☒

EDGAR TIEDERMAN

VICTIM CHARLES TIMBERMAN

Susan Session

OFFICER'S NAME & I.D. # 8019

EDWARDS

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED

11-2-93
1301

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE White Kath robe

worn by Debbie Sutherland

CONDITION _____

found in living room

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM _____

OFFICER'S NAME & I.D. # _____

Rushford 8064

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☒ RTE

DESTROYED

11-2-93
5301

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

PROPERTY TYPE

(50)

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-3-91

SERIAL NO. _____

ARTICLE Robe / T-Shirt

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedeman

VICTIM _____

DESTROYED

2/22/93
6301

OFFICER'S NAME & I.D. # 8019

Edgar

CHECK

☐ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

(50)

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Sheet from

Charles Timberman's

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION Best

Edgar Tiedeman

VICTIM Charles Timberman

DESTROYED

2/22/93
6301

OFFICER'S NAME & I.D. # 8019

Edgar

CHECK

☐ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

(50)

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO.

ARTICLE Bedding for
Bunni bed

CONDITION

TYPE OF CRIME Homicide

SUSPECT ☒ ARRESTED ☒

EDGAR T. EDMAN

VICTIM CHARLES TIMBERMAN

SUSAN SESSION

OFFICER'S NAME & I.D. # 8019

EDWARDS

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

DESTROYED
1-1-93 4301
2/2/93

PROPERTY TYPE

04/40

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-3-81

SERIAL NO.

ARTICLE

CONDITION Bed, mattress

SAFETY

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

EDGAR T. EDMAN

VICTIM SUSAN SESSION

OFFICER'S NAME & I.D. #

EDMAN

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☒

DESTROYED
2/2-11-93 4301

PROPERTY TYPE

40

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE White underwear
womens

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley

8034

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

40

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE Bottle w/ beer
liquid

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # 8069

Edwards

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE 1 GAL CAN OF

TOLUENE

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

CONDITION

DESTROYED
2/22/93 5301

VICTIM Susan Serrin

Charles Tiedeman

OFFICER'S NAME & I.D. # 8019

Edgar Tiedeman

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE Box of bullets

38 CAL 44 count

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

CONDITION

DESTROYED
2/22/93 5301

VICTIM Susan Serrin

OFFICER'S NAME & I.D. # 8019

Edgar Tiedeman

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Blue Case / w /

11 Balls 27 long pipe

CONDITION at present 38

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

VICTIM _____

OFFICER'S NAME & I.D. # 8019

Edgar

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☐ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYDESTROYED
2/2/93 5301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE Hair & Silva

Samples & Concent

CONDITION form

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley

8034

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYDESTROYED
2/2/93 5301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Bullet from
gun

CONDITION _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar Tiedeman

VICTIM _____

OFFICER'S NAME & I.D. # 8819Edgar

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/3/91

SERIAL NO. _____

ARTICLE BULLETCONDITION Bullet, WoodLawrence City G.S.R.1/2 in. head, 1/2 in. sub,wood base, one

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYTYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar TiedemanVICTIM Robert GordonOFFICER'S NAME & I.D. # 8857Edgar

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE one 38 Cal BulletTYPE OF CRIME HomicideSegmentSUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

DESTROYED

VICTIM SUSAN SESSIONSCharles TiedemannOFFICER'S NAME & I.D. # 8019Edwards

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE BULLETTYPE OF CRIME HOMICIDE

CONDITION _____

SUSPECT ☐ ARRESTED ☒Tiedemann, Edgar

DESTROYED

VICTIM _____

OFFICER'S NAME & I.D. # _____

8019 EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE BULLET FRAGMENTSTYPE OF CRIME HomicideSUSPECT ☒ ARRESTED ☐Tiedeman, Edgar

CONDITION _____

VICTIM Session, SusanTiedeman, CharlesOFFICER'S NAME & I.D. # 8019Edwards

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE 22 BULLETTYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar Tiedeman

CONDITION _____

VICTIM _____

OFFICER'S NAME & I.D. # 8019Edwards

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

501

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-3/91

SERIAL NO.

ARTICLE Finger Print cardTYPE OF CRIME HomicideG.S.R. Bullet FromSUSPECT ☐ ARRESTED ☒CONDITION Decayed, Blood,Edgar TiedemanHair, Hair, HairHand, Hair FoundVICTIM Charles Tiedemanon Body, Cold StorageOFFICER'S NAME & I.D. # 8019

CHECK

DESTROYED☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE

SERIAL NO.

ARTICLE 6 itemsTYPE OF CRIME Homicideempty 38 casingSUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedeman**DESTROYED**VICTIM Charles TiedemanOFFICER'S NAME & I.D. # 8019

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

51

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO 91-20773DATE 11/2/91

SERIAL NO _____

ARTICLE ENE-22 CAL. SHELL TYPE OF CRIME Homicide(Case 19)

CONDITION _____

SUSPECT ☐ ARRESTED ☒Edgar TiedemanVICTIM SUSAN SESSIONSCHARLES TIMBERMANOFFICER'S NAME & I.D. # 8019EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

51

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO 91-20773DATE 11-2-91

SERIAL NO. _____

ARTICLE Watch

CONDITION _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar TiedemannVICTIM Susan BunnellOFFICER'S NAME & I.D. # Cowley8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE watch from
Debbie Cole ScottsdaleTYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedeman

VICTIM _____

OFFICER'S NAME & I.D. # 5049

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐DESTROYED
2/22/93 4301

PROPERTY TYPE

1/6

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar TiedemanVICTIM SUSAN SESSIAN& CHARLES TIMBERMANOFFICER'S NAME & I.D. # 801E

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐DESTROYED
2/22/93 43011 - TAG - 4/8/92 Edgar Tiedeman
2 - TAG - 4/1/92 Debbie Scottsdale
3 - TAG - 4/1/92 Scott Bennett

ADDENDUM F

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 1

RE:at 1991, the time is 2:15 PM. I'm Detective Ron Edwards, West Valley Police Department. Sgt. Ed Spann with the West Valley Police Department. I have to read you your rights per miranda. Do you understand that?

ET: Ya.

RE: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have a lawyer present before any questioning. Do you understand that?

ET: ...inaudible...

RE: Do you understand that you can stop this questioning at anytime?

ET: Ya.

RE: If you cannot afford an attorney, we will provide one for you. Do you understand that?

ET: Ya.

RE: Do you still wish to speak to us at this time?

ET: Ya.

RE: Are you intoxicated?

ET: On toluene.

RE: What's toluene?

ET: Toluene. It's, it's a paint thinner.

RE: It's a paint thinner?

ET: Ya.

RE: Okay, do you know why we're going to talk to you?

ET: Ya.

RE: What are we going to talk to you about?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
92-20773
PAGE 2

ET: The murders out there.

RE: What murders?

ET: The murders out there at West Valley.

RE: Who are they?

ET: Suzie, Chuck and Scotty.

RE: Whose Suzie?

ET: She's the woman I love.

RE: That you love?

ET: Ya.

RE: What happened to her?

ET: I don't want to talk about it.

RE: You don't want to talk about it?

ET: No.

ES: Edgar?

ET: What.

ES: Why don't you want to talk about it?

ET: I love that woman so much.

ES: What is it that you don't want to talk about? You said
murders in West Valley, where in West Valley?

ET:inaudible....Hummingbird Street.

ES: I'm sorry, where?

ET: 1308 Hummingbird Street.

ES: 1308 Hummingbird, who lives there?

ET: Me.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 3

RE: Who lives with you?

ET: Suzie and Scotty and they just moved in last night, I don't know.

RE: Okay, what don't you want to talk about? Edgar? What don't you want to talk about, Ed?

ES: Edgar, we're not going to force you talk about anything. We're asking you questions. As Detective Edwards stated, you can answers this questions, not answer that question, answer this question, not answer that question. You don't have to answer any of our questions at all. You can stop at anytime.

ET: Okay.

ES: He made that clear to you, right?

ET: Ya.

ES: Okay. You stated you wanted to talk to us, what part do you and what part don't you want to talk to us about?

RE: Edgar do you remember me reading you're rights earlier and you signing a waiver for us to search your home?

ET: Ya.

RE: Okay, we were called to your home on a gunshot. We got in there and seen some people. Who shot them?

ET: Me.

RE: You did?

ET: Ya.

RE: Why did you shoot them?

ET: I shot Suzie cause I love her and I shot the other two.

RE: Why did you shoot Chuck for?

ET: Just to cover up the murder.

RE: Okay, how did Debra get, come into the picture?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 4

ET: I was going to shoot her too but she was pregnant.

RE: Okay, why? Why did you shoot them?

ET: I shot Suzie cause I love her, I love her so much.

RE: Was she going to leave you?

ET: No. She wouldn't.

RE: If you loved her that much, there's a reason why you shot her.
Could you please explain why you shot her?

ET: I don't know.

RE: Okay. What time did you shoot them?

ET: I don't know.

RE: Was it daylight?

ET: I don't know.

RE: How long have you been sniffing that solvent?

ET: Since 1962.

RE: Tonight how long? Or today?

ET: All day.

RE: Do you know what today's date is?

ET: You told me but I don't remember.

RE: Do you know what day of the week it is?

ET: No.

RE: What was yesterday?

ET: I don't have any idea.

ES: Do you work Edgar?

ET: No, I'm on SSI.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 5

RE: What's SSI?

ET: Social Security Supplemental Income.

RE: Okay. What kind of gun did you use?

ET: A .22 and a .38.

RE: What did you shoot Suzie with?

ET: .22.

RE: What did you shoot Martin with?

ET: Who's that?

RE: Isn't that her son?

ET: No, that's Scotty.

RE: Is that Scotty?

ET: Ya.

RE: That was sleeping on the floor?

ET: Ya.

RE: Okay, what did you shoot him with?

ET: I don't know.

RE: What did you shoot Chuck with?

ET: .38.

RE: How many times did you shoot Chuck?

ET: Twice.

RE: Where at?

ET: The throat.

RE: And where else?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 6

ET: I didn't see where the other place was.

RE: Was he trying to get out of the bed?

ET: Ya.

ES: Who did you shoot first?

ET: Suzie.

RE: Then what happened? Did Scott wake up?

ET: Ya.

RE: So they were all asleep?

ET: Ya. No they was both awake.

RE: They were both awake talking to you?

ET: Ya.

RE: Where were the guns at when you decided to shoot them?

ET: My hands.

RE: Where were the guns at before you picked up the guns? Where did you go get the guns from?

ET: I picked, got them out of my room.

RE: Is yours the bedroom way in the back?

ET: Ya.

RE: Okay. You took them out of that bedroom?

ET: Ya.

RE: Was Chuck asleep?

ET: I think so.

RE: Okay. When you got the guns, where were, were they already loaded or did you have to load them?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 7

ET: They were already loaded.

RE: Do you always carry loaded guns in your home?

ET: Ya.

RE: What kind of car do you own?

ET: 1991 S-10.

RE: Okay, do you know what that license plate number is?

ET: 5, ah 2221CN, I think.

RE: Okay. How long have you owned that S-10?

ET: Ah, since November of 1990.

RE: Whose is the brown vehicle in the driveway?

ET: That's Suzie's, I bought it for her.

RE: Okay, whose...

ET: And she didn't even appreciate it.

RE: She didn't?

ES: How long have you and Suzie been together?

ET: Thousands of years.

RE: Does Suzie work?

ET: She's a prostitute.

ES: What's Suzie's last name?

ET: Sessions.

RE: Is she a....

ET: She shoots heroin. That's why she has to stupid work.

ES: Do you do drugs also, Edgar?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 8

ET: No, I don't do, I used to do it. I done it with her for about two or three, I mean two or three days and it didn't even effect me or anything. I know I didn't, couldn't even get off, just got back to toluene.

RE: So why did you have to shoot Suzie?

ET; I don't know, I don't know.

ES: Does Suzie usually sleep in the bedroom with you or does she sleep on the couch?

ET: No, no, she just moved in. She's...

RE: How long have you known Suzie?

ET: About 10 years.

RE: And how long has she moved in with you?

ET: She moved in about, she lived out there in Rose Park for about two or three months after my mom died and she got an apartment of her own and then.

RE: How old are you Edgar?

ET: 45.

RE: How long have you been on Social Security?

ET: Since November of 88.

RE: Where did you work at before you went on Social Security?

ET: I don't remember.

RE; Do you have any physical impairments? Any physical injuries?

ET: I had a stroke. I couldn't get out of my room for three days. I couldn't talk for seven. I was in the hospital for two and a half months.

RE: You said you had a stroke?

ET: Ya.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 9

RE: How long ago?

ET: ...inaudible...it was 1980, I mean 1988, November of 1988.
The papers are in the trailer.

RE: Okay. Is there any mental problems?

ET: Ya. All kinds.

RE: What kind of mental problems?

ET: See, I think I'm Adolf Hitler. Adolf Hitler died in May of 1945 and I was born in 19, October 1946. I think I'm Adolf Hitler.

ES: Edgar, was Suzie your girlfriend?

ET: Ya. I loved her more than anything else in this world.

ES: Did Suzie love you?

ET: I don't, I don't know, I, I don't think so. I don't think she did.

ES: Well you've know her off and on for ten years and...

ET: Ya.

ES: Is she living in your mom's house in Rose Park?

ET: Ya.

ES: Did you live at your mom's house in Rose Park?

ET: Ya.

ES: When did you move to West Valley?

ET: In May of 1989 or 1990 or 1991 or whatever.

ES: When did she move out here in West Valley, just today, last night or night before or whatever, I don't know.

RE: Where were her and her son staying before then?

ET: Ah, 1446 West 400 North, Apartment C.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 10

RE: Why did they move out to you?

ET: Cause they got kicked out of their apartments.

RE: Why?

ET: They, I don't know why, they just did, I don't know.

RE: Who's Chuck?

ET: She's Debbie's boyfriend. That's....

RE: When did he get in town?

ET: I think he came in a couple of three days ago.

RE: Where's Debbie living?

ET: With Suzie.

RE; So she was staying in that house too?

ET: Ya.

RE: Trailer?

ET; Ya.

RE; So Chuck got here and he was staying in that back bedroom too?

ET: I guess, I don't know.

RE: When you shot him, is that the bedroom he was....

ET: Ya.

RE: And you did shoot him?

ET: Ya.

ES: Why did you shoot him?

ET: I don't know. I don't know. Just....

RE: I want you to think about this, Edgar. You shot Suzie first with the .22.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 11

ET: Ya.

RE: Then you shot Scotty.

ET: Ya.

RE: You went in the bedroom to shoot Chuck?

ET: Ya.

RE: Tell me, describe what happened as you ah, did you turn on the light?

ET: No.

RE: Could you see him pretty good?

ET: I couldn't, I couldn't, I, I was, I just, I couldn't even see. I couldn't see him, I just, actually I couldn't even see any of them.

RE: You said that you shot him in the throat.

ET: I'm just a lucky shot.

RE: Well you said you shot him in the throat, and how would you know you shot him in the throat if you couldn't see him.

ET: Ah, afterwards I turned on the light.

RE: Did you ever turn the light back off?

ET: Ya, I turned it off about six or seven times, maybe more than that.

RE: How many times did you shoot Chuck?

ET: Twice.

RE: Why did you shoot him the second time?

ET: I just popped off two rounds.

RE: Did you have a .38 or a .357?

ET: .38.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 12

ES: How many times did you shoot Scotty?

ET: I don't know, about four I guess I don't know, at least he claims.

RE: Who claims?

ET: Scotty.

RE: When did you talk to Scotty?

ET: He was still alive.

RE; He was still alive?

ET; Ya.

RE: Why didn't you shoot him again?

ET: I just couldn't handle it.

RE: After you shot everybody, was the lights on in the trailer?

ET: No, they was all off. One, the one light, the one back bedroom light was on.

RE: That was your bedroom?

ET: Ya, no the one this one.

RE: The one Chuck was in?

ET: No, the one in the hall.

RE; Oh, the hall light?

ET: Ya.

ES: Okay, Edgar what we'd like to do is kind of start back in the evening and tell us what happened. What time did they move into your house.

ET: I don't remember?

ES: Yesterday?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 13

ET; I think so.

ES: Do you know what day of the week it was?

ET: I don't have any idea.

RE: Was it night time when they moved in or day light?

ET; I don't even know.

RE: Was everybody doing heroin in the house or was they just sniffing with you?

ET: No, Suzie and them and Debbie were using heroin and ah Scotty was straight and, and ah, Chuck was drunk. I don't know if he was intoxicated or what.

RE: But he'd been drinking?

ET: Ya.

RE: Everybody went to bed. What did you do?

ET: I just laid there and thought.

RE; Where at?

ET: My bedroom.

RE; All by yourself?

ET; Ya.

RE; What did you think about?

ET: I don't know what. I love everyone.

RE: When you was in the back bedroom, Edgar, with the gun, why did you have to go out and shoot them?

ET: I don't have any idea.

RE: Did you hear any voices?

ET: I think so. I don't know.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 14

RE: Who was telling you to go shoot them?

ET: The devil.

RE; Are you a christian man?

ET: Ya.

RE: Do you go to church?

ET: Ya, I got to...inaudible...don't go to church, but I became an L.D.S. person. I smoke and drink.

RE: You was sitting in your back bedroom, where was Debbie at?

ET: She was in the second bedroom.

RE: With Chuck?

ET: Ya.

RE: You walked down the hall?

ET; Ah-huh.

RE; Was the TV on?

ET: No.

RE: Radio on?

ET: No.

RE: What happened? Was the lights on?

ET: No. I had the one light on in the hallway.

RE; Okay, you walked in....

ET: ...inaudible...was dim.

RE: Okay, you walked down....

ET: Ya.

RE: ...your's standing over Suzie, what happened?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 15

ET: I don't know what happened. I can't figure it out. I just....

RE: Was the sheet over her head? Or blanket over her head?

ET: No.

RE; Did you see her face?

ET: Just barely.

RE; Was her eyes open?

ET: Ya, I don't know, I couldn't tell if her eyes were open or not, I think she was talking about something, I don't know.

ES: Who was she talking to?

ET: Me.

RE: Was she pleading for her life?

ET: No.

RE: Did she see the gun?

ET: No.

RE: She didn't see the gun at all?

ET: No.

RE: What did you say to her before you shot her?

ET: I don't know.

RE; What did you say after you shot her?

ET: Nothing.

RE: Did she move?

ET: No.

RE: After you shot her, what did Scotty do?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 16

ET: He got up and flipped, flipped over the covers and then I shot him.

RE: Where did you shoot him at?

ET: I don't know, in the stomach or, I mean in the arms and stuff like that. I don't know, I couldn't see very good ...inaudible... I just pumped about, I think I pumped two .22 shells into him and two .38 shells into him.

RE: What side of the mattress was you standing when you shot him? The kitchen side or the bedroom side of the mattress?

ET: Bedroom side.

RE; So how far away from you, how far away was Suzie when you shot her?

ET: Ah, there's a coffee table on the end so, I guess from the coffee table to there.

RE: Did you aim?

ET: No, I only pulled the trigger.

RE; Just one time?

ET: Ya.

RE: And it was a lucky shot?

ET: Ya.

RE: I don't believe you.

ET: I don't know, I was just...

ES: Were you angry with Suzie?

ET: Ya.

ES: What were you angry at her for?

ET: Cause she ripped me off of six or seven thousand dollars.

RE: How did she rip you off?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 17

ET: Well, I bought her that car for eight hundred. She was going to get her husband sent to prison and she bought coke, I mean heroin with a thousand dollars and then I got her out of jail one time and she wasn't even in jail and that was three hundred dollars, she got this ticket, Lee what's his name, Lee Ward and Debbie Lee and they split it up and shot it up in heroin and then ah, I got her, I got her an abortion and I found out she'd been fixed, I knew she'd been fixed but I mean, she didn't appreciate anything.

RE: If you knew all this, why did you let her move in with you?

ET: I don't know.

RE: If you knew that she ripped you off of that money, did you ever ask her to pay you back?

ET: No.

ES: What were you hoping to gain by it?

ET: I wanted to marry her. She kept promising me she was going to marry me, marry me, marry me.

RE: Was you having a sexual relationship with her?

ET: Ya.

RE: How many, you said that she was a prostitute?

ET: Ya.

RE: How often did she go out on the streets?

ET: I don't know.

RE: Who was her pimp?

ET: I think it was Lee Ward.

RE: Lee Ward?

ET: Ya.

RE: Who's that?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 18

ET: A Niger.

RE: Where does he live?

ET: I don't know his exact address, somewhere in 13th South, between 13th South and 7th West or something like that.

RE: Have you ever met him?

ET: Ya.

RE: Did he know that she was living with you?

ET: I think so.

RE: What's your phone number in your house?

ET: It was, ah, 263-8853, but I had it disconnected.

RE: Why?

ET: Cause I didn't trust them people.

ES: What people?

ET: Chuck and them other peoples and stuff.

ES: When did you have it disconnected?

ET: Huh?

ES: When did you have it disconnected?

ET: The day they move in.

RE: Yesterday?

ET: Ya.

RE: How far away were you from Scott when you shot Scott?

ET: I was standing in the same place where I shot Suzie.

RE: Then you walked down the hall?

ET: Ya.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 19

RE: Tell me?

ET: I walked down the hall and I shot four rounds.

RE: Was you shooting your right hand or left hand?

ET: I had them in both hands. I had my .22 in my left hand and my .38 in my left, my right hand.

RE: Are you right handed or left handed?

ET: Right handed.

ES: You had your .22 in the left hand and your .38 in the right?

ET: Ya.

RE: After you shot him.....

ET: I felt terrible.

RE: ...what did you do then?

ET: I felt terrible.

RE: I understand that, but what did you do then? After you shot Chuck what did you do?

ET: I'm not sure. I laid down, I don't know what happened then. It was all a blur.

RE: What did you say to Debbie?

ET: I talked to her for about two or three hours.

RE: Where at?

ET: I don't know. I talked to her for several, I don't know.

ES: You say Scotty was still alive?

ET: Ya.

ES: What was Scotty doing?

ET: Laying there moaning.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 20

ES: How long?

ET: All day.

RE: Did Suzie have AIDS?

ET: I don't think so, I don't know, I don't know. I mean I could, I think I got it, I don't know if I got it or what, I don't, that's not important.

RE: What's that?

ET: That's not important.

RE: Okay. Where did you go after you left your house?

ET: Went to get some heroin.

RE: For who?

ET: Debbie.

RE: Why her?

ET: I don't know, I wanted to get some cocaine.

ES: For who?

ET: I don't know, from Tony or something like that, I don't know their names ..inaudible...

ES: Was that for you or for him? For you or for Debbie?

ET: I wanted the heroin for Debbie and the cocaine for me.

RE: How much money did you have on you?

ET: I didn't have any money.

ES: Who had money then?

ET: Debbie.

RE: Did Debbie know you was going to kill these people?

ET: No.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 21

RE: How long did you ride around with Debbie?

ET: Well, I'd say about an hour or two, I don't know how long.

ES: ...inaudible...drugs?

ET: No. I found a piece in Suzie's coat pocket, here, a piece of heroin.

RE: Is that Suzie's jacket?

ET: Ya.

ES: Whose idea was it to go get drugs?

ET: Debbie's?

RE: Why didn't you shoot Debbie there?

ET: I couldn't fucking handle it, I came to my senses. I don't know why....

ES: If you came to your senses, how come you didn't call somebody to help Scotty?

ET: I don't know. I don't know if I came to my senses or not.

ES: How old is Scotty?

ET: I think he's 15.

ES: How old's Suzie?

ET: I think she's 33.

RE: How old's Debbie?

ET: I think she's 37. I think Chuck's 44.

ES: Anything happy between you and Debbie?

ET: Ya.

ES: What happened?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 22

ET: Um, Debbie and Suzie would take turn sitting on my face and fucking me.

ES: When?

ET: Oh, a couple of times or I don't know.

RE: Last night?

ET: Ah, I don't know.

RE: Did you have ah, have sex with Debbie today?

ET: Ya.

RE: Where at?

ET: The front room, I mean on the hall.

RE: After you shot them?

ET: Ya.

RE: After you shot Suzie, Scott and Chuck, you took Debbie in the hallway and did she submit to you or did you rape her?

ET: She submitted to me.

RE: What, how did it happen? What did you say to her?

ET: Well I had her wash her pussy out real good and I ate her out and then I fucked her.

ES: Did she say anything to you?

RE: Did she want it?

ET: Ya, I think so.

RE: What did she say?

ET: She said it was real enjoyable.

RE: When did she tell you that?

ET: Just after we did it.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 23

ES: Did you have your guns with you still?

ET: I laid them down on the floor.

ES: Did you have your guns with you when you made her clean herself?

ET: Ya.

ES: Where was sure when you told her to get up and clean herself?

ET: What's this?

ES: How did this come about? You Scott, you shot Chuck, how did you come to talk with Debbie? What did she do?

ET: What do you mean, what did she do.

ES: After you shot Chuck, what did she do? She was in bed with him, is that correct?

ET: Ya.

ES: So what does she do?

ET: Not much, she came up and we talked for a while.

RE: What did you talk about?

ET: How much I loved Suzie.

RE: Did she know that you just shot Suzie and Scott?

ET: Ya.

RE: Was she crying?

ET: No. She had a horrified look on her face. I think it's just from the heroin.

RE: After you brought her out of the bedroom, you talked for a while in the hallway?

ET: No, she sat down on the couch and we talked for about two or three hours.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 24

ES: On the couch next to Suzie?

ET: No on the other couch.

ES: What was Scott doing all this time?

ET: Moaning.

ES: So you talked for two or three hours and you had her get up and go to the bathroom?

ET: Ya.

ES: Did you go into the bathroom with her?

ET: No, I just stood out in the hall. I left the door open.

ES: Then what happened? Is that when you performed oral sex on her?

ET: Ya.

RE: What was she wearing?

ET: Ah, a yell, I mean a white terry cloth towel, or a terry cloth robe or whatever it is.

RE: Any panties?

ET: No.

RE: Bra?

ET: No.

ES: Was she wearing any clothes when she was in bed with Chuck?

ET: No.

RE: Why didn't you go back in your bedroom? Edgar? Why didn't you take Debbie back into her bedroom? Back into your bedroom?

ET: I don't know, I just, I didn't think Suzie was dead.

RE: Okay. Suzie was sleeping on the couch.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 25

ET: Ya.

RE: Scott's sleeping on the floor. How come Suzie's not sleeping in your bedroom with you?

ET: She wouldn't do it.

RE: She'd make love to you but she wouldn't sleep with you?

ET: No.

ES: Did you have intercourse with her that night?

ET: No.

ES: When was the last time you had intercourse with Suzie?

ET: Two or three days ago. Me and, me and Debbie and Suzie did, I ate Suzie's pussy and Debbie was sitting on my dick.

RE: Do you always have a threesome?

ET: Ya. Well most, a lot of times just Suzie. I like just Suzie the best.

RE: Why?

ET: Cause I love her.

ES: Do you tell her that?

ET: Every fucking day and night.

ES: What does she say?

ET: She didn't seem to say nothing?

ES: Did she laugh at you?

ET: I don't know what she did. She just....

ES: Did she laugh at you?

ET: No, I don't think she, I don't know if she did or what. She just....

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 26

RE: What did she say tonight or today that made you angry enough to shoot her?

ET: I don't know.

RE: What did she do to make you angered, that angered you?

ET: I don't know, I have no idea, just.....

ES: What made you have sexual relations with her sister after you shot her?

ET: I don't know what that was. I guess I was just horny, I don't know.

RE: Shooting those people get you excited?

ET: No.

RE: Did you have an erection after you shot them?

ET: No.

ES: When did you get the erection?

ET: When I was eating Suzie out, I mean Debbie out.

ES: Did you ever have a sexual relationship prior to police officer finding you?

ET: Huh?

ES: Did you have sex with her anymore prior to the police catching you? After you left your trailer?

ET: No.

ES: Where did you go?

ET: We went to score some dope.

RE: Who was driving?

ET: Debbie.

ES: What vehicle?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 27

ET: Chuck's truck, I mean Chuck's car.

RE: What kind of car is it?

ET: I don't know, it's an Oldsmobile I think or something like that.

RE: Is them the clothes you was wearing last night?

ET: Ya.

RE: And the same clothes you had on after you had sex with Debbie?

ET: Ya.

ES: What were you wearing when you shot Suzie?

ET: These clothes here.

ES: So you were fully dressed?

ET: Ya, except for this jacket here. This jacket here we, I mean, we picked it off, I mean it was on, all I had to do was, a jacket, two jackets, I picked this one here.

RE: Why did you pick that one?

ET: She got the other one, Debbie got the other one.

RE: Why didn't you grab your jacket? Why did you grab Debbie's? I mean Suzie's.

ET: ...inaudible...

RE: Okay.

ES: Did you get any dope? You said no right?

ET: Ya.

ES: Where all did you go?

ET: I don't know. ...inaudible...

ES: How many places did you go?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 28

ET: We just kept driving around and looking for the dope, I mean calling places. I couldn't get the phone numbers.

ES: What was Debbie saying?

ET: Huh?

ES: What was Debbie saying?

ET: Saying?

ES: What did she say? How did you guys decide to go ahead and go? Whose idea was that?

ET: Hers.

ES: She asked you to call medical?

ET: No, no.

ES: She asked you to call for help?

ET: No.

ES: Was Scotty still sitting there, laying there moaning?

ET: Ya.

ES: Was he moaning when you left?

ET: I think so.

ES: Which door did you go out of?

ET: That door.

ES: Did you leave it unlocked or did you lock it?

ET: I locked it I think.

ES: How does it lock?

ET: Just push the button in.

RE: Was the front door already locked?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 29

ET: Ya.

RE: What did Debbie say to you while you was riding around?

ET: Well she said that we could go back and get it on and....

RE: And what else?

ET: I don't know just.

RE: Edgar?

ET: Huh?

RE: I think it's time you start telling us the truth.

ET: That's the truth.

ES: Edgar?

ET: What.

ES: We think it's time you start telling us the truth. The whole truth. I think what you're saying is, is close, but I think there's some other things that you know that you're just not telling us.

RE: I think you're fantasizing about a few things here and what we'd like you to do is tell us exactly what happened. Truthfully.

ET: That's what happened.

RE: Why did you shoot Suzie?

ET: I loved her.

RE: What happened that you got so angered that you went into the back bedroom, got a gun, walked up to the foot of the couch, pulled the weapon up to your eye, took aim and shot her in the head?

ET: I didn't shoot her, I mean, I pulled it down like that, I just ...

RE: Show me again.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 30

ET: Like that.

RE: Stand up and show me, I can't....

ES: Stand up. Okay, I'm on the couch. Which hand did you have the gun that you shot Suzie with?

ET: This one here.

ES: That's your left hand, you had the .22?

ET: Ya.

ES: How many times did you squeeze the trigger?

ET: Once.

ES: What could you see?

ET: I wasn't sure.

RE: Is the .22 an automatic or a revolver?

ET: An automatic.

ES: ...inaudible....

ET: Huh?

ES: ...inaudible...is that from the stroke?

ET: Ya.

RE: Edgar, why did you shoot Suzie. If you loved her, you wouldn't have shot her. You've know her for ten years. You've talked to her before, you've been able to talk problems out before. What problem manifested itself tonight or today or last night that gave you the impulse to kill her?

ET: I don't know.

RE: Something had to turn you, what turned you?

ES: You say you were talking to her when you walked up and at the bottom of the couch. What was she saying to you?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 31

ET: She was telling me I was disgusting.

RE: Why?

ET: I don't know.

ES: Now tell us.

RE: I'm going to talk to Debbie and Debbie's going to tell us her side of the story, so I want you to tell ya, tell us your side before we talk to her.

ET: That is my side of the story.

RE; Did you get that sexually aroused by killing those people that you....

ET: No.

ES: Then why after killing the woman you love, do you have intercourse with her sister?

ET: Cause I liked Debbie second. I love all women.

RE: Edgar, start telling the truth. There's something that snapped in that trailer house, last night or early this morning that made you kill Suzie.

ET: I don't know what happened.

RE: It wasn't the devil. You didn't hear voices. What happened?

ET: I don't know.

ES: When she said that you were disgusting, when did she say that?

ET: She said, she said I was disgusting.

ES: What was happening before that? She sat on the couch and yelled down the hall? Is that disgusting?

ET: No, she was laying there. She called me ...inaudible...

RE: She called you what?

ET: Tiede.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 32

ES: Is that a nickname?

ET: Ya.

ES: What did she say?

ET: She said you were disgusting.

ES: What had you done?

ET; Nothing.

ES: Was this when you had the guns in your hand or before?

ET: I had the guns in my hand.

ES: Okay, something had to have happened as you walked down the hall with two guns in your hand. Not one gun, two guns. Something had to got happened for you to come from your bedroom down the hall, two guns in your hand, point the gun at Debbie, at Suzie and take a shot.

ET: I don't know.

RE: After you shot Suzie, did you do anything else to her?

ET: No, I covered her up.

RE: With the blanket?

ET: Ya.

ES: What was she wearing?

ET: I don't know.

RE: Did she have any blankets on her?

ET: I think so, I don't know.

RE: Or did you just cover her head up?

ET: Her whole, her whole body.

RE: So she was laying on the couch with any covers on her when you shot her?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 33

ET: No, she was, she had covers down to her, down around here.

RE: Down to her waist?

ET: Ya.

RE: Did she have her bra on?

ET: I don't know.

RE: Did she have clothing that covered her?

ET: Ya.

RE: Did she sit up when you shot her?

ET: No.

RE: She was laying down?

ES: Edgar, did you ask her to come in the hall before you shot her?

ET: No.

ES: Had you asked her to come and sleep with you earlier?

ET: Ya.

ES: What did she say?

ET: Just telling me I was disgusting.

ES: How did this conversation begin. They're doing heroin, Debbie and Suzie are doing heroin, where are they doing their heroin?

ET: Ah, sometimes my bathroom other times....

ES: Where were they doing it this time?

ET: I think they was using the bathroom over there because I, seven, seven fifteen, fourth north and 740 East, Apartment C.

ES: They were doing heroin before they got to your house?

RE: Who with?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 34

ET: I don't know.

RE: With him?

ET: I don't know.

RE: Is Debbie a prostitute, too?

ET: I think so.

ES: So you asked Suzie to sleep with you and she called you disgusting?

ET: Ya, I guess so.

ES: Well no, is it true or not?

ET: I thinks it is.

ES: Okay, I'm just telling you what you told me.

ET: Ya.

RE: Edgar?

ET: Huh?

RE: Why did you shoot them?

ET: I don't know.

RE: Why did you shoot Scotty and Chuck then?

ET: I don't know. I just, I don't know.

RE: Have we made any threats to you during this interview?

ET: No.

RE: Have we promised you anything?

ET: No.

RE: Are you making this statement on your own free will?

ET: Ya.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 35

RE: Is there anything else that you can tell us in your defense?
Is there anything that you want to tell us to help us?

ET: I don't want to make any appeals and I want to be put to death
by lethal injection.

RE: You know you're going to be charged with a capital homicide?

ET: I know.

RE: Why did you do it?

ET: I don't know.

RE: Are you under any influence of any other drugs or alcohol?

ET: Just toluene.

RE: How do you feel?

ET: Lousy.

RE: Okay, do you understand everything I've said?

ET: Sometimes.

RE: You've made a response to everything I've asked you, is that
correct?

ET: I think so.

RE: Do you have anything else to say?

ET: I'll think of something in a while.

RE: Okay, we're going to conclude this interview, same date at
3:00 PM.