

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

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**NORMAN FLOWERS**

Electronically Filed  
Oct 29 2018 03:05 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appellant,

vs.

**THE STATE OF NEVADA**

Respondent.

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**Docket No. 53159 Consolidated with 55759**

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Direct Appeal From A Judgment of Conviction.  
Amended Judgment of Conviction, and  
Order Denying Motion for New Trial  
Eighth Judicial District Court  
The Honorable Kathy Hardcastle, District Judge  
and The Honorable Linda Bell, District Judge  
District Court No. C228755

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**APPELLANT'S APPENDIX  
VOLUME 1 OF 3**

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*Shirley C. Langston*  
CLERK

1 IND  
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3 Clark County District Attorney  
4 Nevada Bar #002781  
5 PAMELA WECKERLY  
6 Chief Deputy District Attorney  
7 Nevada Bar #006163  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 -vs- )

13 NORMAN KEITH FLOWERS,  
14 aka Norman Harold Flowers, III,  
#1179383 )

15 Defendant. )  
16 )  
17 )

Case No. C228755  
Dept. No. XIV

INDICTMENT

18 STATE OF NEVADA }  
19 COUNTY OF CLARK } ss.

20 The Defendant(s) above named, NORMAN KEITH FLOWERS, aka, Norman Harold  
21 Flowers, III, accused by the Clark County Grand Jury of the crimes of **BURGLARY**  
22 **(Felony - NRS 205.060); MURDER (Felony - NRS 200.010, 200.030); SEXUAL**  
23 **ASSAULT (Felony - NRS 200.364, 200.366) and ROBBERY (Felony - NRS 200.380),**  
24 committed at and within the County of Clark, State of Nevada, on or about the 24th day of  
25 March, 2005, as follows:

26 COUNT 1 - BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit  
assault or battery and/or a felony, to-wit: murder and/or robbery and/or sexual assault, that

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1 certain building occupied by SHEILA QUARLES, located at 1001 North Pecos #H-63, Las  
2 Vegas, Clark County, Nevada.

3 COUNT 2 - MURDER

4 did then and there wilfully, unlawfully, feloniously, without authority of law, and  
5 with malice aforethought, kill SHEILA QUARLES, a human being, by manual strangulation  
6 with his hands and/or an unknown object, said killing having been (1) wilfull, deliberate and  
7 premeditated; and/or (2) committed during the perpetration or attempted perpetration of  
8 sexual assault as set forth in Count 3 and 4 and/or burglary as set forth in Count 1 and/or  
9 robbery as set forth in Count 4, said acts being incorporated herein by this reference as  
10 though fully set forth, said Defendant being responsible under one or more of the following  
11 principles of criminal liability, to-wit: (1) by Defendant directly committing the acts  
12 constituting the offenses, and/or (2) by aiding or abetting an unknown individual by  
13 counseling, encouraging, commanding or procuring the unknown individual to commit the  
14 offenses and/or (3) by conspiring with an unknown individual to commit said offenses.

15 COUNT 3 - SEXUAL ASSAULT

16 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
17 SHEILA QUARLES, a female person, to sexual penetration, to-wit: sexual intercourse, by  
18 the said Defendant placing his penis and/or an unknown object into the genital opening of  
19 the said SHEILA QUARLES, against her will, said defendant being responsible under one or  
20 more of the following principles of criminal liability, to-wit: (1) by Defendant directly  
21 committing the act constituting the offense, and/or (2) by aiding and abetting an unknown  
22 individual by counseling, encouraging, commanding or procuring the unknown individual to  
23 commit the offense, and/or (3) by conspiring with an unknown individual to commit the said  
24 offense.

25 COUNT 4 - ROBBERY

26 did then and there wilfully, unlawfully, and feloniously take personal property: to-wit:  
27 a stereo and speakers, cell phone, and/or other personal property from the person of SHEILA  
28 QUARLES or in her presence, by means of force or violence, or fear of injury to, and

1 without the consent and against the will of the said SHEILA QUARLES, said Defendant  
2 being responsible under one or more of the following principles of criminal liability, to-wit:  
3 (1) by Defendant directly committing the acts constituting the offenses, and/or (2) by aiding  
4 or abetting an unknown individual by counseling, encouraging, commanding or procuring  
5 the unknown individual to commit the offenses and/or (3) by conspiring with an unknown  
6 individual to commit said offenses.

7 DATED this 13 day of December, 2006.

8  
9 DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

10  
11 BY  For

12 PAMELA WECKERLY  
13 Chief Deputy District Attorney  
Nevada Bar #006163

14 ENDORSEMENT: A True Bill

15  
16   
17 Foreperson, Clark County Grand Jury



1	Names of witnesses testifying before the Grand Jury:	
2	SIMMS, DR. LARY	C.C.M.E.
3	TONEY, QUNISE, C/O CCDA, SVU, 301 E. CLARK PLACE, LVN 89101	
4	SHERWOOD, GEORGE,	LVMPD P#3676
5	TREMEL, DONALD	LVMPD P#2038
6	QUARLES, DEBRA	C/O CCDA, MUV, 301 E. CLARK PL. LVN
7	PAULETTE, KRISTINA	C/O CCDA, MVU, 301 E. CLARK PL. LVN
8	Additional witnesses known to the District Attorney at the time of filing this Indictment:	
9	ADAMS, OFFICER	C.C.D.C.
10	ALBERT, BARBARA	LVMPD P#3108
11	ALBIETZ, D.	LVMPD P#4204
12	AYOTTE, RONALD	3110 PALMDALE LV NV
13	BAKER, SHANE	6650 E. RUSSELL #134 LV NV
14	BELL, BETTY	ADDRESS UNKNOWN
15	BEVILACQUA, A.	LVMPD P#6258
16	BOGUE, MERANDA	6650 E. RUSSELL LV NV
17	BRIAN, WAYNE	ADDRESS UNKNOWN
18	BUCZEK, J.	LVMPD P#3702
19	BURGESS, SHERRI LYNN	4624 LINDA AVE LV NV
20	CABRALES, A.	LVMPD P#2045
21	COOTE, CLATON	3200 MIDVALE DR #M-104 CORVALIS, OR
22	COURTRIGHT, JOHNATHAN	ADDRESS UNKNOWN
23	CRAW, MICHELINE	6650 E. RUSSELL LV NV
24	CURRY, JUANITA	6650 RUSSELL RD #102 LV NV
25	CURRY, SANDRA	ADDRESS UNKNOWN
26	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
27	CUSTODIAN OF RECORDS	LVMPD RECORDS
28		

1	DELLACOURT, NINA	ADDRESS UNKNOWN
2	DUNLAP, GEORGE	C.C.D.C. INMATE
3	EBBERT, LINDA	UMC
4	ERDMAN, SHELLY	LVMPD P#7917
5	ESPLIN, CATHI JO	3110 PALMDALE LV NV
6	FIGUERA, C.	LVMPD P#3341
7	FRENCH, DET.	LVMPD P#375
8	GALLAGHER, E.	LVMPD P#5769
9	GONZALEZ, ANDY	ADDRESS UNKNOWN
10	GONZALEZ, LLOYD	1944 EVELYN AVE HND NV
11	GONZALEZ, PAULINE	216 VALLEY FORGE HND NV
12	GREEN, CHARITY	LVMPD P#7716
13	GROVER, B.	LVMPD P#4934
14	GUENTHER, EDWARD	LVMPD P#5891
15	HAGMEIER, WILLIAM	F.B.I.
16	HERNANDEZ, CESAR	6650 E. RUSSELL RD LV NV
17	HUGGINS, SHEILA	LVMPD P#3603
18	JACKSON, APRIL	6650 E. RUSSELL #144 LV NV
19	JARO, HELEN	ANDRE AGASSI COLLEGE PREP SCHOOL
20	JOHNSON, JAMES	ANDRE AGASSI COMPANY
21	KELLY, S.	LVMPD P#6836
22	KING, BARBARA	ADDRESS UNKNOWN
23	KNOBLOCK, RONALD	C.C.M.E.
24	LAMOUREUX, B.	LVMPD P#7716
25	LARSON, DEBRA	3110 PALMDALE AVE LV NV
26	LEEKE, OFFICER	C.C.D.C.
27	LUTZ, RICHARD	LVMPD P#1746
28	MANN, ANDREW	4481 LINDALE LV NV

1	MAUPIN, R.	LVMPD P#5923
2	MCGOWAN, BARBARA	9361 PARKDALE LV NV
3	MCGOWAN, CLAUD	9361 PARKDALE LV NV
4	MCGRAW, REANNA	ADDRESS UNKNOWN
5	MCKENNA, KATRINA	ADDRESS UNKNOWN
6	MCLAUGHLIN, RANDAL	LVMPD P#4170
7	MENDEZ, ANGELA	6650 E. RUSSELL LV NV
8	MENDEZ, VANESSA	6650 E. RUSSELL LV NV
9	MITCHELL, DENNIS	ANDRE AGASSI COMPANY
10	MOON, L.	C.C.M.E. #313
11	MOORE, KAREN	ADDRESS UNKNOWN
12	NELSON, WILLIAM	H.D.S.P. NDOC#48044
13	OSGOOD, ROGER	ADDRESS UNKNOWN
14	PARKER, MARCIA	6650 E. RUSSELL RD #242 LV NV
15	PAROLE OFFICER	NV DEPT P & P OFFICER FOR N. FLOWERS
16	PETERSON, DANIEL	LVMPD P#4034
17	PIRTLE, M.	LVMPD P#4017
18	RAGLAND, MAWUSI	6650 E. RUSSELL RD #302 LV NV
19	RAMIREZ, MONICA	6650 E. RUSSELL RD LV NV
20	REMBERT, RANZY	445 E. DESERT INN #5 LV NV
21	ROBERTS, OFFICER	LVMPD P#6644
22	ROBINSON, SHAWNTA	C.C.D.C. INMATE
23	ROWLAND, T.	LVMPD P#4178
24	RUTLE, M.	LVMPD P#4017
25	SCHELLBERG, PETER	LVMPD P#5413
26	SILVAS, CONNIE	3125 W. WARM SPRINGS LV NV
27	SMINK, JEFF	LVMPD
28	SMITH. B.	LVMPD P##4712

1	SMYTH, REBECCA	3189 GREENDALE LV NV
2	SPOOR, MONTE	LVMPD P#3856
3	THOMAS, KENDRA	6650 E. RUSSELL #201 LV NV
4	TURNER, ALICIA	ANDRE AGASSI COLLEGE PREP SCHOOL
5	URENO, RANDY	4750 E SHARA AVE LV NV
6	VILLAGRANA, WILLIAM	LVMPD P#8426
7	WAHL, THOMAS	LVMPD P#5019
8	WILLIAMS, ELWOOD	ADDRESS UNKNOWN

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MURDER; ROBB; BURG; S/A - F

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DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
PAMELA WECKERLY  
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Las Vegas, Nevada 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

NORMAN KEITH FLOWERS aka  
Norman Harold Flowers, III,  
#1179383

Defendant.

Case No.

Dept No.

C228755

C216032/

C228755

VI

NOTICE OF MOTION AND MOTION TO CONSOLIDATE

DATE OF HEARING: 1/17/07

TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and files this Notice of Motion and Motion to Consolidate.

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

NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department VI thereof, on Wednesday, the 17th day of January, 2007, at the hour of 8:30 o'clock a.m., or

1 as soon thereafter as counsel may be heard.

2 DATED this 26th day of December, 2006.

3  
4 DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
5

6  
7 BY /s/ PAMELA WECKERLY  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163  
8

9  
10 STATEMENTS OF FACT

11 A. Fact of Case C in District Court VI

12 On May 3, 2005, Silver Pines Apartments employees discovered 45 year old Marilee  
13 Coote lying on her living room floor. Ms. Coote was a reliable employee of the Andre  
14 Agassi Center. When she did not arrive at work by 7:30 a.m., a co-worker became  
15 concerned and asked the apartment workers to do a welfare check. After the apartment  
16 employees discovered the body, they contacted the police.

17 Initially, paramedics arrived, but Ms. Coote was already deceased. Police followed.  
18 Ms. Coote was found lying on her living room floor, facing up and completely nude. Inside  
19 her belly button were ashes from burnt incense. The skin between her upper thighs and her  
20 pubic area was burned. Coote's apartment was locked, but her purse and keys were missing.  
21 Inside Coote's washing machine, police found personal photos, bills, and identification  
22 belonging to Coote. The items appeared to have been washed because they had a soap  
23 residue on them. In the bathtub, under ten inches of water, police found other items of  
24 paperwork, a phone book, and jewelry boxes covered with a towel. The apartment was  
25 otherwise very neat and undisturbed.

26 The detectives initially did not view this incident as a homicide. Therefore, they  
27 documented the scene, but did not collect evidence. After conducting an autopsy, however,  
28 Dr. Knoblock concluded the Coote died as the result of strangulation. He also noted tearing  
of Coote's labia and anal area. Dr. Knoblock concluded that these tears were sustained ante-

1 mortem. Coote also had contusions on her arms and forearms.

2 While various officers were in Coote's apartment during the morning of May 3, 2005,  
3 another resident of the complex, Juanita Curry, came in contact with the defendant, Norman  
4 Flowers. This occurred between 7:00 and 10:00 a.m. Curry was an acquaintance of  
5 Flowers' girlfriend, Mawusi Ragland. Curry lived two floors below Coote. Curry noticed  
6 the police and paramedics going in and out of Coote's apartment. From apartment  
7 employees, Curry believed that Coote died of natural causes. Sometime that same morning,  
8 defendant Flowers knocked on Curry's door. He asked if he could use her phone. He said  
9 he was supposed to meet up with Mawusi that morning. She agreed and gave him the phone.

10 Curry is physically disabled and sometimes walks with a cane. Because of her  
11 compromised physical state, she was not comfortable allowing Flowers in her apartment, so  
12 she let him use her cordless phone in the doorway. After Flowers used the phone, he came  
13 back a few times later, each time with a new request. He asked to use the phone again. He  
14 asked for water. At one point, he asked to use her bathroom. She agreed, but when he went  
15 in the bathroom, she stepped out of the apartment. As she did so, he asked her to come in  
16 and help him find the bathroom light. She refused. When Flowers was at her doorstep, she  
17 also noticed that when the police walked back and forth, he would turn his head away. He  
18 commented, "the police make me nervous." During the final conversation in Curry's  
19 doorway, Flowers leaned down and tried to kiss Curry on the mouth. She turned away.

20 Curry observed Flowers walk across the parking lot to the doorway of Rena  
21 Gonzalez's apartment that morning. Curry left the complex a little before 11:00 in the  
22 morning. When she returned, she learned that the police had discovered the body of Rena  
23 Gonzalez. She gave a statement to police and identified Mawusi's boyfriend as someone she  
24 saw in the area of Rena Gonzalez's apartment.

25 Officers learned of the homicide involving Rena Gonzalez at approximately 4:00 p.m.  
26 Rena's Gonzalez's two daughters, the oldest of whom is seven years old, came home from  
27 school and found their mother on her knees leaning against her bed in her master bedroom.  
28 She was unresponsive. They ran and got their friend, Shayne. Shayne returned with them.

1 They tried to remove a phone cord around Gonzalez's neck and called 911.

2 Gonzalez's apartment was clean and undisturbed with the exception of the following:  
3 a broken blue plastic hair comb in the front hallway and a single green sandal were both in  
4 the front hallway. Officers could not locate Gonzalez's purse or keys.

5 Gonzalez was at the foot of her bed, with her body bent at the waist. Her upper torso  
6 was on the bed with her face down and arms outstretched. A black phone cord and black  
7 lanyard were around her neck. She was dressed in shorts, which were slightly pulled down,  
8 and a shirt. She had the matching blue hairclip hanging from her head and blood coming  
9 from her ear.

10 At autopsy, Dr. Simms noted extensive bruising to breast, right arm and right leg. Dr.  
11 Simms concluded that Gonzalez died as a result of strangulation. He also noted tearing to  
12 her vaginal and anal area. Dr. Simms concluded that these injuries took place post-mortem.

13 Detectives learned that Rena Gonzalez was a close friend of Mawusi Ragland. In  
14 fact, the two women would trade off watching each other's children. They determined that  
15 Gonzalez had walked her daughters to the school bus the morning of the 3rd and would have  
16 returned home around 8:30 a.m. Rena Gonzalez did not work.

17 Mawusi Ragland also lived at the Silver Pines Apartments. She lived in the  
18 apartment across from Coote. She told detectives that approximately three weeks before the  
19 homicide, she and Flowers had gotten into an argument and had not spoken since. In the  
20 argument, Mawusi implied that she would socialize with other men. Mawusi had discussed  
21 Flowers with her friend Rena Gonzalez as well, although Flowers and Gonzalez had not met.  
22 According to Mawusi, Gonzalez advised her not to date Flowers.

23 When Mawusi returned home on the evening of May 3, she saw police vehicles. She  
24 was told her friend, Rena, had been murdered and that her other friend, Marilee, had died of  
25 natural causes. On her apartment door, Mawusi noticed a note. It was from Flowers. It  
26 stated that he tried to catch her before she went to work, but that it looked like he picked a  
27 bad day because "big shit is happening over here." He also asked if she had dated other men  
28 since their argument. Flowers called Mawusi that evening. She was very emotional and



1 explained that both Marilee and Rena were dead. Flowers did not appear to be shocked upon  
2 hearing this news. She asked him to come over and help her through this difficult time. He  
3 told her he'd be right over. When Flowers did not arrive in the next 90 minutes, Mawusi  
4 called him to ask where he was. He said he had not left home because when tried to call her,  
5 she did not answer her phone. He also mentioned that he had seen Rena that morning and  
6 had a short conversation with her. Mawusi asked him what time he was at the complex and  
7 Flowers responded, "I didn't kill her."

8 After speaking with Mawusi, detectives interviewed Norman Flowers. Initially, he  
9 told officers that he had no contact with Marilee Coote on the morning of the murder. He  
10 said he had not seen her for months. He also explained that he met Rena Gonzalez several  
11 months earlier through Mawusi. He admitted that he had spoken with Rena that morning,  
12 but denied ever entering her apartment. Flowers agreed to provide a DNA sample.

13 Subsequently, Flowers' DNA sample was compared with swabs from Marilee  
14 Coote's sexual assault kit. Both vaginal and rectal swabs matched to Flowers. In addition,  
15 DNA was collected from the carpet area where Coote was lying, specifically, the carpet  
16 beneath her upper thighs. That sample also matched to Flowers.

17 Detectives interviewed Flowers again. He still maintained that he had never been in  
18 Gonzalez's apartment that morning. With regard to Marilee Coote, he first explained that he  
19 had had sex with her in the past, but not that day. Then, he acknowledged that he had sex  
20 with her the night before she died, but that she was alive and fine when he left. He denied  
21 having rough sex with her. Later in the interview, he claimed that he might have had rough  
22 sex with her, but that she was fine when he left. In a third interview, he said he did have  
23 rough sex with her, but that she was alive when he left. He also stated that there was a third  
24 man watching the two have sex. He said this man was a medium height, weight, and age  
25 black man, but he did not know his name. He claims this man remained in the apartment  
26 after he left. Thus, his latest claim was that the sex was consensual and another individual  
27 must have killed Coote.

28 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source

1 of this DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is  
2 excluded as the source of that DNA as well.

3 B. Facts of Case C228755 in District Court XIV

4 Less than two months prior, on March 24, 2005, Debra Quarles returned home from  
5 grocery shopping to her residence at 1001 North Pecos, Las Vegas, Clark County, Nevada,  
6 and found her eighteen year old daughter, Sheila Quarles unresponsive in a bathtub  
7 containing warm water. Debra had returned home at 2:30 in the afternoon. She was able to  
8 remove Sheila from the tub with the help of a neighbor who had helped her carry in  
9 groceries. Debra immediately called 911.

10 An autopsy later determined that Sheila died from drowning. However, strangulation  
11 was a significant contributing factor to her death. Sheila also had multiple vertical  
12 lacerations on her introitus, evidence of a violent sexual assault.

13 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30  
14 p.m. and her mother arrived home to find her at approximately 2:30 p.m. In addition,  
15 detectives learned that Sheila was involved in a lesbian relationship with an individual  
16 named Quinise Toney.

17 At autopsy, investigators collected samples from Sheila's vagina. Those swabs  
18 contained a mixture of DNA which included semen. Quinise Toney was excluded as being a  
19 source of this DNA. Sheila Quarles was the major component of the DNA. The male  
20 portion of the DNA was entered into a DNA database. When Flowers' DNA was collected  
21 in the May murders, his profile was entered into the DNA database as well. After this entry,  
22 investigators were notified that Flowers' profile was consistent with part of the minor  
23 component DNA from Sheila Quarles' vaginal swabs. In fact, 99.9934 percent of the  
24 population is excluded as being a source of that DNA, but Flowers is not. There was an  
25 additional, unknown male contributor to the vaginal swabs of Sheila Quarles as well.

26 After detectives were notified of the DNA match, they recontacted Debra Quarles.  
27 Quarles explained that she knew and had actually dated Norman Flowers several months  
28 before the murder. She also explained that he would occasionally give her a ride to her work

1 at the time and that he knew her family members. Quarles said that just prior to the murder,  
2 she saw Flowers at her apartment complex. At that time, he explained that he was working  
3 in maintenance at the complex. After her daughter's murder, Quarles suffered from  
4 depression. Flowers offered to drive her to appointments with her therapist. On several  
5 occasions, Flowers inquired to Debra whether the police had figured out who had murdered  
6 her daughter.

7 The defense has suggested that Flowers will offer an alibi defense to the March 2005  
8 crime.

9 The State moves to consolidate defendant's two cases.

#### 10 ARGUMENT

11 The issue of consolidation lies within the sound discretion of the trial court and will  
12 not be reversed absent a clear abuse of that discretion. Robins v. State, 106 Nev. 611, 789  
13 P.2d 558 (1990); Mitchell v. State, 105 Nev. 735, 782 P.2d 1340 (1989). "Error resulting  
14 from misjoinder of charges is harmless unless the improperly joined charges had a  
15 substantial and injurious effect on the jury's verdict." Weber v. State, 121 Nev. 554, 119  
16 P.3d 107, 119 (2005). Moreover, on appeal "the defendant carries the heavy burden of  
17 showing an abuse of discretion by the district court." Id. at 121. In exercising that  
18 discretion, courts consider potentially conflicting interests of judicial economy and  
19 efficiency of judicial administration, crowded court calendars, avoidance of multiple trials  
20 and possible prejudice to the defendant. See United States v. Fancher, 195 F. Supp. 634 (D.  
21 Conn.), affirmed, 319 F.2d 604 (4<sup>th</sup> Cir. 1963). However, to establish actual prejudice from  
22 joinder requires the defendant to demonstrate more than that severance might have made  
23 acquittal more likely. Weber, 119 P.3d at 121. It requires that the defendant demonstrate  
24 that the joinder may have prevented jurors from making a reliable judgment about guilt. See  
25 id. At 122

26 Nevada Revised Statute 174.155 states:

27  
28 The court may order two or more indictments or information or both be tried  
together if the offenses, and the defendants if there is more than one, could  
have been joined in a single indictment or information. The procedure shall be

1 the same as if the prosecution were under such single indictment or  
2 information.

3 Section 173.115 of the Nevada Revised Statutes provides:

4 Two or more offenses may be charged in the same indictment or information  
5 in a separate count for each offense if the offenses charged, whether felonies or  
6 misdemeanors or both, are:

1. Based on the same act or transaction or
2. Based on two or more acts or transactions connected together or  
constituting parts of a common scheme or plan.

7 Finally, Eighth Judicial Court Rule 3.10 emphasizes the importance of judicial  
8 economy, providing:

9  
10 (a) When an indictment or information is filed against a defendant  
11 who has other criminal cases pending in the court, the new case may be  
12 assigned directly to the department wherein a case against that defendant is  
13 already pending.

(b) Unless objected to by one of the judges concerned, criminal  
cases, writs or motions may be consolidated or reassigned to any department  
for trial, settlement or other resolution.

14 This Court has defendant Flowers' first case set for trial in January 2007. As a capital  
15 case, it is likely to take longer to proceed to trial than a non-capital murder case and certainly  
16 other felony cases. Thus, the case will represent an imposition on the Court as well as  
17 members of a jury who will assess the facts of the case. Flowers' second case is set for trial  
18 in February 2007 in District Court XIV. It is also likely to be a capital case, meaning the  
19 same burdens will be placed on both the court and a potential jury hearing the case for a  
20 second time. Certainly, there is little question that consolidating the cases would be in the  
21 interests of judicial economy, court administration, and imposition of costs to the  
22 community.

23 Moreover, the Nevada Supreme Court has held that "if . . . evidence of one charge  
24 would be cross-admissible in evidence at a separate trial on another charge, then both  
25 charges may be tried together and need not be severed." Robins, 106 Nev. at 619, 798 P.2d  
26 at 563 (citing Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342). In other words,  
27 joinder is proper when evidence from a separate case would be admissible by other means.

28 Section 48.045(2) of the Nevada Revised Statutes provides:

1 Evidence of other crimes, wrongs, or acts is not admissible to prove the  
2 character of a person in order to show that he acted in conformity therewith. It  
3 may, however, be admissible for other purposes, such as proof of motive,  
4 opportunity, intent, preparation, plan, knowledge, identity, or absence of  
5 mistake or accident.

6 In applying NRS 48.045(2), courts must assess whether the probative value of the evidence  
7 is substantially outweighed by a risk of prejudice. Significantly, however, courts have  
8 recognized a distinction between evidence that is incriminating versus evidence that is  
9 actually prejudicial. For instance, in United States v. Harrison, 679 F.2d 942 (D.C. Cir.  
10 1982), the prosecution presented evidence that the defendant had been engaged in drug  
11 dealing in the past over a period of time in order to establish motive, intent, preparation, and  
12 absence of mistake on his current drug charges. The court held that allowing the extrinsic  
13 evidence was proper. It explained:

14 There is nothing "unfair" in admitting direct evidence of the defendant's past  
15 acts by an eyewitness thereto that constituted substantive proof of the relevant  
16 intent alleged in the indictment. The intent with which a person commits an  
17 act on a given occasion can many times be best proven by testimony or  
18 evidence of his acts over a period of time prior thereto . . .

19 Id. at 948.

20 Therefore, while certain evidence may increase the likelihood of conviction and thus be  
21 incriminating, such evidence may not unfairly cast the defendant in a bad light and therefore  
22 be prejudicial.

23 In the instant case, Flowers' two cases are cross-admissible. Evidence of the March  
24 murder would be admissible in a trial focusing on the May murders because such evidence  
25 would be relevant to identity, intent, and motive and vice versa. In Gallego v. State, 101  
26 Nev. 782, 711 P.2d 856 (1985), the Nevada Supreme Court noted how a defendant's prior  
27 murders could be relevant in establishing a common plan, intent, identity, and motive in a  
28 subsequent murder case. In Gallego, the defendant was charged with kidnapping, assaulting,  
and killing two young women by bludgeoning them with a hammer. The trial court  
permitted the State to introduce evidence that Gallego had previously kidnapped two young  
women from a shopping mall and shot and killed them. Id. at 789, 711 P.2d at 861. On  
appeal, Gallego challenged the introduction of such evidence.

1       The Nevada Supreme Court affirmed the conviction and introduction of the evidence  
2 on several grounds within NRS 48.045(2). The court noted that the evidence was relevant to  
3 Gallego's intent and motive, because both instances were prompted by a "sex slave" fantasy  
4 on the part of Gallego. The court also commented that the evidence was relevant because  
5 the prior murders were "not remote in time from the killings here considered" and that  
6 "substantial similarities" were shown to exist between the two events, suggesting that the  
7 evidence was relevant to issues of identity as well as a common scheme or plan. See id.

8       In other case, the Nevada Supreme Court has commented how a particular modus  
9 operandi to a crime can be relevant and admissible under NRS 48.045(2) when the identity  
10 of the perpetrator is at issue. The court has stated that modus operandi evidence is proper in  
11 "situations where a positive identification of the perpetrator has not been made, and the  
12 offered evidence establishes a signature crime so clear as to establish the identity of the  
13 person on trial." Mortensen v. State, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999).

14       In the case of Flowers, all three victims were casual acquaintances of Flowers. All  
15 three were killed in their residences. All three were killed during daylight hours. In addition  
16 to being murdered, all three also had some minor property taken from them as well. More  
17 significantly, of course, all three were sexually assaulted prior to their deaths. The victims  
18 all had damage to their vaginal and/or anal areas substantiating the sexual assault charges.  
19 All three victims were killed by means of strangulation. Admittedly, the cause of death for  
20 Sheila Quarles was a drowning; however, the strangulation was a significant contributing  
21 factor to the death. Certainly, the similarity of the three murders constitutes evidence of  
22 identity admissible under NRS 48.045(2).

23       In addition, evidence of the March 2005 killing is relevant to the May 2005 killings  
24 because it would constitute evidence of intent and lack of accident as well which are also  
25 admissible under NRS 48.045(2). In Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508  
26 (1985), reversed on other grounds by Petrocelli v. Angelone, 242 F.3d 867 (9<sup>th</sup> Cir. 2001),  
27 the Nevada Supreme Court explained how in a murder prosecution where defendant was  
28 claiming that a homicide was an accident, evidence of a prior killing committed by him

1 which he also claimed was accidental was relevant and admissible under NRS 48.045(2).

2 In one of his interviews regarding the May killings, Flowers maintained that while he  
3 may have had sex with Marilee Coote, but he did not kill her. This, of course, occurred after  
4 he adamantly denied having sex with her at all. In any case, given that one possible defense  
5 available to Flowers is that he had consensual sex with Coote and she somehow died during  
6 the encounter, evidence of the March 2004 killing is relevant to his intent during his  
7 encounter with Coote. The fact that he previously had had a violent sexual encounter which  
8 resulted in vaginal trauma to victim Sheila Quarles as well as her strangulation and death is  
9 evidence that Coote's strangulation was intentional and not an accident. See id.

10 Finally, evidence of the March 2005 murder is relevant to the May 2005 murders in  
11 terms of the sexual assault counts. In one of several interviews with detectives, Flowers  
12 claimed that he had consensual intercourse with Marilee Coote, notwithstanding the trauma  
13 to her genital area. He mentioned that they may have engaged in "rough" sex at one point  
14 during his interview. Evidence of the sexual assault trauma to Sheila Quarles would be  
15 relevant to the issue of whether Coote consented to a sexual encounter with Flowers. In  
16 Williams v. State, 95 Nev. 830, 603, P.2d 694 (1979), a sexual assault victim testified that  
17 she met the defendant while discussing a possible job as his secretary. At some point, the  
18 defendant offered her \$5000 for a "one night stand," but she refused. The defendant told her  
19 that he was trained in martial arts and demonstrated what he could do to her and then  
20 sexually assaulted her. The defendant maintained that the intercourse was consensual. The  
21 State presented the testimony of two prior victims, from incidents occurring nineteen months  
22 before the charged incident, who testified that they met the defendant through a job  
23 interview and were coerced into having sex with him after he demonstrated his karate  
24 knowledge. In affirming the admission of testimony regarding the prior incidents, the  
25 Nevada Supreme Court stated:

26  
27 In the instant case, evidence of Williams' sexual misconduct with other  
28 persons was admitted as being relevant to prove his intent to have intercourse  
with the victim without her consent. This evidence was introduced after  
Williams admitted committing the act, but claimed to have done so with the  
victim's consent. By acknowledging the commission of the act but asserting

1 his innocent intent by claiming consent as a defense, Williams himself placed  
2 in issue a necessary element of the offense and it was, therefore, proper for the  
3 prosecution to present the challenged evidence, which was relevant on the  
4 issue of intent, in order to rebut Williams' testimony on a point material to the  
5 establishment of his guilt.

6 Id. at 833.

7 Because all three victims were killed after they were sexually assaulted, the State  
8 must rely on circumstances and medical testimony to establish the lack of consent in the  
9 instant case. Nevertheless, like Williams, Flowers has put consent at issue because he claims  
10 that the sexual encounter with Marilee Coote was consensual. In maintaining that claim,  
11 Flowers makes relevant his prior conduct with Sheila Quarles who also was sexually  
12 assaulted by Flowers and subsequently killed.

13 CONCLUSION

14 Based on the foregoing, the State respectfully asks this Court to consolidate  
15 Flowers' two pending cases.

16 DATED this 26th day of December, 2006.

17 DAVID ROGER  
18 Clark County District Attorney  
19 Nevada Bar #002781

20 BY /s/ PAMELA WECKERLY  
21 PAMELA WECKERLY  
22 Chief Deputy District Attorney  
23 Nevada Bar #006163  
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and forgoing, was made this \_\_26th\_\_ day of  
December, 2006, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER  
FAX#455-6273

BY /s/ M. Beaird  
Employee of the District Attorney's Office

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*Shirley B. Pangione*  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
NORMAN FLOWERS,  
Defendant.

CASE NO. C 216032  
CASE NO. C228755

DATE OF HEARING: 1-17-07  
TIME OF HEARING: 8:30 a.m.

**OPPOSITION TO STATE'S MOTION TO CONSOLIDATE**

COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public Defender, and CLARK W. PATRICK, Deputy Special Public Defender and hereby submits the following Points and Authorities in opposition to the State's Motion to Consolidate Case No. C216032 and Case NO. C228755.

**POINTS AND AUTHORITIES**

**FACTUAL BACKGROUND**

On June 7, 2005, a Criminal Complaint was filed in Justice Court charging Defendant NORMAN FLOWERS (hereinafter FLOWERS) with a single count of Murder (and other charges) on the alleged victim Marilee Coote. Approximately two weeks later, a Second Amended Criminal Complaint was filed charging FLOWERS with Murder (and other charges)

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1 alleging "this time" two (2) victims, Marilee Coote and Rena Gonzales.  
2

On August 17, 2005, at the conclusion of FLOWERS' preliminary hearing, the Court dismissed all counts relating to victim Rena Gonzales. On August 29, 2005, an information was filed in District Court, Case Number C214390, charging Flowers with this single homicide (Marilee Coote).

6 At the initial Arraignment on August 30, 2005 FLOWERS appeared and pled "not  
7 guilty." In addition, FLOWERS asserted his Constitutional right to a speedy trial and the Court  
8 set a trial date of October 24, 2005. On the same day, counsel for FLOWERS received notice  
9 of the State's Intent to Seek and Indictment. Thereafter, on October 18, 2005 the State  
10 dismissed Case Number C214390, and FLOWERS was indicted in Case Number C216032  
11 and charged with two (2) counts of homicide, alleged to have occurred on May 3, 2005.  
12 On November 2, 2005, FLOWERS was arraigned on the indictment and pleaded guilty to the

On November 8, 2005, FLOWERS received a Notice of Intent to Seek Death Penalty containing aggravator number eight (8) which alleged, as a basis for seeking the death penalty, two or more convictions for murder.

15 FLOWERS has now been indicted under Case Number C228755 charging him with a  
16 third homicide that occurred March 24, 2005, forty-one days prior to the first two.  
17 The State is

17 The State is requesting to consolidate Case Nos. C216032 and C228755, and the three  
18 homicides. This is improper under section 173.115 of the Nevada Revised Statutes as the  
19 cases do not arise from the same transaction nor constitute a common plan. Further, joinder  
20 would be more prejudicial than probative. Therefore, this Court should deny the State's  
21 request.

ARGUMENT

The Court should not consolidate the offenses which allegedly occurred on March 24, 2005 and May 3, 2005. Joinder is not proper as the events do not arise from the same transaction nor constitute a common plan. Further, joinder would be prejudicial to Defendant and result in a violation of due process.

27 | . . .

28

1 A.

2 Consolidation Should Not Be Granted Because the March 24, 2005  
3 and May 3, 2005 Incidents Do Not Arise from a Common Transaction  
4 Nor Do They Comprise a Common Scheme

5 NRS 173.115 "Joinder of Offense" provides:

6 Two or more offenses may be charged in the same indictment or information in  
7 a separate count for each offense if the offenses charged, whether felonies or  
8 misdemeanors or both, are:

- 9 1. Based on the same act or transaction; or
- 10 2. Based on two or more acts or transactions connected together or  
11 constituting parts of a common scheme or plan.

12 The policy behind joining offenses is judicial economy. Honeycutt v. State, 56 P.3d  
13 362, 367, 118 Nev. Adv. Rep. 70 (2002). In the case at bar, the three incidents were not  
14 based on the same transaction, nor were they part of a common scheme or plan.

15 When offenses are factually similar and occur in close temporal proximity, they are  
16 properly joined. Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996). In Tillema, the  
17 defendant was arrested for a burglary of a vehicle on May 29, 1993 and a burglary of a vehicle  
18 and a burglary of a store on June 16, 1993. Id. at 267. Because both crimes involved vehicles  
19 in casino parking garages and were seventeen days apart, they "evidenced a common  
20 scheme or plan." Id. at 268. Additionally, the store burglary was connected to the vehicle  
21 burglary because it was part of a "continuing course of conduct." Id. at 269, *quoting* NRS  
22 173.115(2) and Rogers v. State, 101 Nev. 457, 465-66, 705 P.2d 664, 670 (1985). In the  
23 second incident, Tillema burglarized the van and then immediately walked into a store, where  
24 he committed another burglary, so the two incidents were connected. Id.

25 Similar victims and motives, however, are not necessarily part of a common scheme  
26 or plan. Tabish v. State, 119 Nev. Adv. Rep. 35, 72 P.3d 584 (2003). The State was trying  
27 to argue that events involving Leo Casey and events involving Ted Binion were properly  
28 joined, having in common greed, money and the Jean sand pit. Id. at 590. The State also  
emphasized the similarities between Leo Casey and Ted Binion. Id. The Nevada Supreme  
Court noted that "money and greed could be alleged as connections between a great many

1 crimes and thus do not alone sufficiently connect the incidents." Id. That Court held that the  
2 incidents were too far apart in time (fifty days) and that the alleged connections did not  
3 demonstrate a common scheme or plan. Id. at 591.

4 Similarly, in Mitchell v. State, 105 Nev. 735, 782 P.2d 1340 (1989), incidents forty-five  
5 days apart were not considered part of the same transaction. Id. at 738. Additionally, the two  
6 offenses committed by that defendant were not part of a common plan. Id. The defendant was  
7 charged with grand larceny and sexual assault (the Petz charges) and sexual assault and  
8 murder (the Brown charges). Id. at 737. On two separate occasions, the defendant took two  
9 different women to the same bar, forty-five (45) days apart, and sexually assaulted them. Id.  
10 Our Supreme Court noted that taking two women dancing and then later assaulting them (on  
11 separate occasions) could not be considered a common plan, simply because the women  
12 were taken to the same bar. Id. at 738.

13 When considering joinder under NRS §173.115.2, it is useful to distinguish the facts of  
14 the case at hand with the facts of a case for which the Nevada Supreme Court found joinder  
15 permissible. In Floyd, the defendant argued that counts related to the sexual assault of a  
16 woman at gunpoint inside an apartment and the subsequent shooting of five employees at  
17 a nearby supermarket should be severed. However, the Nevada Supreme Court found that  
18 "joinder was proper because the acts charged were at the very least 'connected together'."  
19 Floyd v. State, 42 P.3d 249, 254 (2002). The court explained that a connection existed  
20 because the counts relating to the subsequent act began only fifteen minutes after the counts  
21 relating to the first act had ended.

22 Contrary to Tillema, and Floyd, the offenses in the instant case did not occur in close  
23 temporal proximity. If a connection between separate acts can be argued to exist because of  
24 their relative proximity in time, then it is reasonable to expect that the existence of such a  
25 connection is diminished as the length of time between the acts increases. Here, the incidents  
26 were forty-one (41) days apart, so there was no "continuing course of conduct." The incidents  
27 in Tillema flowed one into the other. With forty-one (41) days between them, the incidents at  
28 bar were too far apart in time to be part of the same transaction. So while a connection may

1 still remain between two acts after only fifteen minutes, extending that time more than three-  
2 thousand fold would seem to extinguish such a connection, utterly.

3 Here, there was also no common scheme or plan, similar to Tabish and Mitchell. In both  
4 of those cases, there were similar motives and similar crimes; however, that was not enough  
5 to establish a common scheme or plan. Here, the only other common denominator, besides  
6 the defendant himself, is the possibility that the defendant knew all of the victims. Again, that  
7 is not enough to establish a common scheme or plan. The victims were different, the incidents  
8 occurred in different locations, albeit two of the homicides occurred in the same apartment  
9 complex and were forty-one (41) days apart. One of the incidents allegedly involved a manual  
10 strangulation, one allegedly involved strangulation with a ligature, while the other allegedly  
11 involved a downing. As for the alleged sexual assaults, Flowers' DNA was recovered from  
12 Marilee Coote, however Flowers admits to having "rough" consensual sex with Coote, and  
13 there was "unknown" male DNA that was also recovered from Coote. The DNA recovered from  
14 Rena Gonzalez *excluded* Flowers as the donor. And while Flowers' DNA was recovered from  
15 Sheila Quarles, again there was "unknown" male DNA also recovered. There is nothing  
16 connecting the three incidents.

17 Because the incidents were not part of the same transaction, nor were they part of a  
18 common scheme or plan, the Defendant respectfully requests that this Court denies the  
19 State's request to consolidate the incidents of March 24, 2005 and May 3, 2005.

20 B.

21 Consolidation Should Not Be Granted Because  
22 the Evidence Is Not Cross-admissible

23 The Nevada Supreme Court has held that if evidence of one crime would be cross-  
24 admissible at a trial on another charge, the charges may be tried together. Mitchell v. State,  
25 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989). In the case at bar, the evidence of one  
26 offense is not necessary in proving the other offense, nor is it necessary in providing the jury  
27 with a complete picture. The three offenses are not connected in any way and the evidence  
28 is not cross-admissible. Moreover, admitting the evidence of one offense in the trial of the

1 other would be more prejudicial than probative. Mitchell, at 738, *citing Berner v. State*, 104  
2 Nev. 695 (1988); and citing NRS 48.045(2). The evidence would essentially amount to  
3 evidence of prior bad acts. This type of evidence is not allowed to show that a defendant has  
4 the propensity to commit the crime. Middleton v. State, 114 Nev. 1089, 1108, 968 P.2d 296,  
5 309 (1998). The State argues that the evidence would be cross-admissible because they can  
6 use evidence of one offense to show motive or intent, thus circumventing the propensity rule.  
7 NRS 48.045 (2004). However, that argument is tenuous, at best. Moreover, the prejudicial  
8 nature of the evidence far outweighs its probative value and the evidence is therefore not  
9 cross-admissible. See Tabish v. State, 73 P.3d 584, 593, *citing Tinch v. State*, 113 Nev. 1170,  
10 1176, 946 P.2d 1061, 1064065 (1997).

11 The Tabish case is useful in understanding when evidence is not cross-admissible  
12 because the prejudicial value outweighs the probative value. The defendants were charged  
13 with the September 17, 1998 murder of Ted Binion, as well as the July 1998 kidnaping and  
14 beating of Leo Casey. Tabish, at 586. Defendant Tabish was convicted in both offenses. Id.  
15 Both defendants appealed their convictions, arguing, among other things, that the joinder of  
16 the offenses was improper. Id. at 589. The State argued that the evidence was cross-  
17 admissible for the purposes of showing motive, plan and identity. Id. at 593. Our Supreme  
18 Court disagreed. Id. The court noted that although the evidence could have been used to show  
19 motive, plan or identity, the prejudicial value of the evidence was far greater than the probative  
20 value. Id. The court further reasoned that the evidence would cause a "spillover effect." Id.

21 The same reasons that make joinder of the counts inappropriate, make the severance  
22 of the same counts appropriate. The controlling state statute which describes relief from  
23 prejudicial joinder is NRS §174.165, which states in part, "[i]f it appears that a defendant or  
24 the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment  
25 or information, or by such joinder for trial together, the court may order an election or separate  
26 trials of counts, grant a severance of defendant's or provide whatever other relief justice  
27 requires."

28 When counts are not related, "the court must assess the likelihood that a jury not

1 otherwise convinced beyond a reasonable doubt of the defendant's guilt of one or more of the  
2 charged offenses might permit the knowledge of the defendant's other criminal activity to tip  
3 the balance and convict him. If the court finds a likelihood that this may occur, severance  
4 should be granted." Floyd v. State, 118 Nev. 17, 42 P.3d 249 (2002), citing, People v. Bean,  
5 46 Cal. 3d 919, 760 P.2d 996 (Cal. 1988).

6 This is exactly the danger the defendant faces in the instant case. The Defendant  
7 faces the risk of the jury accumulating evidence against him, as well as using evidence of one  
8 offense to infer propensity to commit a crime in the other offenses. The counts of each event  
9 are prejudicial in their nature and will be highly inflammatory to any jury. By joining the counts  
10 of each event, the State will be able to provide a circular argument, wherein the likelihood that  
11 the Defendant committed the offenses at one of the events is made more probable by the  
12 possibility that the Defendant committed the offenses at the other event. These are risks that  
13 the Defendant should not face in a trial where his liberty is at stake.

14 C.

15 Consolidation Should Not Be Granted Because a  
16 Heightened Standard of Review Is Required Due to  
17 the Fact the Death Penalty Is Being Sought

18 In a series of recent decisions, the California Supreme Court has made it abundantly  
19 clear that in a capital case it will no longer tolerate the indiscriminate joining together of two  
20 murder charges, especially when the effect of the joinder is to give rise to the special  
21 circumstance allegation of multiple murder (see, People v. Johnson [1987] 43 Cal.3d 296, 309,  
22 n.5; People v. Smallwood [1986] 42 Cal.3d; Williams v. Superior Court (1984) 36 Cal.3d 441).

23 In Williams, the Court ordered severance of two similar but unrelated murder charges  
24 and also set forth the standards for meaningful review of severance motions. In the course  
25 of its discussion, the Court emphasized:

26 "The final consideration in our analysis is that since one of the charged crimes  
27 is a capital offense, carrying the gravest possible consequences, the court must  
28 analyze the severance issue with a higher degree of scrutiny and care than is  
normally applied in a non-capital case. Even greater scrutiny is required in the  
instant matter, for it is the joinder itself which gives rise to the special  
circumstance allegation of multiple murder under Penal Code Section 190.2,  
subdivision (a)(3)." (36 Cal.3d at 454.)



1 In Smallwood, the Court reversed a death penalty case in its entirety solely on the basis  
2 that the trial court erred in denying defendant's pretrial motion to sever two murder counts.  
3 Citing Williams, the Court stressed "the fact that this case is a capital one, 'carrying the gravest  
4 possible consequences.'" (42 Cal.3d at 430.) The Court was highly critical of the trial court for  
5 ignoring that fact:

6 "This factor should have prompted the trial court to analyze the severance issue  
7 with a higher degree of scrutiny and care than is normally applied in a  
8 non-capital case. Here, the record demonstrates that the trial court ruled with  
9 virtually no scrutiny and care, denying a severance motion in the face of a clear  
10 showing of prejudice and despite the prosecutor's concession that no legitimate  
11 state goals would be served by joinder. Even if such an ill-considered ruling  
12 were justifiable in a less serious case, it was impermissible where questions of  
13 life and death were at stake." (Id., at 431.)

14 The Court acknowledged that in the past trial court rulings on severance motions "were  
15 typically accorded great deference." (Id., at 425.) But Williams had drastically altered the law  
16 of severance in capital cases:

17 "Williams represented a major advance by announcing for the first time that  
18 reviewing courts must analyze realistically the prejudice which flows from joinder  
19 in light of all the circumstances of the individual case. Williams also directed  
20 reviewing courts to weigh any claimed benefits to the prosecution from joinder  
21 in order to determine whether such benefits are real or theoretical. No longer  
22 may a reviewing court merely recite a public policy favoring joinder or presume  
23 judicial economy to justify denial of severance. Put simply, the joinder law must  
24 never be used to deny a criminal defendant's fundamental right to due process  
25 and a fair trial." (Id., at 425.)

26 Finally, in People v. Johnson, *supra*, the Court briefly considered the effect of Williams  
27 on the retrial of a case in which the prosecutor had joined a capital murder case with a related  
28 non-capital rape charge. The Court concluded: "(a)s for prejudice, the inflammatory nature  
of the rape--a brutal cross-racial rape in a church--coupled with the fact that the murder is a  
capital offense, weigh heavily against a joint trial upon retrial." (43 Cal.3d at 309-310, n. 5.)

### CONCLUSION

NORMAN FLOWERS respectfully requests that this Court deny the State's motion to  
consolidate because the three separate and distinct offenses are not part of the same

...  
...

1 transaction or occurrence, are not part of a common scheme or plan, and as the evidence of  
2 one is not cross-admissible in the trial of the others,

3 DATED this 2 day of <sup>January 2007</sup> ~~December, 2006~~.

4 RESPECTFULLY SUBMITTED:

5 DAVID M. SCHIECK  
6 SPECIAL PUBLIC DEFENDER

7 

8 RANDY H. PIKE  
9 Deputy Special Public Defender  
10 CLARK W. PATRICK  
11 Deputy Special Public Defender  
12 330 South Third Street, 8th Floor  
13 Las Vegas, NV 89155-2316  
14 (702) 455-6265  
15 Attorneys for Defendant

16 RECEIPT OF COPY

17 RECEIPT OF COPY of the foregoing **OPPOSITION TO STATE'S MOTION TO**  
18 **CONSOLIDATE** is hereby acknowledged this 2 day of <sup>Jan</sup> ~~December~~, 2007.

19 

20 DAVID ROGER  
21 District Attorney  
22 200 Lewis Avenue, 3rd Floor  
23 Las Vegas, NV 89155  
24 Attorney for Plaintiff  
25  
26  
27  
28

  
CLERK

1 **NISD**  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 PAMELA WECKERLY  
6 Chief Deputy District Attorney  
7 Nevada Bar #006163  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2211  
10 (702) 455-4711  
11 Attorney for Plaintiff  
12

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 NORMAN KEITH FLOWERS, aka  
12 Norman Harold Flowers,  
13 #1179383

13 Defendant.

CASE NO: C228755

DEPT NO: XIV

14 **NOTICE OF INTENT TO SEEK DEATH PENALTY**

15 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District  
16 Attorney, by and through PAMELA WECKERLY, Chief Deputy District Attorney, pursuant  
17 to NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a  
18 penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of  
19 the following aggravating circumstances:

20 1. The murder was committed by a person under sentence of imprisonment.  
21 (NRS 200.033(1)). To establish this aggravating circumstance, the State will present  
22 evidence from Flowers' parole officer and/or other witnesses and/or a certified copy of a  
23 Judgment of Conviction. In case C110585, Flowers was convicted of first degree arson.  
24 The Judgment of Conviction is dated May 28, 1993. In that case, he was sentenced to fifteen  
25 years in the Nevada Department of Prisons, making Flowers under sentence of imprisonment  
26 when he committed the instant offense in March 2005. Court documents regarding the  
27 conviction were attached to the Notice of Intent to Seek Death Penalty in Case No. C214390  
28

1 (which was consolidated into case C216032) and have previously been provided to the  
2 defense. The Notice in C214390 and the Notice filed in C216032 are also incorporated by  
3 reference.

4 2. The murder was committed by a person who has been convicted of a felony  
5 involving violence. (NRS 200.033 (2)). In case number C110585, Flowers was convicted of  
6 first degree arson. As previously mentioned, copies of court documents relevant to that case  
7 have been provided to the defense under Case Number C214390. To establish this  
8 aggravating circumstance, the State will rely on the following facts and evidence: on  
9 September 29, 1992, Claud and Barbara McGowan had left their residence on 9361 Parkdale  
10 at 7:30 am and had locked the doors. Around 12:00 p.m. a witness saw smoke coming from  
11 the residence and entered the residence to see if anyone was inside in need of assistance.  
12 This witness, Richard Mann, called the Fire Department. The Fire Department responded  
13 and extinguished the residential fire. Inside the residence bathroom, investigators found the  
14 McGowan's dog locked in the bathroom and deceased. Fire was set in south east bedroom  
15 in the corner. This fire took place in a residential neighborhood, thus threatening other  
16 individuals. Copies of relevant police reports regarding the incident have been provided to  
17 the defense and are incorporated by reference.

18 3. The murder was committed by a person who has been convicted of a felony  
19 involving violence. (NRS 200.033 (2)). In case number C109523, Flowers was convicted of  
20 robbery with use of a deadly weapon. To establish this aggravating circumstance, the State  
21 will rely on a certified copy of a Judgment of Conviction for this crime which has been  
22 provided to the defense and is incorporated by reference. In addition, the State will rely on  
23 the following facts: on October 10, 1992, Ranzy Rembert was approached by the defendant  
24 and another individual who claimed they were interested in test driving a vehicle. Rembert  
25 was working at The Car Store in Las Vegas, Clark County Nevada. After this conversation,  
26 Rembert, Flowers and a third individual got into a vehicle and left the car lot. After a while,  
27 the defendant and third individual pulled out a firearm and instructed Rembert to pull over,  
28 get out, and not look back. After Rembert exited the vehicle, the defendant and third

1 individual drove off. Copies of the police reports of this incident have been provided t the  
2 defense and are incorporated by reference.

3 4. The murder was committed while the person was engaged, in the commission  
4 of a robbery and the person charged killed the person murdered. (NRS 200.033 (4)). To  
5 establish this aggravating circumstance, the State will rely on testimony of Debra Quarles,  
6 the mother of victim Sheila Quarles. Debra Quarles will testify that she had previously  
7 purchased a stereo for her home. Debra Quarles noticed the stereo was missing at the same  
8 time she discovered that her daughter had been murdered. The State will present evidence  
9 that Sheila Quarles was home at the time of the murder and that she died as a result of  
10 drowning with strangulation being a significant contributing factor in order to establish the  
11 force or threat of force element of a robbery. This evidence will be in the form of testimony  
12 from a medical examiner and photographs from autopsy. The State also references and  
13 incorporates count four of the indictment which charges Flowers with robbing Sheila  
14 Quarles.

15 5. The person subjected the victim to nonconsensual sexual penetration  
16 immediately before the murder. (NRS 200.033 (13)). To establish this aggravating  
17 circumstance, the State will present the testimony of a medical examiner who will state that  
18 Sheila Quarles Coote sustained injuries to her vaginal area or introitus prior to death. This  
19 aggravating circumstance will also be proven with photographic evidence. The State also  
20 references counts three of the indictment which charges the defendant with sexual assault,  
21 one for placing his penis and/or an unknown object into the genital opening of Sheila  
22 Quarles against her will and/or aiding and abetting another individual in this crime. The  
23 State may call a sexual assault nurse examiner to explain how these types of injuries are  
24 indicative of sexual assault.

25 6. The murder was committed by a person who has been convicted of another  
26 murder and the provisions of subsection 12 do not otherwise apply to that murder. (NRS  
27 200.033(2)(a). Assuming that case C216032 proceeds to trial before the instant case,  
28 defendant Flowers may be convicted of two counts of murder before this case proceeds to

1 trial. Specifically, these convictions would be for the murder of Marilee Coote and Rena  
2 Gonzalez. The defense currently has all available discovery regarding that case where the  
3 State has alleged that defendant Flowers murdered Coote and Gonzalez on or about May 3,  
4 2005. The State alleges that each murder, that of Coote and Gonzalez, would be a separate  
5 aggravating circumstance should those convictions occur.

6 7. The murder was committed by a person who has been convicted of a felony  
7 involving violence. (NRS 200.033 (2)). Assuming that case C216032 proceeds to trial  
8 before the instant case and defendant Flowers is convicted of sexually assaulting Marilee  
9 Coote and Rena Gonzalez, it will be the State's position that these convictions fall under this  
10 aggravating circumstance. In that case, defendant Flowers is charged with multiple counts  
11 of sexual assault. The defense has all discovery associated with that case. Additionally, the  
12 State alleges that if convictions occur involving each victim, they substantiate two different  
13 aggravating circumstance under this subheading.

14 8 The murder was committed by a person who has been convicted of a felony  
15 involving violence. (NRS 200.033 (2)). Assuming case C216032 proceeds to trial before  
16 the instant case and defendant Flowers is convicted of robbing Marilee Coote and Rena  
17 Gonzalez, it will be the State's position that these convictions are prior violent felony  
18 convictions. In that case, Flowers is charged with robbing both victims in addition to  
19 murdering them. The defense has all discovery associated with that case. Additionally, the  
20 State alleges that if convictions occur involving those victims, they substantiate two different  
21 aggravating circumstances under this subheading.

22 DATED this 11th day of January, 2007.

23 Respectfully submitted,

24 DAVID ROGER  
25 Clark County District Attorney  
Nevada Bar #002781

26 BY /s/D. McDonald

27 PAMELA WECKERLY  
28 Chief Deputy District Attorney  
Nevada Bar #006163

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice of Intent to Seek the Death Penalty, was made  
this 11th day of January, 2007, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER'S OFFICE  
FAX #455-6273

AND

BRETT WHIPPLE, ESQ.  
FAX #895-7315

/s/D. McDonald  
Secretary for the District Attorney's  
Office

PW/ddm

ORIGINAL

FILED

JAN 23 4 33 PM '07

CLERK OF THE COURT

0001  
DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER  
Nevada Bar No. 0824  
RANDALL H. PIKE  
Deputy Special Public Defender  
Nevada Bar No. 1940  
CLARK W. PATRICK  
Deputy Special Public Defender  
Nevada Bar No. 9451  
330 South Third Street, Suite 800  
Las Vegas, NV 89155-2316  
(702) 455-6265  
Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.

NORMAN FLOWERS,  
Defendant.

CASE NO. C228755  
DEPT. NO. XIV

DATE OF HEARING: 2-5-07  
TIME OF HEARING: 8:30 a.m.  
9:00 a.m.

**MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER BAD ACTS  
AND MOTION TO CONFIRM COUNSEL**

COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys,  
DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public  
Defender, CLARK W. PATRICK, Deputy Special Public Defender and BRET WHIPPLE, ESQ.  
and hereby moves the Court for an Order to confirm Bret Whipple as lead counsel in the  
instant matter and to preclude evidence of other bad acts.

This motion is made and based upon the following Points and Authorities, and any  
argument of counsel at the time of hearing of this motion.

...  
...



1 NOTICE OF MOTION

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion  
5 on for hearing before the above-entitled Court on the 5<sup>th</sup> day of Feb, 2007, at  
6 the hour of 9:00 a.m.

7 **POINTS AND AUTHORITIES**

8 **FACTUAL BACKGROUND**

9 On June 7, 2005, a Criminal Complaint was filed in Justice Court charging Defendant  
10 NORMAN FLOWERS (hereinafter FLOWERS) with a single count of Murder (and other  
11 charges) on the alleged victim Marilee Coote. Approximately two weeks later, a Second  
12 Amended Criminal Complaint was filed charging FLOWERS with Murder (and other charges)  
13 alleging "this time" two (2) victims, Marilee Coote and Rena Gonzales.

14 On August 17, 2005, at the conclusion of FLOWERS' preliminary hearing, the Court  
15 dismissed all counts relating to victim Rena Gonzales. On August 29, 2005, an information  
16 was filed in District Court, Case Number C214390, charging Flowers with this single homicide  
17 (Marilee Coote).

18 At the initial Arraignment on August 30, 2005 FLOWERS appeared and pled "not  
19 guilty." In addition, FLOWERS asserted his Constitutional right to a speedy trial and the Court  
20 set a trial date of October 24, 2005. On the same day, counsel for FLOWERS received notice  
21 of the State's Intent to Seek and Indictment. Thereafter, on October 18, 2005 the State  
22 dismissed Case Number C214390, and FLOWERS was indicted in Case Number C216032  
23 and charged with two (2) counts of homicide, alleged to have occurred on May 3, 2005.

24 On November 8, 2005, FLOWERS received a Notice of Intent to Seek Death Penalty  
25 containing aggravator number eight (8) which alleged, as a basis for seeking the death  
26 penalty, two or more convictions for murder.

27 FLOWERS has now been indicted under Case Number C228755 charging him with a  
28 third homicide that occurred March 24, 2005, forty-one days prior to the first two.

1 While the matter was pending indictment on the third case, the Defendant brought two  
2 proper person motions to have the Special Public Defender's Office removed from  
3 representation in the case. The Hon. Judge Bonaventure appointed attorney Brett Whipple  
4 to assist regarding the third homicide which was then the subject of the indictment. Upon  
5 indictment, the matter was assigned to the instant department. This only presents a difficulty  
6 now that the State's motion to consolidate Case Nos. C216032 and C228755 was not granted  
7 in Department VI.

8 Accordingly, the Defendant, through counsel respectfully requests that this Honorable  
9 Court appoint Brett Whipple as lead counsel.

#### 10 ARGUMENT

11 The Court has, the defense believes, appropriately denied the State's motion to  
12 consolidate the offenses which allegedly occurred on March 24, 2005 and May 3, 2005.  
13 Joinder is not proper as the events do not arise from the same transaction nor constitute a  
14 common plan. The Defense is left in an, as of yet, unresolved procedural nightmare. The  
15 State has announced that it would be bringing a motion to introduce the evidence of the  
16 alternate acts either during the guilt phase to establish identity and motive. In the alternative,  
17 the State has included within it's notice of intent to seek the death penalty it's desire to  
18 produce evidence of each case within the other.

19 As the Supreme Court has been definitive on the requirements of defense counsel to  
20 actively and thoroughly investigate any homicide which may be cross referenced within a trial,  
21 counsel for the defendant has been required to continue the trial on the May 3, 2005 case to  
22 complete the investigation. While attempting to coordinate with Mr. Whipple and use his  
23 investigation, it was determined that the most proper approach would be to bring motions in  
24 limine in both cases, determine the two Court's wishes and determine if the Defense must then  
25 resort to a drastic tactic of consolidation to minimize the unavoidable prejudice that cross  
26 admission would produce.

27 . . .

1                    **IT WOULD BE PROPER TO APPOINT COUNSEL IN THIS MATTER**

2                    EDCR 7.40 provides in relevant portion as follows:

3                    "(b) Counsel in any case may be changed only:

4                    (1) When a new attorney is to be substituted in place of the attorney  
5                    withdrawing, by the written consent of both attorneys and the client,  
6                    which must be filed with the court and served upon all parties or their  
7                    attorneys who have appeared in the action, or

8                    (2) When no attorney has been retained to replace the attorney  
9                    withdrawing, by order of the court, granted upon written motion, and

10                    (I) If the application is made by the attorney, the  
11                    attorney must include in an affidavit the address,  
12                    or last known address, at which the client may be  
13                    served with notice of further proceedings taken in  
14                    the case in the event the application for  
15                    withdrawal is granted, and the telephone number,  
16                    or last known telephone number, at which the  
17                    client may be reached and the attorney must  
18                    serve a copy of the application upon the client and  
19                    all other parties to the action or their attorneys, or

20                    (c) No application for withdrawal or substitution may be granted if a delay of  
21                    the trial or of the hearing of any other matter in the case would result"

22                    In Brown v. Craven, 424 F.2d 1166 (9th Cir. 1970) the Court stated:

23                    "We think, however, that to compel one charged with grievous crime to  
24                    undergo a trial with the assistance of an attorney with whom he has become  
25                    embroiled in irreconcilable conflict is to deprive him of the effective  
26                    assistance of any counsel whatsoever."

27                    Brown, 424 F.2d at 1170.

28                    Similarly in United States v. Williams, 594 F.2d 1258 (9th Cir. 1979) the Court  
found:

"Here, there was no finding, although a strong showing was made, on the  
issue of irreconcilable conflict, and the matter was called to the attention of  
the trial court well before the date of trial. Under the stated facts we find to  
exist here, the denial of appellant's motion for change of appointed counsel  
was error. As a result, appellant was deprived of his constitutionally  
guaranteed right to have the effective assistance of counsel at his trial."

Williams, 594 F.2d at 1261.

In reviewing the district court's exercise of discretion in denying a defendant's

1 motion for substitution of counsel, the Court should consider the following three factors: (1)  
2 the extent of conflict between the defendant and counsel, (2) the adequacy of the court's  
3 inquiry into the defendant's complaint, and (3) the timeliness of the motion. United States  
4 v. Gonzalez, 113 F.3d 1026, 1028 (9th Cir. 1997). A district court abuses its discretion in  
5 denying such a motion if an irreconcilable conflict exists between the defendant and his  
6 counsel. United States v. Moore, 159 F.3d 1154, 1158 n.3 (9th Cir. 1998). If the  
7 relationship between lawyer and client completely collapses, the refusal to substitute new  
8 counsel violates the defendant's Sixth Amendment right to effective assistance of counsel.  
9 See, Brown, 424 F.2d at 1170.

11  
12 In the instant case, Mr. Flowers has written correspondence indicating he desires  
13 current counsel to withdraw and alternate counsel be appointed. Based on the allegations  
14 made by Mr. Flowers, it is apparent that irreconcilable differences exist between counsel  
15 and client. Due to attorney-client privilege counsel has not attached the correspondence  
16 but upon request will present same for in-camera review to this Court.

17  
18 In addition, this is a capital case. Mr. Flowers is not just charged with a "grievous  
19 crime" but is facing the death sentence. It is therefore imperative that he not be compelled  
20 to "undergo a trial with the assistance of an attorney with whom he has become embroiled  
21 in irreconcilable conflict". Brown, 424 F.2d at 1170.

22 **EVIDENCE OF OTHER BAD ACTS SHOULD NOT BE**  
23 **ALLOWED IN A SEPARATE TRIAL DURING EITHER**  
24 **THE GUILT PHASE OR IN THE PENALTY PHASE**

25 As a general proposition, evidence of prior crimes and other bad acts of a criminal  
26 defendant is inadmissible character evidence unless it falls within certain specific  
27 exceptions. See, NRS 48.045

1 Reference to a prior criminal history of a defendant is reversible error. Witherow v.  
2 State, 104 Nev. 721, 765 P.2d 1153 (1988). The test for determining whether a reference  
3 to criminal history occurred is whether "a juror could reasonably infer from the facts  
4 presented that the accused had engaged in prior criminal activity." Manning v. Warden, 99  
5 Nev. 82, 659 P.2d 847 (1983), citing Commonwealth v. Allen, 292 A.2d 373, 375 (Pa  
6 1972).

8 This court in Manning, supra, detailed a number of different cases where in indirect  
9 references to prior acts were found to be references to criminal history. See e.g. Gehrke v.  
10 State, 96 Nev. 581, 613 P.2d 1028 (1980); Reese v. State, 95 Nev. 419, 596 P.2d 212  
11 (1979); Geary v. State, 91 Nev. 784, 544 P.2d 417 (1975); Founts v. State, 87 Nev. 165,  
12 483 P.2d 654 (1971). Most interestingly, the State in Manning, supra, conceded that in a  
13 majority of jurisdiction, an improper reference to criminal history is a violation of due  
14 process since it affects the presumption of innocence. Id at 87.

16 Many years ago this Court well summarized the position of Defendant Norman  
17 Flowers:

19 The danger of allowing prejudicious remarks and testimony during a trial is  
20 not confined to their momentary effect upon the juror. Trial tactics are  
21 influenced immeasurably. Counsel is forced to object and argue repeatedly.  
22 Defendant may be compelled to testify when it is his right not to do so. Ibsen  
23 v. State, 83 Nev. 42, 422 P.2d 543 (1967)

24 This reversal for a new trial is a hard burden to bear because Walker is a  
25 confirmed criminal. But it is a proud tradition of our system that every man,  
26 no matter who he may be, is guaranteed a fair trial. As stated by Chief  
27 Justice Traynor in People v. Cahan, 282 P.2d 905 at 912 (Cal. 1955) 'Thus,  
28 no matter how guilty a defendant might be or how outrageous his crime, he  
must not be deprived of a fair trial, and any action, official or otherwise, that  
would have that effect would not be tolerated.'

The requisites of a trial free of prejudicial atmosphere are too deeply  
implanted to require repetition; for when the death penalty is executed, its  
consequences are irretrievable. A fair trial therefore is a very minimal

1 standard to require before its imposition.”

2 Walker v. Fogliani, 83 Nev. 154, 157, 425 P.2d 794 (1983)

3 If the State desires to introduce evidence of other bad acts or criminal activity it is  
4 necessary for the Court to hold a hearing wherein it is the burden of the State to establish  
5 that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and  
6 convincing evidence; and (3) the probative value of the evidence is not substantially  
7 outweighed by the danger of unfair prejudice. Tinch v. State, 113 Nev. 1170, 946 P.2d  
8 1061 (1997). If the State intends to introduce any such evidence it is requested that a  
9 hearing be held outside the presence of the jury to determine if the evidence is properly  
10 admissible.  
11

12  
13 The Nevada Supreme Court has held that if evidence of one crime would be cross-  
14 admissible at a trial on another charge, the charges may be tried together. Mitchell v.  
15 State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989). In the case at bar, the evidence of  
16 one offense is not necessary in proving the other offense, nor is it necessary in providing  
17 the jury with a complete picture. The three offenses are not connected in any way and the  
18 evidence is not cross-admissible. Moreover, admitting the evidence of one offense in the  
19 trial of the other would be more prejudicial than probative. Mitchell, at 738, *citing* Berner v.  
20 State, 104 Nev. 695 (1988); and citing NRS 48.045(2). The evidence would essentially  
21 amount to evidence of prior bad acts. This type of evidence is not allowed to show that a  
22 defendant has the propensity to commit the crime. Middleton v. State, 114 Nev. 1089,  
23 1108, 968 P.2d 296, 309 (1998). The State argues that the evidence would be cross-  
24 admissible because they can use evidence of one offense to show motive or intent, thus  
25 circumventing the propensity rule. NRS 48.045 (2004). However, that argument is  
26  
27  
28

1 tenuous, at best. Moreover, the prejudicial nature of the evidence far outweighs its  
2 probative value and the evidence is therefore not cross-admissible. See Tabish v. State,  
3 73 P.3d 584, 593, *citing* Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064065  
4 (1997).

5  
6 The Tabish case is useful in understanding when evidence is not cross-admissible  
7 because the prejudicial value outweighs the probative value. The defendants were  
8 charged with the September 17, 1998 murder of Ted Binion, as well as the July 1998  
9 kidnaping and beating of Leo Casey. Tabish, at 586. Defendant Tabish was convicted in  
10 both offenses. Id. Both defendants appealed their convictions, arguing, among other  
11 things, that the joinder of the offenses was improper. Id. at 589. The State argued that the  
12 evidence was cross-admissible for the purposes of showing motive, plan and identity. Id.  
13 at 593. Our Supreme Court disagreed. Id. The court noted that although the evidence  
14 could have been used to show motive, plan or identity, the prejudicial value of the evidence  
15 was far greater than the probative value. Id. The court further reasoned that the evidence  
16 would cause a "spillover effect." Id.

17  
18  
19 The same reasons that make joinder of the counts inappropriate, make the  
20 severance of the same counts appropriate. The controlling state statute which describes  
21 relief from prejudicial joinder is NRS §174.165, which states in part, "[i]f it appears that a  
22 defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in  
23 an indictment or information, or by such joinder for trial together, the court may order an  
24 election or separate trials of counts, grant a severance of defendant's or provide whatever  
25 other relief justice requires."

26  
27 When counts are not related, "the court must assess the likelihood that a jury not  
28

1 otherwise convinced beyond a reasonable doubt of the defendant's guilt of one or more of  
2 the charged offenses might permit the knowledge of the defendant's other criminal activity  
3 to tip the balance and convict him. If the court finds a likelihood that this may occur,  
4 severance should be granted." Floyd v. State, 118 Nev. 17, 42 P.3d 249 (2002), citing,  
5 People v. Bean, 46 Cal. 3d 919, 760 P.2d 996 (Cal. 1988).  
6

7 This is exactly the danger the defendant faces in the instant case. The Defendant  
8 faces the risk of the jury accumulating evidence against him, as well as using evidence of  
9 one offense to infer propensity to commit a crime in the other offenses. The counts of each  
10 event are prejudicial in their nature and will be highly inflammatory to any jury. By joining  
11 the counts of each event, the State will be able to provide a circular argument, wherein the  
12 likelihood that the Defendant committed the offenses at one of the events is made more  
13 probable by the possibility that the Defendant committed the offenses at the other event.  
14 These are risks that the Defendant should not face in a trial where his liberty is at stake.  
15

16 **A "HEIGHTENED STANDARD OF REVIEW" IS REQUIRED DUE TO**  
17 **THE FACT THE DEATH PENALTY IS BEING SOUGHT**

18 In a series of recent decisions, the California Supreme Court has made it  
19 abundantly clear that in a capital case it will no longer tolerate the indiscriminate joining  
20 together of two murder charges, especially when the effect of the joinder is to give rise to  
21 the special circumstance allegation of multiple murder (see, People v. Johnson [1987] 43  
22 Cal.3d 296, 309, n.5; People v. Smallwood [1986] 42Cal.3d; Williams v. Superior Court  
23 (1984) 36 Cal.3d 441).  
24

25 In Williams, the Court ordered severance of two similar but unrelated murder  
26 charges and also set forth the standards for meaningful review of severance motions. In  
27 the course of its discussion, the Court emphasized:  
28



1 "The final consideration in our analysis is that since one of the charged  
2 crimes is a capital offense, carrying the gravest possible consequences, the  
3 court must analyze the severance issue with a higher degree of scrutiny and  
4 care than is normally applied in a non-capital case. Even greater scrutiny is  
5 required in the instant matter, for it is the joinder itself which gives rise to the  
6 special circumstance allegation of multiple murder under Penal Code Section  
7 190.2, subdivision (a)(3)." (36 Cal.3d at 454.)

8 In Smallwood, the Court reversed a death penalty case in its entirety solely on the  
9 basis that the trial court erred in denying defendant's pretrial motion to sever two murder  
10 counts. Citing Williams, the Court stressed "the fact that this case is a capital one,  
11 'carrying the gravest possible consequences.'" (42 Cal.3d at 430.) The Court was highly  
12 critical of the trial court for ignoring that fact:

13 "This factor should have prompted the trial court to analyze the severance  
14 issue with a higher degree of scrutiny and care than is normally applied in a  
15 non-capital case. Here, the record demonstrates that the trial court ruled with  
16 virtually no scrutiny and care, denying a severance motion in the face of a  
17 clear showing of prejudice and despite the prosecutor's concession that no  
18 legitimate state goals would be served by joinder. Even if such an  
19 ill-considered ruling were justifiable in a less serious case, it was  
20 impermissible where questions of life and death were at stake." (Id., at 431.)

21 The Court acknowledged that in the past trial court rulings on severance motions  
22 "were typically accorded great deference." (Id., at 425.) But Williams had drastically altered  
23 the law of severance in capital cases:

24 "Williams represented a major advance by announcing for the first time that  
25 reviewing courts must analyze realistically the prejudice which flows from  
26 joinder in light of all the circumstances of the individual case. Williams also  
27 directed reviewing courts to weigh any claimed benefits to the prosecution  
28 from joinder in order to determine whether such benefits are real or  
theoretical. No longer may a reviewing court merely recite a public policy  
favoring joinder or presume judicial economy to justify denial of severance.  
Put simply, the joinder law must never be used to deny a criminal defendant's  
fundamental right to due process and a fair trial." (Id., at 425.)

Finally, in People v. Johnson, *supra*, the Court briefly considered the effect of  
Williams on the retrial of a case in which the prosecutor had joined a capital murder case

1 with a related non-capital rape charge. The Court concluded: "(a)s for prejudice, the  
2 inflammatory nature of the rape--a brutal cross-racial rape in a church--coupled with the  
3 fact that the murder is a capital offense, weigh heavily against a joint trial upon retrial." (43  
4 Cal.3d at 309-310, n. 5.)  
5

6 **CONCLUSION**

7 NORMAN FLOWERS respectfully requests that this Court confirm the appointment  
8 of Brett Whipple, Esq. as lead counsel and preclude the State from introducing evidence  
9 of the two murder cases during the prosecution o f the other case.  
10

11 DATED this 23 day of January, 2007.

12 RESPECTFULLY SUBMITTED:

13 DAVID M. SCHIECK  
14 SPECIAL PUBLIC DEFENDER

15   
16

17 RANDY H. PIKE  
18 CLARK W. PATRICK  
19 330 South Third Street, 8th Floor  
20 Las Vegas, NV 89155-2316  
21 Attorneys for Defendant  
22  
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28


1  
2 AFFIRMATION  
Pursuant to NRS 239B.030

3 The undersigned does hereby affirm that the preceding Motion to Preclude  
4 Evidence of Other Bad Acts and to Confirm Counsel filed in District Court Case number  
5 C228755 does not contain the social security number of any person.  
6

7 DATED: 1-23-07

8 SPECIAL PUBLIC DEFENDER

9 DAVID M. SCHIECK

10 

11 RANDY PIKE

12 CLARK PATRICK

13 Attorneys for Flowers

14 330 S. Third Street, 8th Floor

15 Las Vegas NV 89155  
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CLERK OF THE COURT

**OPPS**  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LISA LUZAICH  
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Nevada Bar #005056  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO: C228755
	)	
-vs-	)	DEPT NO: XIV
	)	
NORMAN FLOWERS,	)	
#1179383	)	
	)	
Defendant.	)	

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE  
EVIDENCE OF OTHER BAD ACTS AND MOTION TO CONFIRM COUNSEL

DATE OF HEARING: 02/05/07  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points  
and Authorities in Opposition to Defendant's Motion In Limine To Preclude Evidence Of  
Other Bad Acts And Motion To Comfirm Counsel.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 A. The Facts of the Instant Case

4 On March 24, 2005, Debra Quarles returned home from grocery shopping to her  
5 residence at 1001 North Pecos, Las Vegas, Clark County, Nevada, and found her eighteen  
6 year old daughter, Sheila Quarles unresponsive in a bathtub containing warm water. Debra  
7 had returned home at 2:30 in the afternoon. She was able to remove Sheila from the tub with  
8 the help of a neighbor who had helped her carry in groceries. Debra immediately called 911.

9 An autopsy later determined that Sheila died from drowning. However, strangulation  
10 was a significant contributing factor to her death. Sheila also had multiple vertical  
11 lacerations on her introitus, evidence of a violent sexual assault.

12 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30  
13 p.m. and her mother arrived home to find her at approximately 2:30 p.m. In addition,  
14 detectives learned that Sheila was involved in a lesbian relationship with an individual  
15 named Quinise Toney.

16 At autopsy, investigators collected samples from Sheila's vagina. Those swabs  
17 contained a mixture of DNA which included semen. Quinise Toney was excluded as being a  
18 source of this DNA. Sheila Quarles was the major component of the DNA. The male  
19 portion of the DNA was entered into a DNA database. When Flowers' DNA was collected  
20 in the May murders, his profile was entered into the DNA database as well. After this entry,  
21 investigators were notified that Flowers' profile was consistent with part of the minor  
22 component DNA from Sheila Quarles' vaginal swabs. In fact, 99.9934 percent of the  
23 population is excluded as being a source of that DNA, but Flowers is not. There was an  
24 additional, unknown male contributor to the vaginal swabs of Sheila Quarles as well.

25 After detectives were notified of the DNA match, they recontacted Debra Quarles.  
26 Quarles explained that she knew and had actually dated Norman Flowers several months  
27 before the murder. She also explained that he would occasionally give her a ride to her work  
28 at the time, and that he knew her family members. Quarles said that just prior to the murder,

1 she saw Flowers at her apartment complex. At that time, he explained that he was working  
2 in maintenance at the complex. After her daughter's murder, Quarles suffered from  
3 depression. Flowers offered to drive her to appointments with her therapist. On several  
4 occasions, Flowers inquired to Debra whether the police had figured out who had murdered  
5 her daughter.

6 B. Facts of Case C216032 in District Court VI

7 Approximately six (6) weeks after the murder of Sheila, on May 3, 2005, Silver Pines  
8 Apartments employees discovered 45-year-old Marilee Coote lying dead on her living room  
9 floor. Ms. Coote was a reliable employee of the Andre Agassi Center. When she did not  
10 arrive at work by 7:30 a.m., a co-worker became concerned and asked the apartment workers  
11 to do a welfare check. After the apartment employees discovered the body, they contacted  
12 the police.

13 Paramedics arrived, then police. Ms. Coote was found lying on her living room floor,  
14 facing up and completely nude. Inside her belly button were ashes from burnt incense. The  
15 skin between her upper thighs and her pubic area was burned. Coote's apartment was  
16 locked, but her purse and keys were missing. Inside Coote's washing machine, police found  
17 personal photos, bills, and identification belonging to Coote. The items appeared to have  
18 been washed because they had a soap residue on them. In the bathtub, under ten inches of  
19 water, police found other items of paperwork, a phone book, and jewelry boxes covered with  
20 a towel. The apartment was otherwise very neat and undisturbed.

21 The detectives initially did not view this incident as a homicide. Therefore, they  
22 documented the scene, but did not collect evidence. After conducting an autopsy, however,  
23 Dr. Knoblock concluded the Coote died as the result of strangulation. He also noted tearing  
24 of Coote's labia and anal area. Dr. Knoblock concluded that these tears were sustained ante-  
25 mortem. Coote also had contusions on her arms and forearms.

26 While various officers were in Coote's apartment during the morning of May 3, 2005,  
27 another resident of the complex, Juanita Curry, came in contact with the defendant, Norman  
28 Flowers. This occurred between 7:00 and 10:00 a.m. Curry was an acquaintance of

1 Flowers' girlfriend, Mawusi Ragland. Curry lived two floors below Coote. Curry noticed  
2 the police and paramedics going in and out of Coote's apartment. From apartment  
3 employees, Curry believed that Coote died of natural causes. Sometime that same morning,  
4 defendant Flowers knocked on Curry's door. He asked if he could use her phone. He said  
5 he was supposed to meet up with Mawusi that morning. She agreed and gave him the phone.

6 Curry is physically disabled and sometimes walks with a cane. Because of her  
7 compromised physical state, she was not comfortable allowing Flowers in her apartment, so  
8 she let him use her cordless phone in the doorway. After Flowers used the phone, he came  
9 back a few times later, each time with a new request. He asked to use the phone again. He  
10 asked for water. At one point, he asked to use her bathroom. She agreed, but when he went  
11 in the bathroom, she stepped out of the apartment. As she did so, he asked her to come in  
12 and help him find the bathroom light. She refused. When Flowers was at her doorstep, she  
13 also noticed that when the police walked back and forth, he would turn his head away. He  
14 commented, "the police make me nervous." During the final conversation in Curry's  
15 doorway, Flowers leaned down and tried to kiss Curry on the mouth. She turned away.

16 Curry observed Flowers walk across the parking lot to the doorway of Rena  
17 Gonzalez's apartment several times that morning. Curry left the complex a little before  
18 11:00 in the morning. When she returned, she learned that the police had discovered the  
19 body of Rena Gonzalez. She gave a statement to police and identified Mawusi's boyfriend  
20 as someone she saw in the area of Rena Gonzalez's apartment.

21 Officers learned of the homicide involving Rena Gonzalez at approximately 4:00 p.m.  
22 Rena's Gonzalez's two daughters, the oldest of whom is seven-years-old, came home from  
23 school and found their mother on her knees leaning against her bed in her master bedroom.  
24 She was unresponsive. They ran and got their friend, Shayne. Shayne returned with them.  
25 They tried to remove a phone cord around Gonzalez's neck and called 911.

26 Gonzalez's apartment was clean and undisturbed with the exception of the following:  
27 a broken blue plastic hair comb in the front hallway and a single green sandal were both in  
28 the front hallway. Officers could not locate Gonzalez's purse or keys.



1           Gonzalez was at the foot of her bed, with her body bent at the waist. Her upper torso  
2 was on the bed with her face down and arms outstretched. A black phone cord and black  
3 lanyard were around her neck. She was dressed in shorts, which were slightly pulled down,  
4 and a shirt. She had the matching blue hairclip hanging from her head and blood coming  
5 from her ear.

6           At autopsy, Dr. Simms noted extensive bruising to breast, right arm and right leg. Dr.  
7 Simms concluded that Gonzalez died as a result of strangulation. He also noted tearing to  
8 her vaginal and anal area. Dr. Simms concluded that these injuries took place post-mortem.

9           Detectives learned that Rena Gonzalez was a close friend of Mawusi Ragland. In  
10 fact, the two women would trade off watching each other's children. They determined that  
11 Gonzalez had walked her daughters to the school bus the morning of the 3rd and would have  
12 returned home around 8:30 a.m. Rena Gonzalez did not work.

13           Mawusi Ragland also lived at the Silver Pines Apartments. She lived in the  
14 apartment across from Coote. She told detectives that approximately three weeks before the  
15 homicide, she and Flowers had gotten into an argument and had not spoken since. In the  
16 argument, Mawusi implied that she would socialize with other men. Mawusi had discussed  
17 Flowers with her friend Rena Gonzalez as well, although Flowers and Gonzalez had not met.  
18 According to Mawusi, Gonzalez advised her not to date Flowers.

19           When Mawusi returned home on the evening of May 3, she saw police vehicles. She  
20 was told her friend, Rena, had been murdered and that her other friend, Marilee, had died of  
21 natural causes. On her apartment door, Mawusi noticed a note. It was from Flowers. It  
22 stated that he tried to catch her before she went to work, but that it looked like he picked a  
23 bad day because "big shit is happening over here." He also asked if she had dated other men  
24 since their argument. Flowers called Mawusi that evening. She was very emotional and  
25 explained that both Marilee and Rena were dead. Flowers did not appear to be shocked upon  
26 hearing this news. She asked him to come over and help her through this difficult time. He  
27 told her he'd be right over. When Flowers did not arrive in the next 90 minutes, Mawusi  
28 called him to ask where he was. He said he had not left home because when tried to call her,

1 she did not answer her phone. He also mentioned that he had seen Rena that morning and  
2 had a short conversation with her. Mawusi asked him what time he was at the complex and  
3 Flowers responded, "I didn't kill her."

4 After speaking with Mawusi, detectives interviewed Norman Flowers. Initially, he  
5 told officers that he had no contact with Marilee Coote on the morning of the murder. He  
6 said he had not seen her for months. He also explained that he met Rena Gonzalez several  
7 months earlier through Mawusi. He admitted that he had spoken with Rena that morning,  
8 but denied ever entering her apartment. Flowers agreed to provide a DNA sample.

9 Subsequently, Flowers' DNA sample was compared with swabs from Marilee Coote's  
10 sexual assault kit. Both vaginal and rectal swabs matched to Flowers. In addition, DNA was  
11 collected from the carpet area where Coote was lying, specifically, the carpet beneath her  
12 upper thighs. That sample also matched to Flowers.

13 Detectives interviewed Flowers again. He still maintained that he had never been in  
14 Gonzalez's apartment that morning. With regard to Marilee Coote, he first explained that he  
15 had had sex with her in the past, but not that day. Then, he acknowledged that he had sex  
16 with her the night before she died, but that she was alive and fine when he left. He denied  
17 having rough sex with her. Later in the interview, he claimed that he might have had rough  
18 sex with her, but that she was fine when he left. In a third interview, he said he did have  
19 rough sex with her, but that she was alive when he left. He also stated that there was a third  
20 man watching the two have sex. He said this man was a medium height, weight, and age  
21 black man, but he did not know his name. He claims this man remained in the apartment  
22 after he left. Thus, his latest claim was that the sex was consensual and another individual  
23 must have killed Coote.

24 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source  
25 of this DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is  
26 excluded as the source of that DNA as well.

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1 this other person, went to go get some marijuana from this lady and before -- that's how he  
2 put it -- before they knew it he was beating her up and did her in. And this other person that  
3 was with him allegedly had sex with her and before he knew it he smothered her to death."  
4 The defendant also told Robinson that he went through the Hispanic lady's car.

5 After hearing this, Robinson contacted Det. Huggins. He told her what he knew and  
6 gave a taped statement.

7 George Dunlap testified before the grand jury at the request of the defense (the  
8 special public defender). Interestingly, he had offered to provide information for the district  
9 attorney for "probably three or four" other cases. The State did not take him up on his offer.

10 Dunlap told the grand jury that he first met the defendant when he was speaking to  
11 another inmate about how easy it is to beat a murder case; that the defendant heard him  
12 talking, came over and asked his advice on how to beat a murder case. They began talking  
13 and the defendant told Dunlap about "the black female, the first victim," and described what  
14 occurred. The defendant also told Dunlap about "the Mexican" woman, and how she saw  
15 the defendant coming out of "the black woman's apartment," that he and his friend went to  
16 talk to her and ask if she can sell them marijuana and she let them in. He described how,  
17 once inside there was a fight that ended up in the bedroom, that he pushed her head down  
18 while his friend raped her, that he put a pillow over her head to stop her from screaming.  
19 "[H]e said he killed her, but his friend killed the black woman. And all he did was have sex  
20 with the black woman but his friend had sex with the Mexican woman."

21 Dunlap was asked if he ever spoke with the defendant about Shawnta Robinson. He  
22 said that Robinson is "just another inmate housed in the same area that I was and Keith, we  
23 all played dominoes together all talked amongst each other. . . . Keith wanted me to testify  
24 on his behalf against Shawnta Robinson because he said Shawnta Robinson was going to  
25 testify against him and he needed to have somebody testify against Shawnta saying that they  
26 never spoke. But I told him, I said no, I can't do that because I know for a fact that you  
27 spoke and you also spoke to me, but he offered to pay me money, take care of me if I  
28 testified for him."

1 On October 14, 2005, an indictment was returned charging Flowers with offenses  
2 relating to both Coote and Gonzalez.<sup>2</sup> With the permission of the Court, the State dismissed  
3 the original information charging Flowers with offenses relating to Coote only (that was set  
4 for trial October 24, 2005), and proceeded on the indictment pertaining to both Coote and  
5 Gonzalez.

6 Interestingly, approximately, two weeks before the trial date in a capital case, attorney  
7 Bret Whipple sent a letter to the Office of the District Attorney indicating that he had been  
8 retained to represent defendant Flowers on the charges pertaining to Coote. He had filed no  
9 appearance with the Court, he had filed no motions, he had filed no notice of experts, he had  
10 filed no witness list, yet he claimed to be ready for trial. Further, he objected to the  
11 continuance of the trial.

12 The Court continued the trial to January 29, 2007. When the trial was continued, and  
13 Flowers' family could no longer afford to pay his fee, Whipple no longer represented  
14 Flowers. He asked the Court to appoint him. The Court denied that request.

15 While preparing for trial, the State discovered that Flowers' DNA was found in the  
16 vagina of a third woman who had been strangled and violently sexually assaulted (the case  
17 before this Court). The State presented the case to the grand jury and an indictment was  
18 returned. The State filed a motion to consolidate the cases in the case with the lower case  
19 number. That Court denied the motion, but did appoint Whipple to represent Flowers  
20 despite the fact that 2 special public defenders are already representing him and have done  
21 all of the work.

22 The defense now asks this Court to appoint Whipple to represent Flowers in addition  
23 to the special public defenders. The State opposes.

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28 <sup>2</sup> C216032 is scheduled for trial in district court 6 on October 22, 2007.

1 ARGUMENT

2 I  
3 DEFENDANT IS NOT ENTITLED TO A THIRD ATTORNEY  
4 THAT WOULD BE PAID HOURLY AT THE  
5 TAXPAYER'S EXPENSE

6 Clearly Flowers has a constitutional right to counsel. Because the instant case is a  
7 capital case, Supreme Court Rule 250 applies. Supreme Court Rule 250 requires the  
8 appointment of two attorneys in capital cases where the defendant is indigent and is  
9 receiving the assistance of counsel by means of appointed counsel by the court. Thus,  
10 Flowers must have two (2) attorneys. In fact, he has two (2) attorneys. Special public  
11 defenders Randall Pike and Clark Patrick have been actively representing Flowers, filing  
12 motions and making requests of the State since their appointment in September 2005.  
13 Flowers simply wants Whipple even though he cannot afford to pay him and complains  
14 about the attorneys who are working hard for him believing he can get this court to appoint  
15 Whipple as well.

16 While it is axiomatic that a criminal defendant has a right to an attorney, "The right to  
17 counsel of one's own choosing is not absolute." United States v. Deegan, 428 F.2d 714, 716  
18 (2d Cir.), cert. denied, 400 U.S. 928 (1970). Moreover, the United States Supreme Court has  
19 stated that, "[t]he Sixth Amendment does not guarantee a meaningful relationship between  
20 accused and his counsel." Morris v. Slappy, 461 U.S. 1, 13 (1983).

21 Long ago, our Supreme Court stated, "[a] defendant is not entitled to reject his court-  
22 appointed counsel and request substitution of other counsel at public expense absent a  
23 showing of adequate cause for such a change." Junior v. State, 91 Nev. 439, 441 (1975).  
24 Subsequently, in Thomas v. State, 94 Nev. 605, 607-08 (1978), that Court held that a  
25 defendant's right to substitution of counsel is limited. The decision whether friction between  
26 counsel and client justifies appointment of new counsel is entrusted to the sound discretion  
27 of the trial court and should not be disturbed on appeal in the absence of a clear showing of  
28 abuse.

//

1 More recently, in Gallego v. State, 117 Nev. 348, 23 P.3d 227 (2001), the Supreme  
2 Court stated:

3 An indigent defendant “has a right to substitution only upon establishing ‘good  
4 cause, such as a conflict of interest, a complete breakdown of communication,  
5 or an irreconcilable conflict which [could] lead ... to an apparently unjust  
6 verdict.’ The mere loss of confidence in his appointed counsel does not  
7 establish ‘good cause.’” Good cause is not “determined solely according to  
8 the subjective standard of what the defendant perceives. While loss of trust is  
9 certainly a factor in assessing good cause, a defendant seeking substitution of  
10 assigned counsel must nevertheless afford the court with legitimate reasons for  
11 the lack of confidence.” “Attorney-client conflicts justify the grant of a  
12 substitution motion only when counsel and defendant are so at odds as to  
13 prevent presentation of an adequate defense.” (citations omitted).

14 The defense has made no showing whatsoever regarding “good cause” to dismiss the  
15 special public defenders and appoint alternate counsel. The defendant has created his own  
16 conflict so he can have the attorney of his choice without having to pay for him. Flowers has  
17 two (2) attorneys who handle only capital murders. Who better to represent the defendant  
18 than the attorneys who have worked diligently on his case for more than one year and are  
19 intimately familiar with all aspects of the case? The defendant’s request to appoint Whipple  
20 must be denied.

## 16 II 17 EVIDENCE OF THE MURDERS OF COOTE AND 18 GONZALEZ SHOULD BE ADMITTED

19 Section 48.045(2) of the Nevada Revised Statutes provides:

20 Evidence of other crimes, wrongs, or acts is not admissible to prove the  
21 character of a person in order to show that he acted in conformity therewith. It  
22 may, however, be admissible for other purposes, such as proof of motive,  
23 opportunity, intent, preparation, plan, knowledge, identity, or absence of  
24 mistake or accident.

25 In applying NRS 48.045(2), courts must assess whether the probative value of the  
26 evidence is substantially outweighed by a risk of prejudice. Significantly, however, courts  
27 have recognized a distinction between evidence that is incriminating versus evidence that is  
28 actually prejudicial. For instance, in United States v. Harrison, 679 F.2d 942 (D.C. Cir.  
1982), the prosecution presented evidence that the defendant had been engaged in drug  
dealing in the past over a period of time in order to establish motive, intent, preparation, and  
absence of mistake on his current drug charges. The court held that allowing the extrinsic

1 evidence was proper. It explained:

2       There is nothing “unfair” in admitting direct evidence of the defendant’s past  
3 acts by an eyewitness thereto that constituted substantive proof of the relevant  
4 intent alleged in the indictment. The intent with which a person commits an  
act on a given occasion can many times be best proven by testimony or  
evidence of his acts over a period of time prior thereto . . .

5 Id. at 948.

6       Therefore, while certain evidence may increase the likelihood of conviction and thus  
7 be incriminating, such evidence may not unfairly cast the defendant in a bad light and  
8 therefore be prejudicial.

9       In the instant case, Flowers’ two cases are cross-admissible. Evidence of the May  
10 murders of Coote and Gonzalez are admissible in a trial focusing on the March murder of  
11 Quarles because such evidence would be relevant to identity, intent, and motive and vice  
12 versa. In Gallego v. State, 101 Nev. 782, 711 P.2d 856 (1985), the Nevada Supreme Court  
13 noted how a defendant’s prior murders could be relevant in establishing a common plan,  
14 intent, identity, and motive in a subsequent murder case. In Gallego, the defendant was  
15 charged with kidnapping, assaulting, and killing two young women by bludgeoning them  
16 with a hammer. The trial court permitted the State to introduce evidence that Gallego had  
17 previously kidnapped two young women from a shopping mall and shot and killed them. Id.  
18 at 789, 711 P.2d at 861. On appeal, Gallego challenged the introduction of such evidence.

19       The Nevada Supreme Court affirmed the conviction and introduction of the evidence  
20 on several grounds within NRS 48.045(2). The court noted that the evidence was relevant to  
21 Gallego’s intent and motive, because both instances were prompted by a “sex slave” fantasy  
22 on the part of Gallego. The court also commented that the evidence was relevant because  
23 the prior murders were “not remote in time from the killings here considered” and that  
24 “substantial similarities” were shown to exist between the two events, suggesting that the  
25 evidence was relevant to issues of identity as well as a common scheme or plan. See id.

26       In other cases, the Nevada Supreme Court has commented how a particular modus  
27 operandi to a crime can be relevant and admissible under NRS 48.045(2) when the identity  
28 of the perpetrator is at issue. The court has stated that modus operandi evidence is proper in



1 “situations where a positive identification of the perpetrator has not been made, and the  
2 offered evidence establishes a signature crime so clear as to establish the identity of the  
3 person on trial.” Mortensen v. State, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999).

4 In the case of Flowers, all three victims were casual acquaintances of Flowers. All  
5 three were killed in their residences. All three were killed during daylight hours. In addition  
6 to being murdered, all three also had some minor property taken from them as well. More  
7 significantly, of course, all three were sexually assaulted prior to their deaths. The victims  
8 all had damage to their vaginal and/or anal areas substantiating the sexual assault charges.  
9 All three victims were killed by means of strangulation. Admittedly, the cause of death for  
10 Sheila Quarles was a drowning; however, the strangulation was a significant contributing  
11 factor to the death. Certainly, the similarity of the three murders constitutes evidence of  
12 identity admissible under NRS 48.045(2).

13 The murder of Quarles is a crime that went unsolved. Investigators pursued every  
14 lead available to them, but were unable to ascertain who killed and sexually assaulted her. It  
15 wasn't until Flowers' DNA profile was obtained, analyzed and entered into the DNA  
16 database during the course of the investigation into the murders of Coote and Gonzalez that  
17 the investigators were notified that there was a match with the minor component DNA from  
18 Quarles vaginal swabs. Investigators then learned that Flowers knew Quarles mother,  
19 Debra. He would take her home from work. In fact, they had a dating relationship for a  
20 period of time. He also knew victim Coote and knew of victim Gonzalez through his  
21 girlfriend.

22 Additionally, evidence of the March 2005 killing is relevant to the May 2005 killings  
23 because it would constitute evidence of intent and lack of accident as well which are also  
24 admissible under NRS 48.045(2). In Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508  
25 (1985), reversed on other grounds by Petrocelli v. Angelone, 242 F.3d 867 (9<sup>th</sup> Cir. 2001),  
26 the Nevada Supreme Court explained how in a murder prosecution where defendant was  
27 claiming that a homicide was an accident, evidence of a prior killing committed by him  
28 which he also claimed was accidental was relevant and admissible under NRS 48.045(2).

1 In one of his interviews regarding the May killings, Flowers maintained that while he  
2 may have had sex with Marilee Coote, but he did not kill her. This, of course, occurred after  
3 he adamantly denied having sex with her at all. In any case, given that one possible defense  
4 available to Flowers is that he had consensual sex with Coote and she somehow died during  
5 the encounter, evidence of the March 2004 killing is relevant to his intent during his  
6 encounter with Coote. The fact that he previously had had a violent sexual encounter which  
7 resulted in vaginal trauma to victim Sheila Quarles as well as her strangulation and death is  
8 evidence that Coote's strangulation was intentional and not an accident. See id.

9 Finally, evidence of the March 2005 murder is relevant to the May 2005 murders in  
10 terms of the sexual assault counts. In one of several interviews with detectives, Flowers  
11 claimed that he had consensual intercourse with Marilee Coote, notwithstanding the trauma  
12 to her genital area. He mentioned that they may have engaged in "rough" sex at one point  
13 during his interview. Evidence of the sexual assault trauma to Sheila Quarles would be  
14 relevant to the issue of whether Coote consented to a sexual encounter with Flowers. In  
15 Williams v. State, 95 Nev. 830, 603, P.2d 694 (1979), a sexual assault victim testified that  
16 she met the defendant while discussing a possible job as his secretary. At some point, the  
17 defendant offered her \$5000 for a "one night stand," but she refused. The defendant told her  
18 that he was trained in martial arts and demonstrated what he could do to her and then  
19 sexually assaulted her. The defendant maintained that the intercourse was consensual. The  
20 State presented the testimony of two prior victims, from incidents occurring nineteen months  
21 before the charged incident, who testified that they met the defendant through a job  
22 interview and were coerced into having sex with him after he demonstrated his karate  
23 knowledge. In affirming the admission of testimony regarding the prior incidents, the  
24 Nevada Supreme Court stated:

25 In the instant case, evidence of Williams' sexual misconduct with other  
26 persons was admitted as being relevant to prove his intent to have intercourse  
27 with the victim without her consent. This evidence was introduced after  
28 Williams admitted committing the act, but claimed to have done so with the  
victim's consent. By acknowledging the commission of the act but asserting  
his innocent intent by claiming consent as a defense, Williams himself placed  
in issue a necessary element of the offense and it was, therefore, proper for the

1 prosecution to present the challenged evidence, which was relevant on the  
2 issue of intent, in order to rebut Williams' testimony on a point material to the  
establishment of his guilt.

3 Id. at 833.

4 Because all three victims were killed after they were sexually assaulted, the State  
5 must rely on circumstances and medical testimony to establish the lack of consent in the  
6 instant case. Flowers' subsequent conduct with Coote and Gonzalez, who also were sexually  
7 assaulted by Flowers and subsequently killed, is that much more probative.

8 Although the murders and sexual assault of Coote and Gonzalez occurred after the  
9 murder and sexual assault of Quarles, the courts have held that there is no distinction  
10 between "prior" and "subsequent" bad acts so long as both satisfy the statutory analysis for  
11 admissibility. See, United States v. Ayers, 924 F.2d 1468, 1472-1474 (9th Cir. 1991).

12 As far as the penalty hearing is concerned, the State is unsure how Flowers justified  
13 excluding the murders of Coote and Gonzalez. Assuming for purposes of argument that  
14 there is a conviction for first degree murder, pursuant to NRS 175.552, a penalty hearing  
15 must be held. During that hearing, "evidence may be presented concerning aggravating and  
16 mitigating circumstances relative to the offense, defendant or victim and on any other matter  
17 which the court deems relevant to sentence, whether or not the evidence is ordinarily  
18 admissible." What could possibly be more relevant at the sentencing regarding the Quarles  
19 murder than the fact that Flowers did the same thing to two other women? Additionally, the  
20 other murders are potentially aggravating circumstances. See 200.033.

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CONCLUSION

Based on the foregoing, the State respectfully asks this Court to deny defendant's Motion in Limine to Preclude Evidence of Other Bad Acts and Motion to Confirm Counsel.

DATED this 2nd day of February, 2007.

Respectfully submitted,

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s//LISA LUZAICH  
\_\_\_\_\_  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition, was made this 2nd day of February, 2007, by facsimile transmission to:

RANDALL PIKE, Special Public Defender  
CLARK W. PATRICK, Special Public Defender  
455-6273

and

BRET WHIPPLE, ESQ.  
543-3505

BY M. Warner  
\_\_\_\_\_  
Employee of the District Attorney's Office

mmw/SVU

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CLERK OF THE COURT

0001

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN FLOWERS,  
#1179383

Defendant.

Case No. C228755

Dept No. VII

NOTICE OF MOTION AND MOTION FOR CLARIFICATION OF  
COURT'S RULING

DATE OF HEARING: 11/15/07

TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and files this Notice of Motion and Motion For Clarification of Court's Ruling.

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

NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department

CLERK OF THE COURT

NOV 05 2007


RECEIVED

1 VII thereof, on Thursday, the 7<sup>th</sup> day of November, 2007, at the hour of 8:30 A.M., or as  
2 soon thereafter as counsel may be heard.

3 DATED this 31<sup>st</sup> day of October, 2007.

4  
5 DAVID ROGER  
6 Clark County District Attorney  
7 Nevada Bar #002781

8  
9 BY

  
10 PAMELA WECKERLY  
11 Chief Deputy District Attorney  
12 Nevada Bar #006163

13 **STATEMENT OF FACTS**

14 A. Fact of Case C214390 in District Court XI

15 1. Marilee Coote

16 On May 3, 2005, Silver Pines Apartments employees discovered 45 year old Marilee  
17 Coote lying on her living room floor. Ms. Coote was a reliable employee of the Andre  
18 Agassi Center. When she did not arrive at work by 7:30 a.m., a co-worker became  
19 concerned and asked the apartment workers to do a welfare check. After the apartment  
20 employees discovered the body, they contacted the police.

21 Initially, paramedics arrived, but Ms. Coote was already deceased. Police followed.  
22 Ms. Coote was found lying on her living room floor, facing up and completely nude. Inside  
23 her belly button were ashes from burnt incense. The skin between her upper thighs and her  
24 pubic area was burned. Coote's apartment was locked, but her purse and keys were missing.  
25 Inside Coote's washing machine, police found personal photos, bills, and identification  
26 belonging to Coote. The items appeared to have been washed because they had a soap  
27 residue on them. In the bathtub, under ten inches of water, police found other items of  
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1 paperwork, a phone book, and jewelry boxes covered with a towel. The apartment was  
2 otherwise very neat and undisturbed.

3 The detectives initially did not view this incident as a homicide. Therefore, they  
4 documented the scene, but did not collect evidence. After conducting an autopsy, however,  
5 Dr. Knoblock concluded the Coote died as the result of strangulation. He also noted tearing  
6 of Coote's labia and anal area. Dr. Knoblock concluded that these tears were sustained ante-  
7 mortem. Coote also had contusions on her arms and forearms.

8 Ms. Coote was an acquaintance of defendant Norman Flowers's girlfriend, Mawusi  
9 Ragland, who also lived in the Silver Pines complex.

10 2. Juanita Curry

11 While various officers were in Coote's apartment during the morning of May 3, 2005,  
12 another resident of the complex, Juanita Curry, came in contact with the defendant, Norman  
13 Flowers. This occurred between 7:00 and 10:00 a.m. Curry also was an acquaintance of  
14 Flowers's girlfriend, Mawusi Ragland. Curry lived two floors below Coote. Curry noticed  
15 the police and paramedics going in and out of Coote's apartment. From apartment  
16 employees, Curry believed that Coote died of natural causes. Sometime that same morning,  
17 defendant Flowers knocked on Curry's door. He asked if he could use her phone. He said  
18 he was supposed to meet up with Mawusi that morning. She agreed and gave him the phone.

19 Curry is physically disabled and sometimes walks with a cane. Because of her  
20 compromised physical state, she was not comfortable allowing Flowers in her apartment, so  
21 she let him use her cordless phone in the doorway. After Flowers used the phone, he came  
22 back a few times later, each time with a new request. He asked to use the phone again. He  
23 asked for water. At one point, he asked to use her bathroom. She agreed, but when he went  
24 in the bathroom, she stepped out of the apartment. As she did so, he asked her to come in  
25 and help him find the bathroom light. She refused. When Flowers was at her doorstep, she  
26 also noticed that when the police walked back and forth, he would turn his head away. He  
27 commented, "the police make me nervous." During the final conversation in Curry's  
28 doorway, Flowers leaned down and tried to kiss Curry on the mouth. She turned away.

1 Curry observed Flowers walk across the parking lot to the doorway of resident Rena  
2 Gonzalez's apartment that morning. Curry left the complex a little before 11:00 in the  
3 morning. When she returned, she learned that the police also had discovered the body of  
4 resident Rena Gonzalez. She gave a statement to police and identified Mawusi's boyfriend  
5 as someone she saw in the area of Rena Gonzalez's apartment.

6 3. Rena Gonzalez

7 Officers learned of the homicide involving Rena Gonzalez at approximately 4:00 p.m.  
8 that same day. Rena Gonzalez's two daughters, the oldest of whom is seven years old, came  
9 home from school and found their mother on her knees leaning against her bed in her master  
10 bedroom. She was unresponsive. They ran and got their friend, Shayne. Shayne returned  
11 with them. They tried to remove a phone cord around Gonzalez's neck and called 911.

12 Gonzalez's apartment was clean and undisturbed with the exception of the following:  
13 a broken blue plastic hair comb and a single green sandal were both in the front hallway.  
14 Officers could not locate Gonzalez's purse or keys.

15 Gonzalez was at the foot of her bed, with her body bent at the waist. Her upper torso  
16 was on the bed with her face down and arms outstretched. A black phone cord and black  
17 lanyard were around her neck. She was dressed in shorts, which were slightly pulled down,  
18 and a shirt. She had the matching blue hairclip hanging from her hair and blood coming  
19 from her ear.

20 At autopsy, Dr. Simms noted extensive bruising to Gonzalez's breast, right arm and  
21 right leg. Dr. Simms concluded that Gonzalez died as a result of strangulation. He also  
22 noted tearing to her vaginal and anal area. Dr. Simms concluded that these injuries took  
23 place post-mortem.

24 Detectives learned that Rena Gonzalez was a close friend of Mawusi Ragland. In  
25 fact, the two women would trade off watching each other's children. They determined that  
26 Gonzalez had walked her daughters to the school bus the morning of the 3rd and would have  
27 returned home around 8:30 a.m. Rena Gonzalez did not work.

28 ///



1           4.     Mawusi Ragland

2           Mawusi Ragland also lived at the Silver Pines Apartments. She lived in the  
3 apartment across from Coote. She told detectives that approximately three weeks before the  
4 homicide, she and Flowers had gotten into an argument and had not spoken since. In the  
5 argument, Mawusi implied that she would socialize with other men. Mawusi had discussed  
6 Flowers with her friend Rena Gonzalez as well, although Flowers and Gonzalez had not met.  
7 According to Mawusi, Gonzalez advised her not to date Flowers.

8           When Mawusi returned home on the evening of May 3, she saw police vehicles. She  
9 was told her friend, Rena, had been murdered and that her other friend, Marilee, had died of  
10 natural causes. On her apartment door, Mawusi noticed a note. It was from Flowers. It  
11 stated that he tried to catch her before she went to work, but that it looked like he picked a  
12 bad day because "big shit is happening over here." He also asked if she had dated other men  
13 since their argument. Flowers called Mawusi that evening. She was very emotional and  
14 explained that both Marilee and Rena were dead. Flowers did not appear to be shocked upon  
15 hearing this news. She asked him to come over and help her through this difficult time. He  
16 told her he'd be right over. When Flowers did not arrive in the next 90 minutes, Mawusi  
17 called him to ask where he was. He said he had not left home because when tried to call her,  
18 she did not answer her phone. He also mentioned that he had seen Rena that morning and  
19 had a short conversation with her. Mawusi asked him what time he was at the complex and  
20 Flowers responded, "I didn't kill her."

21           After speaking with Mawusi, detectives interviewed Norman Flowers. Initially, he  
22 told officers that he had no contact with Marilee Coote on the morning of the murder. He  
23 said he had not seen her for months. He also explained that he met Rena Gonzalez several  
24 months earlier through Mawusi. He admitted that he had spoken with Rena that morning,  
25 but denied ever entering her apartment. Flowers agreed to provide a DNA sample.

26           Subsequently, Flowers's DNA sample was compared with swabs from Marilee Coote's  
27 sexual assault kit. Both vaginal and rectal swabs matched to Flowers. In addition, DNA was  
28

1 collected from the carpet area where Coote was laying, specifically, the carpet beneath her  
2 upper thighs. That sample also matched to Flowers.

3 Detectives interviewed Flowers again. He still maintained that he had never been in  
4 Gonzalez's apartment that morning. With regard to Marilee Coote, he first explained that he  
5 had had sex with her in the past, but not that day. Then, he acknowledged that he had sex  
6 with her the night before she died, but that she was alive and fine when he left. He denied  
7 having rough sex with her. Later in the interview, he claimed that he might have had rough  
8 sex with her, but that she was fine when he left. In a third interview, he said he did have  
9 rough sex with her, but that she was alive when he left. He also stated that there was a third  
10 man watching the two have sex. He said this man was a medium height, weight, and age  
11 black man, but he did not know his name. He claims this man remained in the apartment  
12 after he left. Thus, his latest claim was that the sex was consensual and another individual  
13 must have killed Coote.

14 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source  
15 of this DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is  
16 excluded as the source of that DNA as well. The partial profiles obtained from Gonzalez's  
17 rectal swabs and the phone cord are consistent with a single male source and may be the  
18 product of laboratory transfer or contamination. Upon retesting, no indication of the partial  
19 male profile was present in the rectal swabs.

20 B. Facts of Instant Case C228755 Before This Court VII

21 Sheila Quarles

22 Less than two months prior to the murders of Marilee Coote and Rena Gonzalez, on  
23 March 24, 2005, Debra Quarles returned home from grocery shopping to her residence at  
24 1001 North Pecos, Las Vegas, Clark County, Nevada, and found her eighteen year old  
25 daughter, Sheila Quarles, unresponsive in a bathtub containing warm water. Debra had  
26 returned home at 2:30 in the afternoon. She was able to remove Sheila from the tub with the  
27 help of a neighbor who had helped her carry in groceries. Debra immediately called 911.

1 An autopsy later revealed that Sheila died from drowning. However, strangulation  
2 was a significant contributing factor to her death. Sheila also had multiple vertical  
3 lacerations on her introitus, evidence of a violent sexual assault.

4 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30  
5 p.m. and her mother arrived home to find her dead at approximately 2:30 p.m. A stereo was  
6 also missing from the residence. In addition, detectives learned that Sheila was involved in a  
7 lesbian relationship with an individual named Quinise Toney.

8 At autopsy, investigators collected samples from Sheila's vagina. Those swabs  
9 contained a mixture of DNA which included semen. Quinise Toney was excluded as being a  
10 source of any of this DNA. Sheila Quarles was the major component of the DNA. The male  
11 portion of the DNA was entered into a DNA database. When Flowers's DNA sample was  
12 collected in connection with the May murders (Coote and Gonzalez), his profile was entered  
13 into the DNA database as well. After this entry, investigators were notified that Flowers's  
14 profile was consistent with part of the minor component DNA from Sheila Quarles's vaginal  
15 swabs. In fact, 99.9934 percent of the population is excluded as being a source of that DNA,  
16 but Flowers is not. There was an additional, unknown male contributor to the vaginal swabs  
17 of Sheila Quarles as well.

18 After detectives were notified of the DNA match, they recontacted Debra Quarles.  
19 Quarles explained that she knew and had actually dated Norman Flowers several months  
20 before the murder. She also explained that he would occasionally give her a ride home from  
21 her work at the time and that he knew her family members. Quarles said that just prior to the  
22 murder, she saw Flowers at her apartment complex. At that time, he explained that he was  
23 working in maintenance at the complex. After her daughter's murder, Quarles suffered from  
24 depression. Flowers offered to drive her to appointments with her therapist. On several  
25 occasions, Flowers inquired to Debra whether the police had figured out who had murdered  
26 her daughter.

27 The State moves to admit evidence of Flowers's subsequent murders and activity at  
28 the Silver Pines Apartment Complex in May in the instant murder case before this Court

1 concerning victim Sheila Quarles. Prior to this case being transferred to Department VII, the  
2 case was in Department XIV. At that time, the defense moved to preclude the State from  
3 introducing such evidence. The State opposed. Judge Mosley did not grant the defense  
4 motion, commented that all three cases should be consolidated, but did not clearly state that  
5 the State could affirmatively move to admit such evidence. Thus, the State files the instant  
6 motion for clarification.

### 7 ARGUMENT

8 As this Court is well aware, section 48.045(2) of the Nevada Revised Statutes  
9 provides:

10 Evidence of other crimes, wrongs, or acts is not admissible to prove the  
11 character of a person in order to show that he acted in conformity therewith. It  
12 may, however, be admissible for other purposes, such as proof of motive,  
13 opportunity, intent, preparation, plan, knowledge, identity, or absence of  
mistake or accident.

14 In applying NRS 48.045(2), courts must assess whether the probative value of the evidence  
15 is substantially outweighed by a risk of prejudice. Significantly, however, courts have  
16 recognized a distinction between evidence that is incriminating versus evidence that is  
17 actually prejudicial. For instance, in United States v. Harrison, 679 F.2d 942 (D.C. Cir.  
18 1982), the prosecution presented evidence that the defendant had been engaged in drug  
19 dealing in the past over a period of time in order to establish motive, intent, preparation, and  
20 absence of mistake on his current drug charges. The court held that allowing the admission  
21 of the extrinsic evidence was proper. It explained:

22 There is nothing "unfair" in admitting direct evidence of the defendant's past  
23 acts by an eyewitness thereto that constituted substantive proof of the relevant  
24 intent alleged in the indictment. The intent with which a person commits an  
act on a given occasion can many times be best proven by testimony or  
evidence of his acts over a period of time prior thereto . . .

25 Id. at 948. Therefore, while certain evidence may increase the likelihood of conviction and  
26 thus be incriminating, such evidence may not unfairly cast the defendant in a bad light and  
27 therefore be prejudicial.

1 In the instant case, Flowers's subsequent conduct is admissible in the instant case.  
2 Evidence of the May murders would be admissible in a trial focusing on the March murder  
3 because such evidence would be relevant to identity, intent, and motive and vice versa. In  
4 Gallego v. State, 101 Nev. 782, 711 P.2d 856 (1985), the Nevada Supreme Court noted how  
5 a defendant's prior murders could be relevant in establishing a common plan, intent, identity,  
6 and motive in a subsequent murder case. In Gallego, the defendant was charged with  
7 kidnapping, assaulting, and killing two young women by bludgeoning them with a hammer.  
8 The trial court permitted the State to introduce evidence that Gallego had previously  
9 kidnapped two young women from a shopping mall and shot and killed them. Id. at 789, 711  
10 P.2d at 861. On appeal, Gallego challenged the introduction of such evidence.

11 The Nevada Supreme Court affirmed the conviction and introduction of the evidence  
12 on several grounds within NRS 48.045(2). The court noted that the evidence was relevant to  
13 Gallego's intent and motive, because both instances were prompted by a "sex slave" fantasy  
14 on the part of Gallego. The court also commented that the evidence was relevant because  
15 the prior murders were "not remote in time from the killings here considered" and that  
16 "substantial similarities" were shown to exist between the two events, suggesting that the  
17 evidence was relevant to issues of identity as well as a common scheme or plan. See id.

18 In another case, the Nevada Supreme Court has commented how a particular modus  
19 operandi to a crime can be relevant and admissible under NRS 48.045(2) when the identity  
20 of the perpetrator is at issue. The court has stated that modus operandi evidence is proper in  
21 "situations where a positive identification of the perpetrator has not been made, and the  
22 offered evidence establishes a signature crime so clear as to establish the identity of the  
23 person on trial." Mortensen v. State, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999).

24 In the case of Flowers, all three victims were casual acquaintances of Flowers. All  
25 three were killed in their residences. All three were killed during daylight hours. In addition  
26 to being murdered, all three also had some minor property taken from them as well. More  
27 significantly, of course, all three were sexually assaulted prior to their deaths. The victims  
28 all had damage to their vaginal and/or anal areas substantiating the sexual assault charges.

1 All three victims were killed, at least in part, by means of strangulation. Admittedly, the  
2 cause of death for Sheila Quarles was a drowning; however, the strangulation was a  
3 significant contributing factor to the death. Certainly, the similarity of the three murders  
4 constitutes evidence of identity admissible under NRS 48.045(2).

5 In addition, evidence of the May 2005 killings is relevant to the March 2005 killing  
6 because it would constitute evidence of intent and lack of accident as well—also admissible  
7 under NRS 48.045(2). In Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985),  
8 reversed on other grounds by Petrocelli v. Angelone, 242 F.3d 867 (9<sup>th</sup> Cir. 2001), the  
9 Nevada Supreme Court explained how in a murder prosecution where defendant was  
10 claiming that a homicide was an accident, evidence of a prior killing committed by him  
11 which he also claimed was accidental was relevant and admissible under NRS 48.045(2).

12 In one of his interviews regarding the May killings, Flowers maintained that while he  
13 may have had sex with Marilee Coote, but he did not kill her. This, of course, occurred after  
14 he adamantly denied having sex with her at all. In any case, given that one possible defense  
15 available to Flowers is that he had consensual sex with Quarles and she somehow died  
16 during the encounter, evidence of the May 2005 killings is relevant to his intent during his  
17 encounter with Quarles and whether she consented to the sex. The fact that he  
18 subsequently—at a minimum—had at least one violent sexual encounter which resulted in  
19 vaginal trauma to victim Marilee Coote as well as her strangulation and death is evidence  
20 that Quarles's murder was intentional and not an accident. See id.

21 Finally, evidence of the May 2005 murders is relevant to the March 2005 murder in  
22 terms of the charged sexual assault counts. In one of several interviews with detectives,  
23 Flowers claimed that he had consensual intercourse with Marilee Coote, notwithstanding the  
24 trauma to her genital area. He mentioned that they may have engaged in “rough” sex at one  
25 point during his interview. This evidence would be relevant to the sexual assault trauma to  
26 Sheila Quarles and whether she consented to a sexual encounter with Flowers. In Williams  
27 v. State, 95 Nev. 830, 603, P.2d 694 (1979), a sexual assault victim testified that she met the  
28 defendant while discussing a possible job as his secretary. At some point, the defendant

1 offered her \$5000 for a "one night stand," but she refused. The defendant told her that he  
2 was trained in martial arts and demonstrated how he could injure her and then sexually  
3 assaulted her. The defendant maintained that the intercourse was consensual. The State  
4 presented the testimony of two prior victims, from incidents occurring nineteen months  
5 before the charged incident, who testified that they met the defendant through a job  
6 interview and were coerced into having sex with him after he demonstrated his karate  
7 knowledge. In affirming the admission of testimony regarding the prior incidents, the  
8 Nevada Supreme Court stated:

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10 In the instant case, evidence of Williams' sexual misconduct with other  
11 persons was admitted as being relevant to prove his intent to have intercourse  
12 with the victim without her consent. This evidence was introduced after  
13 Williams admitted committing the act, but claimed to have done so with the  
14 victim's consent. By acknowledging the commission of the act but asserting  
his innocent intent by claiming consent as a defense, Williams himself placed  
in issue a necessary element of the offense and it was, therefore, proper for the  
prosecution to present the challenged evidence, which was relevant on the  
issue of intent, in order to rebut Williams' testimony on a point material to the  
establishment of his guilt.

15 Id. at 833.

16 Because Quarles was killed after she was sexually assaulted, the State must rely on  
17 circumstances and medical testimony to establish the lack of consent in the instant case.  
18 Consent is at issue because of the sexual assault charge itself, which requires lack of consent,  
19 and, like Williams, Flowers could affirmatively claim that the sexual encounter was  
20 consensual. Therefore, the subsequent conduct of Flowers in May 2005 is relevant.

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1 CONCLUSION

2 Based on the foregoing, the State respectfully asks this Court to allow the State to  
3 present evidence of May murders in its case-in-chief.

4 DATED this 31<sup>st</sup> day of October, 2007.

5 DAVID ROGER  
6 Clark County District Attorney  
7 Nevada Bar #002781

8 BY

Pamela Weckerly  
9 PAMELA WECKERLY  
10 Chief Deputy District Attorney  
11 Nevada Bar #006163  
12  
13

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of MOTION FOR CLARIFICATION OF COURT'S  
16 RULING, was made this 31<sup>st</sup> day of October, 2007, by facsimile transmission to:

17 SPECIAL PUBLIC DEFENDER'S OFFICE  
18 455-6273  
19

20 BY /S/D.Daniels  
21 Employee of the District Attorney's Office  
22  
23  
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25  
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DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER  
Nevada Bar No. 0824  
RANDALL H. PIKE  
Deputy Special Public Defender  
Nevada Bar No. 1940  
CLARK W. PATRICK  
Deputy Special Public Defender  
Nevada Bar No. 9451  
330 South Third Street, Suite 800  
Las Vegas, NV 89155-2316  
(702) 455-6265  
Attorneys for Defendant

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.

NORMAN FLOWERS,  
Defendant.

CASE NO. C228755  
DEPT NO. VII

DATE OF HEARING: 11-7-07  
TIME OF HEARING: 8:30 a.m.

**OPPOSITION TO STATE'S MOTION FOR CLARIFICATION OF COURT'S RULING**

COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public Defender, and CLARK W. PATRICK, Deputy Special Public Defender and hereby submits the following Points and Authorities in opposition to the State's Motion for Clarification of Court's Ruling.

**POINTS AND AUTHORITIES**

The State relies on Gallego v. State, 101 Nev. 782, 711 P.2d 856 (1985) and Mortensen v. State, 115 Nev. 273, 986 P.2d 1105 (1999), in their argument that the deaths of Marilee Coote and Rena Gonzalez somehow establish a common plan, intent, identity or motive in the death of Sheila Quarles. In Gallego, the Nevada Supreme Court held that the prior acts were relevant because they were "not remote in time" from the acts Gallego was on

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NEVADA

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App. 000077

1 trial for, and there were "substantial similarities" between the acts, suggesting a common  
2 scheme or plan. Gallego at 789. In Mortensen, the Court discussed situations where the  
3 evidence "establishes a signature crime so clear as to establish the identity of the person on  
4 trial." Mortensen at 280.

5 In the instant matter, the events were forty-one (41) days apart. The Nevada Supreme  
6 Court has ruled that time frame is too far removed to be part of a common scheme or plan.  
7 As an example of what is "not remote in time" and substantially similar, see, Tillema v. State,  
8 112 Nev. 266, 914 P.2d 605 (1996), the defendant was arrested for a burglary of a vehicle on  
9 May 29, 1993 and a burglary of a vehicle and a burglary of a store on June 16, 1993. Id. at  
10 267. Because both crimes involved vehicles in casino parking garages and were seventeen  
11 days apart, they "evidenced a common scheme or plan." Id. at 268. Additionally, the store  
12 burglary was connected to the vehicle burglary because it was part of a "continuing course of  
13 conduct." Id. at 269, *quoting* NRS 173.115(2) and Rogers v. State, 101 Nev. 457, 465-66, 705  
14 P.2d 664, 670 (1985). In the second incident, Tillema burglarized the van and then  
15 immediately walked into a store, where he committed another burglary, so the two incidents  
16 were connected. Id.

17 In Floyd v. State, 118 Nev. 156, 42 P.3d 249 (2002) the defendant was charged of  
18 sexually assaulting a woman at gunpoint inside an apartment and the subsequent shooting  
19 of five employees at a nearby supermarket. The Nevada Supreme Court held that the acts  
20 charged were at the very least 'connected together.'" Id. at 156. The court explained that a  
21 connection existed because the counts relating to the subsequent act began only fifteen  
22 minutes after the counts relating to the first act had ended.

23 Similar victims and motives, however, are not necessarily part of a common scheme  
24 or plan. Tabish v. State, 119 Nev. Adv. Rep. 35, 72 P.3d 584 (2003). The State was trying  
25 to argue that events involving Leo Casey and events involving Ted Binion were properly  
26 joined, having in common greed, money and the Jean sand pit. Id. at 590. The State also  
27 emphasized the similarities between Leo Casey and Ted Binion. Id. The Nevada Supreme  
28 Court noted that "money and greed could be alleged as connections between a great many

1 crimes and thus do not alone sufficiently connect the incidents." Id. That Court held that the  
2 incidents were too far apart in time (fifty days) and that the alleged connections did not  
3 demonstrate a common scheme or plan. Id. at 591.

4 Similarly, in Mitchell v. State, 105 Nev. 735, 782 P.2d 1340 (1989), incidents forty-five  
5 days apart were not considered part of the same transaction. Id. at 738. Additionally, the two  
6 offenses committed by that defendant were not part of a common plan. Id. The defendant was  
7 charged with grand larceny and sexual assault (the Petz charges) and sexual assault and  
8 murder (the Brown charges). Id. at 737. On two separate occasions, the defendant took two  
9 different women to the same bar, forty-five (45) days apart, and sexually assaulted them. Id.  
10 Our Supreme Court noted that taking two women dancing and then later assaulting them (on  
11 separate occasions) could not be considered a common plan, simply because the women  
12 were taken to the same bar. Id. at 738.

13 Contrary to Tillema, and Floyd, the offenses in the instant case did not occur in close  
14 temporal proximity. If a connection between separate acts can be argued to exist because of  
15 their relative proximity in time, then it is reasonable to expect that the existence of such a  
16 connection is diminished as the length of time between the acts increases. Here, the incidents  
17 were forty-one (41) days apart, so there was no "continuing course of conduct." The incidents  
18 in Tillema flowed one into the other. With forty-one (41) days between them, the incidents at  
19 bar were too far apart in time to be part of the same transaction. So while a connection may  
20 still remain between two acts after only fifteen minutes, extending that time more than three-  
21 thousand fold would seem to extinguish such a connection, utterly.

22 Here, there was also no common scheme or plan, similar to Tabish and Mitchell. In both  
23 of those cases, there were similar motives and similar crimes; however, that was not enough  
24 to establish a common scheme or plan. Here, the only other common denominator, besides  
25 the defendant himself, is the possibility that the defendant knew all of the victims. Again, that  
26 is not enough to establish a common scheme or plan, and not even close to establishing a  
27 *signature crime* so clear as to establish the identity of the person on trial.. The victims were  
28 different, the incidents occurred in different locations, albeit two of the homicides occurred in

1 the same apartment complex and were forty-one (41) days apart. One of the incidents  
2 allegedly involved a manual strangulation, one allegedly involved strangulation with a ligature,  
3 while the other allegedly involved a downing. Two of the women were nude and one was  
4 clothed. The three women had significantly different ages, Quarles was eighteen (18),  
5 Gonzalez was twenty-five (25) and Coote was forty-five (45). The women were of two different  
6 races. As for the alleged sexual assaults, Flowers' DNA was recovered from Marilee Coote,  
7 however Flowers admits to having "rough" consensual sex with Coote, and there was  
8 "unknown" male DNA that was also recovered from Coote. The DNA recovered from Rena  
9 Gonzalez *excluded* Flowers as the donor. And while Flowers' DNA was recovered from Sheila  
10 Quarles, again there was "unknown" male DNA also recovered. There is nothing connecting  
11 the three incidents.

12 The State contends that the defense in this case will be that Flowers and Quarles were  
13 having sex, and Quarles "somehow died during the encounter." This is a false statement.  
14 Whether or not Flowers had sex with Quarles or Coote, Flowers did not kill either of them.  
15 There is no evidence that Flowers and Gonzalez ever had sex, and no evidence that Flowers  
16 killed Gonzalez.

17 Following NRS 48.035(1) "Although relevant, evidence is not admissible if its probative  
18 value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues  
19 or of misleading the jury." It is clear in the case at the bar that allowing the State to cross-  
20 contaminate the cases against Flowers, whatever slight probative value the State hopes to  
21 gain, would be greatly outweighed by the unfair prejudice Flowers. Therefore, Flowers  
22 respectfully requests this Court to deny the State's motion.

### 23 CONCLUSION

24 Because the incidents were not part of the same transaction nor were they part of a  
25 common scheme or plan, and because of the significant time between the incidents, the  
26

27 . . .

28 . . .

1 Defendant respectfully requests that this Court denies the State's request to present evidence  
2 of the May incident in its case-in-chief in the instant matter.

3 DATED this 6 day of November, 2007.

4 RESPECTFULLY SUBMITTED:

5  
6 DAVID M. SCHIECK  
7 SPECIAL PUBLIC DEFENDER

8   
9

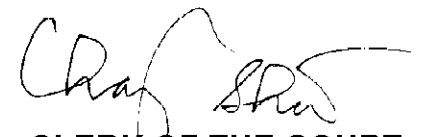
10 RANDY H. PIKE  
11 Deputy Special Public Defender  
12 CLARK W. PATRICK  
13 Deputy Special Public Defender  
14 330 South Third Street, 8th Floor  
15 Las Vegas, NV 89155-2316  
16 (702) 455-6265  
17 Attorneys for Defendant

18 **RECEIPT OF COPY**

19 RECEIPT OF COPY of the foregoing **OPPOSITION TO STATE'S MOTION FOR**  
20 **CLARIFICATION OF COURT'S RULING** is hereby acknowledged this U day of November,  
21 2007.

22  
23   
24

25 DAVID ROGER  
26 District Attorney  
27 200 Lewis Avenue, 3rd Floor  
28 Las Vegas, NV 89155  
Attorney for Plaintiff

  
CLERK OF THE COURT

**NISD**  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
PAMELA WECKERLY  
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Nevada Bar #006163  
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(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN HAROLD FLOWERS, III,  
#1179383

Defendant.

Case No. C228755

Dept No. VII

**NOTICE OF EVIDENCE IN SUPPORT OF  
AGGRAVATING CIRCUMSTANCES**

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through PAMELA WECKERLY, Chief Deputy District Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to present the following evidence in support of aggravating circumstance at a penalty hearing:

Evidence and Testimony at the Trial Phase

Counsel for the Defendant have the grand jury transcript and exhibits from the instant case, C228755, as well as witness notices, pretrial motions, discovery, police reports and court documents concerning the case. Counsel also have the preliminary hearing and grand jury transcript from case C216032, preliminary hearing exhibits and evidence from that case, impounded evidence, witness notices, pretrial motions, discovery. Counsel represents defendant in both cases. The State has also provided the defense with police reports and

1 court documents regarding the defendant's prior criminal history. Thus, Counsel for the  
2 Defendant are on notice of all of the evidence and testimony to be adduced at the guilt phase  
3 of these proceedings.

4 In the penalty phase of the trial, the State will be relying on the evidence and  
5 testimony adduced during the trial phase for the purpose of establishing the character of the  
6 defendant for penalty purposes.

7 Prior Felony Conviction of the Defendant

8 1. In support of the allegation pertaining to NRS 200.033(1), an aggravating  
9 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
10 The murder was committed by a person under sentence of imprisonment, the State intends to  
11 introduce a certified copy of Flowers's Judgment of Conviction from case C110585 in which  
12 Flowers was convicted of first degree arson on May 28, 1993. The Judgment of Conviction  
13 notes that he was sentenced to fifteen years in prison, making Flowers under sentence of  
14 imprisonment when he committed the charged offense in March 2005. Court documents  
15 regarding the conviction were provided in the Notice of Intent to Seek Death Penalty. In  
16 addition, the State may call Flowers's parole officer or a designee on the arson case to  
17 establish that he was subject to parole supervision in March 2005. Finally, the State may call  
18 a custodian of records from the Nevada Department of Prisons to establish that Flowers  
19 served time and was then paroled for the 1993 arson conviction.

20 Other Aggravating Circumstances

21 Furthermore, the following evidence pertaining to the Defendant will be used as  
22 character evidence during the penalty phase.

23 2. In support of the allegation pertaining to NRS 200.033(2)), an aggravating  
24 circumstance set for in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
25 The murder was committed by a person who has been convicted of a felony involving  
26 violence, the State intends to produce testimony from witnesses from case C110585 in which  
27 Flowers was convicted of first degree arson. The police reports regarding this incident were  
28 provided with the Notice of Intent to Seek Death Penalty in this case and attached to the



1 Notice of Intent to Seek Death Penalty in case C214390. The witnesses listed in those  
2 reports will be called to establish this aggravating circumstance. Those witnesses include,  
3 Claud and Barbara McGowan who left their residence at 9361 Parkdale with locked doors.  
4 Witness Richard Mann noticed smoke coming from the residence and went inside to see if  
5 anyone needed assistance. He also called the police. The officers who responded and  
6 investigated this crime, who also may be called as witnesses include, D. Albietz, LVMPD P#  
7 4204, J. Buczek, LVMPD P#3702, A. Cabrales, LVMPD P#2045, C. Figueroa, LVMPD  
8 P33341, Richard Good, T. Rowland, LVMPD P#4178, D. Ruffino, LVMPD P#1502, J.  
9 Tharp, LVMPD P#3599, W. Zimmerman, LVMPD P#4211, M. Luna, LVMPD P#175.  
10 Other lay witnesses who were involved in this case and may be called as witnesses include:  
11 Andrew Mann, Karen Moore, Aaron Murphy, Betty Bell, Brian Wayne, Clark County Fire  
12 Department Engine 14 Company, William Patterson, G. Redmon, Clark County Fire  
13 Department.

14 The State may also present any and all diagrams, photographs, or physical evidence  
15 related to the investigation of this incident as well as a certified copy of a Judgment of  
16 Conviction.

17 3. In support of the allegation pertaining to NRS 200.033(2)), an aggravating  
18 circumstance set for in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
19 The murder was committed by a person who has been convicted of a felony involving  
20 violence, the State intends to produce testimony from witnesses from case C109523 in which  
21 Flowers was convicted of robbery with use of a deadly weapon. The court documents and  
22 police reports regarding this incident were provided with the instant Notice of Intent to Seek  
23 Death Penalty and attached to the Notice of Intent to Seek Death in case C214390. The  
24 witnesses listed in those reports will be called to establish this aggravating circumstance.  
25 Those witnesses include Ranzy Rembert, Debra Larson, Cathi Jo Esplin, Rebecka Smyth,  
26 Sherri Lynn Burgess, and Ronald Ayotte. In this case, Ranzy Rembert was approached by  
27 defendant Flowers and another individual who claimed that they were interested in test  
28 driving a vehicle. Rambert was working at The Car Store in Las Vegas, Clark County,

1 Nevada. After this conversation, Rembert, Flowers, and a third individual pulled out a  
2 firearm and instructed Rembert to pull over, get out, and not look back. After Rembert  
3 exited the vehicle, defendant Flowers and the third individual drove off. The officers who  
4 responded and investigated this crime, who also may be called as witnesses, include: M.  
5 Rutte, LVMPD P#4017, Det. French, LVMPD P#375, M. Pirtle, LVMPD P#4017, A.  
6 Pilette.

7 The State may also present any and all diagrams, photographs, or physical evidence  
8 related to the investigation of this incident as well as a certified copy of a Judgment of  
9 Conviction.

10 4. In support of the allegation pertaining to NRS 200.033(4)), an aggravating  
11 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
12 The murder was committed while the person was engaged in the commission of a robbery  
13 and the person charged killed the person murdered, the State intends to rely on evidence  
14 presented during the guilt phase of the trial. The State will rely on the testimony of witness  
15 Debra Quarles, the mother of victim Sheila Quarles. Debra Quarles will testify that she had  
16 previously purchased a stereo for her home. Debra Quarles noticed the stereo was missing at  
17 the same time she discovered that her daughter had been murdered. The State will present  
18 evidence that Sheila Quarles was home at the time of the murder and that she died as a result  
19 of drowning with strangulation being a significant contributing factor in order to establish  
20 the force or threat element of robbery. The specific medical testimony will be offered  
21 through Dr. Knoblock or a designee. The State also references and incorporates count 4 of  
22 the indictment which charges Flowers with robbing Sheila Quarles.

23 5. In support of the allegation pertaining to NRS 200.033(13)), an aggravating  
24 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
25 The person subjected the victim to non-consensual sexual penetration immediately before  
26 the murder. To establish this aggravating circumstance, the State will present evidence in  
27 the guilt or penalty phase of a medical examiner, Dr. Knoblock or designee, who will state  
28 that Sheila Quarles sustained injuries to her vaginal area or introitus prior to death. This

1 aggravating circumstance will also be established with photographic evidence. Witness  
2 Kristina Paulette will establish that defendant Flowers's DNA was found in the vaginal of  
3 Sheila Quarles. The State further references count three of the indictment which charges the  
4 defendant with sexual assault. Further, the State may offer the testimony of SANE Nurse  
5 Linda Ebbert or a designee to explain how these types of injuries occur to sexual assault  
6 victims. In addition, the State will establish the condition of Quarles's body and clothing at  
7 the time she was found, either through witness Debra Quarels or Detective George Sherwood  
8 or Detective Dan Long.

9         6. In support of the allegation pertaining to NRS 200.033(2)(a), an aggravating  
10 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
11 The murder was committed by a person who has been convicted of another murder and the  
12 provisions of subsection 12 do not otherwise apply to that murder (NRS 200.033(2)(a)), the  
13 State will present evidence regarding the May murders committed by Flowers. In other  
14 words, assuming the case involving victims Marilee Coote and Rena Gonzalez proceeds to  
15 trial before the instant case, defendant Flowers may be convicted of two counts of murder  
16 before this case proceeds to trial. This would be established through the following  
17 witnesses: Detective Don Tremel, Detective Sheila Huggins, and Dr. Lary Simms or  
18 designee. The State will also present evidence of photographs of these two murders as well  
19 as a Judgment of Conviction, if available. Should the case involving Marilee Coote and  
20 Rena Gonzalez not proceed to trial before the instant case, the State still intends to present  
21 evidence of those murders at a penalty hearing, just not as evidence of an aggravating  
22 circumstance.

23         7. In support of the allegation of aggravating circumstance pertaining to NRS  
24 200.033(2), an aggravating circumstance set forth in the Notice of Intent to Seek Death  
25 Penalty, filed January 11, 2007: The murder was committed by a person who has been  
26 convicted of a felony involving violence, the State will present evidence in accord with what  
27 has previously been described. In other words, assuming that the case involving victims  
28 Marilee Coote and Rena Gonzalez proceeds to trial before the instant case, the State's

1 position is that any convictions for the crime of sexual assault from that case constitutes an  
2 aggravating circumstance in the instant case. This would be established through the  
3 following witnesses: Detective Don Tremel, Detective Sheila Huggins, and Dr. Lary Simms  
4 or designee. The State will also present evidence of photographs of these two murders as  
5 well as a Judgment of Conviction, if available. Should the case involving Marilee Coote and  
6 Rena Gonzalez not proceed to trial before the instant case, the State still intends to present  
7 evidence of those crimes at a penalty hearing, just not as evidence of an aggravating  
8 circumstance.

9       8. In support of the allegation of aggravating circumstance pertaining to NRS  
10 200.033(2), an aggravating circumstance set forth in the Notice of Intent to Seek Death  
11 Penalty, filed January 11, 2007: The murder was committed by a person who has been  
12 convicted of a felony involving violence, the State will present evidence in accord with what  
13 has previously been described. In other words, assuming that the case involving victims  
14 Marilee Coote and Rena Gonzalez proceeds to trial before the instant case, the State's  
15 position is that any convictions for the crime of robbery from that case constitutes an  
16 aggravating circumstance in the instant case. This would be established through the  
17 following witnesses: Detective Don Tremel, Detective Sheila Huggins, and Dr. Lary Simms  
18 or designee. The State will also present evidence of photographs of these two murders as  
19 well as a Judgment of Conviction, if available. Should the case involving Marilee Coote and  
20 Rena Gonzalez not proceed to trial before the instant case, the State still intends to present  
21 evidence of those crimes at a penalty hearing, just not as evidence of an aggravating  
22 circumstance.

#### 23                               The Adult Criminal History of the Defendant

24       9. The State may also present evidence of defendant Flowers' conviction for  
25 burglary in case number C109622. This will be established through a certified copy of a  
26 Judgment of Conviction. This case was based on a series of residential burglaries and one  
27 robbery in the Parkdale, Palmdale, Cloverdale, Ferndale, and Ridgedale Street areas. The  
28 State may also call burglary victims Karen Moore, Jonathan Courtright, Nina Dellacourt,

1 Barbara King, Reanna McGraw, Betty Bell, Elwood Williams, and Roger Osgood. The  
2 State may also present the testimony of Det. Buczek, LVMPD P#3702, Det. Tharp, LVMPD  
3 P#3599, Det. Figueroa, LVMPD P#3341, Det. Stotts, LVMPD P#4321, Det. Tremel,  
4 LVMPD P#2038. Through these witnesses the State will also present any and all diagrams,  
5 photographs or physical evidence related to the investigation of the crimes of robbery and  
6 battery by a prisoner on January 25, 1993 and January 29, 1993.

7 10. The State may also present evidence of Flowers' arrest on March 11, 2005.  
8 This will be established through witnesses Officer R. Maupin, LVMPD P#5923 who  
9 conducted a vehicle stop and ran a records check which indicated that Flowers county and  
10 municipal warrants.

11 11. The State may also present evidence of Flowers' commission of the crime of  
12 destruction of county property on December 7, 1992 in which personnel of the Clark County  
13 Detention Center noted chips of glass from a window of Flowers' cell. This will be  
14 established through witnesses Officer Leeke and Officer Adams of the Detention Center.  
15 The State may also present photographic evidence, if any exists, through these two  
16 witnesses.

17 12. The State may also present evidence of the testimony of a representative of the  
18 Nevada Department of Parole and Probation, specifically, Flowers' parole officer, to testify  
19 to the defendant's performance on parole.

20 Other Evidence

21 13. The testimony of the Custodian of Records of the Nevada Department of  
22 Prisons regarding the disciplinary record of the Defendant while he was in the care and  
23 custody of the Nevada Department of Prisons and/or certified copies of such records.

24 14. The testimony of the Custodian of Records of the Clark County Detention  
25 Center regarding the disciplinary record of the Defendant while in the care and custody of  
26 the Clark County Detention Center and/or certified copies of such records.

27 15. The testimony of family members of victim Sheila Quarles, specifically, her  
28 mother, Debra Quarles. Exhibits will include photographs and memorabilia regarding the

1 life of Debra Quarles. The State will also present evidence from the family members of  
2 Marilee Coote, specifically her son, Dalton Coote. The State will also present evidence from  
3 the family of Rena Gonzalez, specifically, her daughter Angel Gonzalez and her mother  
4 Pauline Gonzalez.

5 16. Statements of the defendant in the form of phone calls made from the Nevada  
6 Department of Prisons and/or the Clark County Detention Center which demonstrate his  
7 character and attitudes towards violence and the criminal justice system.

8 DATED this 9<sup>th</sup> day of November, 2007.

9 Respectfully submitted,

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

13  
14 BY /s/PAMELA WECKERLY  
15 PAMELA WECKERLY  
16 Chief Deputy District Attorney  
17 Nevada Bar #006163

18 CERTIFICATE OF FACSIMILE TRANSMISSION

19 I hereby certify that service of NOTICE OF EVIDENCE IN SUPPORT OF  
20 AGGRAVATING CIRCUMSTANCES, was made this 9<sup>TH</sup> day of November, 2007, by  
21 facsimile transmission to:

22 SPECIAL PUBLIC DEFENDER'S OFFICE  
23 455-6273

24 BY /s/D.Daniels  
25 Employee of the District Attorney's Office

FILED

2008 JUL 21 P 2:45

  
CLERK OF THE COURT

0001  
DAVID M. SCHIECK  
Nevada Bar No. 824  
Special Public Defender  
RANDALL H. PIKE  
Nevada Bar No. 1940  
Deputy Special Public Defender  
CLARK W. PATRICK  
Nevada Bar No. 9451  
Deputy Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, NV 89155  
(702) 455-6265  
Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS

Defendant.

CASE NO. C 228755  
DEPT. NO. VII

Hearing date: \_\_\_\_\_  
Hearing time: 8:30 a.m.

DEFENDANT'S MOTION IN LIMINE TO ADMIT EVIDENCE OF  
AND CONTENTS OF CRIME STOPPERS REPORT

COMES NOW, the Defendant, NORMAN FLOWERS, by and through his attorneys of record, DAVID M. SCHIECK, Special Public Defender, RANDALL PIKE, Deputy Special Public Defender and CLARK W. PATRICK, Deputy Special Public Defender and hereby Moves this Honorable Court for admission of the existence and contents of the attached Crime Stoppers report into evidence in the Defense's case in chief, or through cross examination of the State's witnesses. Said Motion is based upon the attached Points and Authorities, all papers and pleadings on file herein, and on oral argument, if any, at the time of the hearing of said Motion.

... RECEIVED

JUL 21 2008

CLERK OF THE COURT

App. 000090

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 NOTICE OF MOTION

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
5 Motion on for hearing before the above-entitled Court on the 31 day of  
6 July, 2008, at the hour of 8:30 a.m.

7 **POINTS AND AUTHORITIES**

8 **ARGUMENT**

9 The evidence sought to be admitted is the report attached hereto. Respectfully, it is  
10 admissible because it is a statement of the deceased expressing her concern over  
11 someone other than the defendant that may cause her harm and it is reliable exculpatory  
12 hearsay evidence that is "otherwise admissible" under the hearsay exceptions found in  
13 NRS 51.315 and Federal Rule of Evidence 807, as well as the Nevada Supreme Court  
14 holding in Williams v. State, 110 Nev. 1182, 885 P.2d 536 (1994).

15 **A. The Crime Stoppers report is admissible under NRS 51.315**

16 NRS 51.315 provides a general exception to the rule against hearsay; "A statement  
17 is not excluded by the hearsay rule if (a) its nature and the special circumstances under  
18 which it was made offer strong assurances of accuracy; and (b) the declarant is  
19 unavailable as a witness." The requirements of this exception are clearly met in this  
20 instance:

21 (a) The special circumstances assuring accuracy here are that Crime  
22 Stoppers, a part of Crime Stoppers International, is a telephone hotline,  
23 separate from the emergency telephone number system, that allows a  
24 member of the community to provide anonymous information about criminal  
25 activity. <http://www.crimestopusa.com/AboutUs.asp#>. It allows citizens to  
26 provide crime solving assistance to the authorities without being directly  
involved in the investigation process. Id. Crime Stopper programs are  
operated in many communities worldwide, including Las Vegas, Nevada. Id.  
It is supported by the Crime Stoppers International Foundation and, as such,  
is a recognized, reliable, and accurate source of information. Id.

27 (b) The Victim is deceased, thus precluding her testimony as to her fear of  
28 someone other than the defendant. Additionally, the caller who gave this  
information to Crime Stoppers wished to remain anonymous and gave no  
information as to her identity. See "Nevada Crime Stoppers" report attached



1 hereto. In light of the unavailability of both the Victim and the anonymous  
2 caller, this report must be let in as it is the only way of presenting this highly  
probative information.

3 **B. The Crime Stoppers report is admissible under FRE 807**

4 Federal Rule of Evidence 807 provides:

5 "A statement not specifically covered by Rule 803 or 804 but having  
6 equivalent circumstantial guarantees of trustworthiness, is not excluded by  
7 the hearsay rule, if the court determines that (A) the statement is offered as  
8 evidence of a material fact; (B) the statement is more probative on the point  
9 for which it is offered than any other evidence which the proponent can  
10 procure through reasonable efforts; and (C) the general purposes of these  
11 rules and the interests of justice will best be served by admission of the  
statement into evidence. However, a statement may not be admitted under  
this exception unless the proponent of it makes known to the adverse party  
sufficiently in advance of the trial or hearing to provide the adverse party with  
a fair opportunity to prepare to meet it, the proponent's intention to offer the  
statement and the particulars of it, including the name and address of the  
declarant."

12 The three prong test required for admissibility of evidence is clearly met in this instance:

13 (A) The Crime Stoppers report is offered for the material fact of the Victim's  
14 fear of individuals other than the defendant. Whether the Victim was fearful  
15 of other men around the time of her death directly affects the weight of the  
16 State's evidence against the defendant. That the Victim made statements to  
17 a friend regarding the sexual advances of a suspect other than the defendant  
18 is extremely material given the nature of the victim's demise, and a  
19 reasonable jury could find this evidence exculpates Defendant. Additionally,  
two sets of DNA evidence were found on the Victim's body. The jury must be  
allowed to weigh all probative evidence, especially that supporting a  
reasonable defense theory that another man committed this crime. See  
Williams, 110 Nev. At 1185, 885 P.2d at 538 (holding defendant should have  
been allowed to introduce into evidence testimony which even tended to  
support her theory of defense).

20 (B) The Crime Stoppers report is the most probative way to present the  
21 information regarding the Victim's fear of other individuals because the Victim  
22 is deceased and cannot testify to such fears in person. Additionally, the  
23 caller who gave this information to Crime Stoppers wished to remain  
anonymous and gave no information as to her identity. In light of the  
unavailability of both the Victim and the caller, this report must be let in as it  
is the only way to present this highly probative information.

24 (C) The truth finding function of the courts and a general sense of justice  
25 requires that this report be admitted into evidence. The technical  
26 requirements of the hearsay rules should not deprive Defendant of his right to  
present all evidence in support of his defensive theory and must not deny the  
jury an opportunity to consider such highly valuable evidence.

27 **C. The Crime Stoppers report is admissible under Williams v. State**

28 Due process requires that the Crime Stoppers report be admitted into evidence.

1 "Few rights are more fundamental than that of an accused to present witnesses in his own  
2 defense." Williams, 110 Nev. At 1184, 885 P.2d at 537 (quoting Chambers v. Mississippi,  
3 410 U.S. 284 (1973) (concluding it was harmful error for a trial court to exclude hearsay  
4 evidence which evinced persuasive assurances of trustworthiness where such exclusion  
5 denied the accused traditional and fundamental due process)). The Defendant's theory,  
6 that someone else committed this crime, must not be undermined by an exclusion of the  
7 Crime Stoppers report. "The Due process clauses of our constitutions assures an accused  
8 the right to introduce into evidence **any** testimony or documentation which would tend to  
9 prove the defendant's theory of the case." Emphasis added. Williams, 110 Nev. At 1185,  
10 885 P.2d at 537-538 (quoting Vipperman v. State, 96 Nev. 592, 614 P.2d 532 (1980)).  
11 Just as in Williams, where the Court found harmful error when defendant was not allowed  
12 to introduce hearsay evidence supporting her theory of insanity, it too would be harmful  
13 error for this court to exclude the Crime Stoppers report supporting Defendant's theory that  
14 someone else committed this crime.

15 As the requirements for admissibility under NRS 51.513 and FRE 807 are clearly  
16 met, and according to Nevada case law, the report should be admitted. This evidence is  
17 relevant both to Defendant's theory of defense, and is permitted under the Rules of  
18 Evidence. The report is crucial to establishing the state of mind of the deceased victim.  
19 The "reasonableness" of the Victim's fear may be subject to argument, but this question of  
20 fact along with the Victim's consensual relationship with the Defendant must be considered  
21 by the jury. The Victim's fears and state of mind at the time of the incident is crucial to the  
22 defense's case. Excluding the evidence and allowing the jury only a partial, incomplete  
23 picture would be harmful, prejudicial error.

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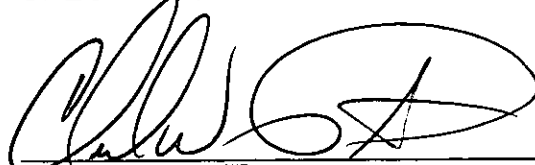
28 . . .

1 **CONCLUSION**

2 The Defense asks this court to admit evidence which demonstrates the victim's fear of  
3 someone other than the Defendant.

4 DATED this 21 day of July, 2008.

5 SUBMITTED BY:  
6 DAVID M. SCHIECK  
7 SPECIAL PUBLIC DEFENDER

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant.

CASE NO. C228755  
DEPT. NO. VII

DATE OF HEARING: 8/1/2008  
TIME OF HEARING: 8:30 a.m.

**BENCH BRIEF**

COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys,  
DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public  
Defender, CLARK W. PATRICK, Deputy Special Public Defender and hereby submits the  
following Bench Brief for the Evidentiary Hearing on August 1, 2008.

**POINTS AND AUTHORITIES**

**FACTS**

A preliminary hearing was held in this matter, before the Honorable Justice of the Peace,  
Tony L. Abbatangelo. The hearing was held over a three day period, June 23, 2005, July 18,  
2005 and August 16, 2005. At the conclusion of the preliminary hearing, Judge Abbatangelo  
found insufficient evidence to bindover Flowers on the counts relating to Gonzales. Judge  
Abbatangelo did however, find sufficient evidence to bindover Flowers on the charges relating  
to Coote.

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1 Subsequently, the case was taken before the Grand Jury, because of the discovery of "new  
2 evidence." The new evidence was nothing more than the testimony of two snitches, Shawnta  
3 Robinson and George Dunlap. At the conclusion of testimony before the Grand Jury, Flowers  
4 was indicted on all counts in regards to Coote and all counts regarding Gonzales, which had been  
5 previously dismissed. Since the only new evidence presented to the Grand Jury was the  
6 testimony of the snitches, Flowers' indictment to the charges involving Gonzales was solely on  
7 that testimony. In other words, without the snitches, Flowers would not have been indicted on  
8 the Gonzales charges.

9 Thomas Wahl testified on the DNA evidence from the case. Wahl testified during both  
10 the preliminary hearing and the grand jury. In both proceedings, Wahl's testimony was  
11 consistent. Wahl was given the biological evidence to perform DNA testing.

12 Regarding Coote, Wahl was given a buccal swab from Flowers, the medical examiners  
13 kit from Coote and a piece of carpet recovered from Coote's apartment. There were sperm cells  
14 in both the vaginal and rectal swabs recovered from Coote. Both swabs contained sperm from  
15 a single donor. Wahl determined Flowers was the donor.

16 Wahl recovered DNA evidence from the carpet sample. The sample contained DNA from  
17 Coote, Flowers and an unknown person. Wahl was unable to determine if the third person was  
18 male or female.

19 As to Gonzales, Wahl was given several pieces of evidence to test, including the medical  
20 examiners kit from Gonzales, a buccal swab from Flowers, Gonzales' underwear, a burnt piece  
21 of paper, two cigarette butts, a phone cord and a cloth lanyard.

22 The underwear contained no sperm or semen, therefore Wahl did not process it further.  
23 Wahl did not recover any sperm cells from Gonzales' vaginal, rectal or cervical swabs. The  
24 vaginal swab had a weak positive for P-30 which indicates semen. The rectal swab was positive  
25 for a DNA mixture, that was a combination of Gonzales and an unknown male. Flowers was  
26 excluded as the male. The rectal swab was also negative for P-30.

27 The burnt paper was positive for Gonzales' DNA and an unknown male DNA. Flowers  
28 was excluded as the male donor. One cigarette butt (with no brand name) contained an unknown

1 male DNA. Flowers was excluded as the donor. The other cigarette butt (Marlboro) contained  
2 a major female DNA component and a minor male DNA component. Gonzales was not the  
3 female donor, and Flowers was not the male donor.

4 The cloth lanyard contained no DNA evidence. The phone cord contained DNA from a  
5 female donor and a male donor. The female donor was Gonzales. Flowers was excluded as the  
6 male donor.

7 Dr. Knoblock testified at the preliminary hearing that he performed the autopsy on Coote.  
8 His findings included that Coote's pubic hair had been singed, she had hemorrhaging with in the  
9 whites of her eyes, an abrasion behind her right ear and tears on her labia and anus. Dr.  
10 Knoblock also notices contusions on Coote's arms. Dr. Knoblock placed Coote's time of death  
11 between 9:00 p.m. and 3:00 a.m. the night before she was found. He determined the cause of  
12 death to be manual strangulation.

13 Dr. Knoblock testified that the tears in Coote's labia and anus were due to penetration.  
14 However, he could not determine if the penetration was from a penis or from a "marital aid" that  
15 was found in Coote's apartment. Dr. Knoblock could also not determine if the penetration was  
16 consensual or non-consensual. He agreed that the tearing could have happened during rough  
17 consensual sex.

18 Dr. Knoblock testified that the hemorrhages in Coote's eyes were indicative of  
19 strangulation. An examination of Coote's neck also showed hemorrhages in the underlying  
20 muscles, a further indication of strangulation. Dr. Knoblock further testified that there was no  
21 evidence that the strangulation was done with a ligature.

22 Dr. Simms testified at the preliminary hearing that he had performed the autopsy on  
23 Gonzales. His findings included ligature impressions on Gonzales' neck, several blunt force  
24 injuries, vaginal tears and to a lesser extent anal tears. He determined the cause of death to be  
25 strangulation with the use of a ligature.

26 The blunt force injuries to Gonzales included contusions to her right and left thighs, the  
27 front of her right knee, her left leg, the right side of her head, her upper arms and shoulders and  
28 her right and left breasts. Dr. Simms opined that the injuries came as the result of a struggle. Dr.

1 Simms testified that the tears to the vaginal and anus were post-mortem.

2 Dr. Simms testified that Gonzales was strangled solely with the use of a ligature. He  
3 found no evidence of manual strangulation. He stated that he could tell the differences between  
4 manual and ligature strangulation during an autopsy.

5 During the grand jury testimony, Dr. Kubiczek testified regarding the autopsies on Coote  
6 and Gonzales. Dr. Kubiczek testified that he did not perform either autopsy, but was only  
7 testifying from the autopsy reports prepared by Dr. Knoblock and Dr. Sims.

8 As to Coote's autopsy, Dr. Kubiczek's testimony was consistent with Dr. Knoblock's  
9 testimony during the preliminary hearing. As to Gonzales' autopsy, Dr. Kubiczek's testimony  
10 was consistent with Dr. Simms testimony at the preliminary hearing, with a few exceptions.

11 Dr. Kubiczek characterized the injuries to Gonzales' vagina as discolorations, erosions  
12 and labial tears. He noted that at least one of the tears on her anus was a superficial skin tear,  
13 which was an artifact created during her autopsy. Dr. Kubiczek also noted that Gonzales'  
14 toxicology screen came back positive for marijuana use.

15 Monica Ramirez testified at the preliminary hearing that she was the manager of the  
16 Silver Pines Apartments. The apartment office received a telephone call at approximately 8:20  
17 a.m. on May 3, 2005, regarding a welfare check on Coote. Ramirez went to Coote's apartment  
18 and knocked on the door. When no one answered she used a master key to enter Coote's  
19 apartment. Entry required unlocking the dead bolt on the door. The door had to be locked from  
20 the outside using a key. The key used was never recovered by the apartment complex. She found  
21 Coote on the floor and called 911.

22 Ramirez also testified before the grand jury. Her testimony was consistent, except she  
23 mentioned a maintenance worker named Cesar Hernandez. Hernandez did not currently work  
24 for the Silver Pines apartments at the time of the grand jury.

25 Mawusi Ragland testified during both the preliminary hearing and the grand jury. In both  
26 proceedings, Ragland's testimony was consistent.

27 Ragland lived in apartment 302, of the Silver Pines Apartments on May 3, 2005. Ragland  
28 knew Coote and socialized with her. Ragland knew Gonzales through their children. Ragland

1 had introduced Flowers to Coote in July 2004. Flowers helped Coote instal a VCR. Ragland  
2 thought Coote and Flowers had a sexual relationship. Ragland had never introduced Flowers to  
3 Gonzales and Flowers and Gonzales did not know each other.

4 Ragland had known Flowers for approximately thirteen years. They had been dating for  
5 ten months. Ragland and Flowers had a fight in April 2005. She had not heard from him until  
6 she found a note on her apartment door from Flowers on May 3, 2005.

7 On May 3, 2005, Ragland left for work between 7:15 a.m. and 7:30 a.m. Ragland returned  
8 home at approximately 7:00 p.m. When she returned home, the apartment complex was cordoned  
9 off with yellow police tape. As Ragland entered her apartment she found a note left by Flowers  
10 that day. There were calls from Flowers' sister's phone number on the caller ID on her  
11 telephone. Ragland called Flowers at approximately 8:22 p.m. and told him two of her friends  
12 had died that day. Ragland told Flowers that Coote had died of natural causes and that Gonzales  
13 had been killed. Ragland asked Flowers to come over to her apartment. Flowers did not go to  
14 Ragland's apartment.

15 Juanita Curry testified during both the preliminary hearing and the grand jury. In both  
16 proceedings, Curry's testimony was consistent.

17 Curry lived in apartment 102 in the Silver Pines Apartment complex in May 2005. She  
18 was friends with Ragland. When Curry was moving into her apartment, a male friend of  
19 Ragland's helped her move her stereo. She knew the man as "Keith."

20 On May 3, 2005, Curry had gotten out of bed at approximately 6:00 a.m. She noticed a  
21 fire truck and an ambulance outside her apartment at approximately 8:00 - 8:15 a.m. (She  
22 testified at the grand jury that the time was between 7:30 and 8:30 a.m.)

23 A man knocked on her door between 8:30 and 9:00 a.m. She did not recognize the man.  
24 The man told her he knew Ragland and that he had moved Curry's stereo for her. Curry then  
25 recognized the man as "Keith." Curry opened the door. Keith asked to use her phone. Curry gave  
26 him her phone and Keith made several calls. Curry then asked him in to wait for Ragland and  
27 offered him a chair. Keith stayed for a few minutes then got up to leave. As he was leaving,  
28 Keith attempted to "kiss" Curry.



1 Keith came back to Curry's apartment approximately thirty minutes later. He asked to use  
2 her telephone again. Curry allowed him to make a phone call. Keith then left and walked across  
3 the apartment complex. Curry saw Keith walk towards Gonzales' apartment, but did not see him  
4 enter any apartment.

5 Keith comes back to Curry's apartment and knocks on the door. Curry did not answer.  
6 Keith leaves. He comes back and knocks again. Curry answers and talks to him. Curry offers him  
7 a glass of water. Keith leaves. Keith later comes back again and asks Curry to use the bathroom.  
8 She allows him into her apartment to use the bathroom. When he is done he leaves.

9 At approximately 11:00 a.m. Curry leaves to go see her daughter. As Curry is leaving,  
10 Keith approaches her and asks to use her cell phone. Curry lets him make a call.

11 Curry returns to her apartment at approximately 2:30 p.m. Curry is getting ready to leave  
12 again at approximately 4:00 p.m. and notices that there is a fire truck and an ambulance in the  
13 apartment complex parking lot.

14 Donald Tremel testified during both the preliminary hearing and the grand jury. In both  
15 proceedings, Tremel's testimony was consistent.

16 Tremel is a homicide detective with the Las Vegas Metropolitan Police Department. He  
17 was assigned to investigate the death of Coote on May 3, 2005, at the Silver Pine Apartments.  
18 He arrived at the scene at approximately 10:00 a.m.

19 Upon entering Coote's apartment, Tremel saw Coote deceased on the living room floor.  
20 There were ashes from incense in her navel area, and her pubic hair had been singed. The  
21 television in the living room had a pay per view movie ready to be watched. The movie was an  
22 adult pornographic film.

23 In the bathroom of the apartment, Tremel noticed the tub full of water with papers and  
24 miscellaneous items in the water. The washing machine contained assorted miscellaneous items.  
25 The machine had been put through a wash cycle. Tremel noted no other disturbances in the  
26 apartment. Tremel was at Coote's apartment for approximately an hour and a half.

27 Tremel was called back to the Silver Pines Apartments at approximately 5:00 p.m. the  
28 same day to investigate the death of Gonzales. Tremel observed Gonzales deceased in the bed

1 room, kneeling at the foot of the bed. Her pants were sagging, but were not pulled down. There  
2 was a ligature around her neck. Gonzales' apartment was clean, with no signs of being  
3 ransacked.

4 Tremel interrogated Flowers a total of three times. The first time was on May 4, 2005.  
5 Flowers was not given his Miranda rights, because he was not in custody.

6 Subsequently, Tremel received the DNA report from Wahl. The DNA report linked  
7 Flowers DNA to Coote, but not to Gonzales. Tremel arrested Flowers on June 7, 2005, and  
8 interrogated Flowers after giving Flowers his Miranda rights. Flowers admitted to a sporadic  
9 sexual relationship with Coote. Flowers told Tremel that Coote enjoyed rough sex. Flowers  
10 denied any contact with Gonzales.

11 Tremel testified during the preliminary hearing that the only link between Flowers and  
12 Gonzales was Curry's statement. Tremel also testified to the differences between the two cases,  
13 including: Coote was strangled manually, Gonzales was strangled with a ligature; Flowers had  
14 a sexual relationship with Coote, but not with Gonzales; Flowers' DNA was recovered in  
15 Coote's apartment, not in Gonzales'; Coote's body showed no signs of struggle, Gonzales' body  
16 did; Coote was found naked, Gonzales was fully clothed; Coote was found face up, Gonzales  
17 face down; Coote was in the living room, Gonzales in the bed room; Coote's apartment door was  
18 locked from the outside with a deadbolt, Gonzales' apartment door had been unlocked; Coote's  
19 apartment showed signs of a clean up effort, Gonzales' apartment did not.

20 Linda Ebbert testified only during the grand jury proceedings. Ebbert testified that she  
21 is a nurse trained to examine patients for sexual assault. Ebbert did not examine Coote or  
22 Gonzales. After reviewing photographs of Coote, Ebbert testified that the coroner had found  
23 tears to the labia and anus. After reviewing photographs of Gonzales, Ebbert testified that the  
24 coroner had found vaginal abrasions and tears in the rectum. Ebbert testified that she was unable  
25 to interpret the coroner's findings.

26 Ed Guenther testified only during the grand jury proceedings. Guenther is a crime scene  
27 analyst for the Las Vegas Metropolitan Police Department. He works in the latent print unit of  
28 the forensic laboratory. Guenther examined latent prints from Coote's apartment and known

1 prints of Flowers. Guenther did not identify Flowers prints anywhere in Coote's apartment.  
2 However, Guenther did identify the prints of Marcine Carroll and Paco Hernandez from Coote's  
3 apartment.

4 Guenther also examined latent prints from Gonzales' apartment. Guenther did not identify  
5 Flowers prints inside Gonzales' apartment. However, Guenther did identify several prints from  
6 Randy Ureno. Ureno's prints were found in Gonzales' master bedroom and on the door jam  
7 leading into the master bedroom.

8 Jeffrey Smink testified only during the grand jury proceedings. Smink is a senior crime  
9 scene analyst for the Las Vegas Metropolitan Police Department. Smink was assigned to process  
10 Coote's and Gonzales' apartments. He was assigned to assist in processing for latent prints,  
11 footwear impressions and search for evidence.

12 Smink testified that there were footwear impressions located in the planter area outside  
13 of Gonzales' apartment. He also noted that Gonzales' apartment was neat and orderly and that  
14 the exterior door had no evidence of damage.

15 Smink was also assigned to process Coote's apartment. Smink was assigned to take  
16 photographs, process for latent prints, process for bodily fluids, and impound evidence. Smink  
17 noted the items in the bathtub and washer. Smink located an area of possible body fluids on the  
18 carpet in the living room. A piece of the carpet was cut out and impounded.

19 Charity Green testified only during the grand jury proceedings. Green is a crime scene  
20 analyst for the Las Vegas Metropolitan Police Department. Green was assigned to assist Smink  
21 with processing Coote's apartment. Green impounded a piece of carpeting from the apartment.

22 Randy Ureno testified only during the grand jury proceedings. Ureno was friends with  
23 Gonzales. Ureno and Gonzales were in a sexually active relationship. They engaged in anal  
24 intercourse. Ureno testified that he had not seen Gonzales for approximately a month prior to her  
25 death.

26 Shawnta Robinson testified only during the grand jury proceedings. Robinson is an  
27 inmate at the Clark County Detention Center. Robinson was in jail on three different cases. The  
28 first was for attempt battery constituting domestic violence and burglary. The second was for

1 burglary, batter constituting domestic violence third and child endangerment. The third was for  
2 burglary, battery with use of a deadly weapon, first degree kidnaping and battery constituting  
3 domestic violence third. He was housed in the same unit as Flowers.

4 Robinson testified that Flowers told him that Flowers was going to get away with murder  
5 in regards to a Hispanic lady. Flowers had gone to the lady's house to buy marijuana. Flowers  
6 and the Hispanic male, beat up the lady, the Hispanic male had sex with her and smothered her.

7 Robinson also testified that Flowers told him that Flowers and a Hispanic male went into  
8 the apartment of a black lady. Flowers needed money to repair his car. Flowers and the lady had  
9 sex, and the Hispanic male strangled the lady.

10 George Dunlap testified only during the grand jury proceedings. Dunlap is an inmate at  
11 the Clark County Detention Center. Dunlap was in jail on charges of first degree kidnaping,  
12 sexual assault of a minor under fourteen, lewdness with a child under fourteen, coercion and  
13 battery. Dunlap testified that he was providing testimony to favorably affect his case. Dunlap had  
14 three previous felony convictions. The convictions were for possession of a destructive device,  
15 possession of a stolen vehicle and possession of a concealed weapon. Dunlap has offered to  
16 provide information in three to four other cases with the expectation it would reflect favorably  
17 on his cases.

18 Dunlap knew Flowers from the Clark County Detention Center. Dunlap testified that  
19 Flowers told him that Flowers and a friend went to a black lady's apartment to get money.  
20 Flowers raped the lady and his friend strangled her. Flowers indicated he had known the lady.

21 Dunlap also testified that Flowers had told him about a Hispanic lady. Flowers and his  
22 friend asked if she would sell them marijuana. They went into the lady's apartment. Flowers and  
23 his friend fought with the lady. Flowers' friend raped the lady, and Flowers smothered her with  
24 a pillow.

25 Dunlap then testified that Flowers told him that Flowers needed an alibi so Flowers went  
26 to the apartment of an old black lady. Flowers asked the woman to use her phone, got a drink  
27 of water and left.

28 Dunlap testified that he was housed in the same unit as Flowers and Robinson. Dunlap,

1 Robinson and Flowers played dominoes together and talked. Dunlap testified that he had made  
2 notes of his conversations with Flowers. The District Attorneys office is in possession of the  
3 notes.

4 Charles Bell testified only during the grand jury proceedings. Bell testified at the request  
5 of Flowers. Bell is an inmate at the Clark County Detention Center. Bell is facing charges of  
6 burglary while in possession of a firearm, conspiracy to commit robbery, robbery with use of a  
7 deadly weapon, possession of stolen property and evading a police officer. Bell has previous  
8 convictions for attempt grand larceny, burglary and conspiracy to commit robbery. Bell and  
9 Flowers were cellmates. Bell had observed and overheard Flowers having conversations with  
10 other inmates. Bell testified that Flowers would never talk to other inmates regarding Flowers'  
11 case.

#### 12 ARGUMENT

13 In the present case, the Court is being asked for a defacto joinder for emotional  
14 prejudicial impact purposes that will basically ensure a guilty verdict and a sentence of death.

15 While under the guise of "other bad act" evidence, it is respectfully submitted that the finding  
16 of the District Court Judge in denying the actual joinder of the counts be considered. Basically,  
17 that the inclusion of information regarding additional murder is so overwhelmingly prejudicial  
18 that it would preclude a fair trial on the individual counts. See Tabish v. State, 119 Nev. 293,  
19 2003 Nev. LEXIS 41 (Nev., July 14, 2003, Decided ). A case wherein the defendants were  
20 charged with crimes 50 days apart, the theory that money gained from the first crime was needed  
21 to fund the business gained from the second crime was insufficient to warrant a single trial on  
22 all charges. The Court finding in that case that even if joinder would be permissible under Nev.  
23 Rev. Stat. § 173.115, a trial court should sever the offenses if the joinder is unfairly prejudicial.

24 Similarly, in the case of Collman v. State, 116 Nev. 687, 2000 Nev. LEXIS 93 (Nev.,  
25 August 23, 2000, Decided), although the death sentence in that matter was upheld, the Court  
26 found Nev. Rev. Stat. § 48.045(2) prohibits the admission of evidence of other crimes, wrongs,  
27 or acts to prove a person's character, but such evidence may be admissible for other purposes.  
28 In order to determine admissibility of those acts, the district court must determine that: (1) the

1 incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence;  
2 and (3) the probative value of the evidence is not substantially outweighed by the danger of  
3 unfair prejudice. The decision to admit or exclude evidence rests within the trial court's  
4 discretion, and the Nevada Supreme Court will not overturn that decision absent manifest error.

5 In the present case, the "other bad acts" are not proven by "clear and convincing  
6 evidence, and the additional counts of homicide clearly provide a danger of unfair and  
7 overwhelming prejudice.

8 DATED: July 30, 2008.

9 Respectfully submitted,

10 DAVID M. SCHIECK  
11 SPECIAL PUBLIC DEFENDER

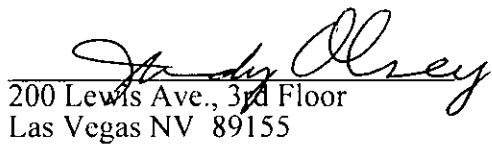
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20 RECEIPT OF COPY

21 RECEIPT of a copy of the foregoing document is hereby acknowledged this 30 day of July,  
22 2008.

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CLERK OF THE COURT

BY *Tina Hurd*  
TINA HURD DEPUTY

ORIGINAL

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 NORMAN FLOWERS,  
14 #1179383

15 Defendant.

CASE NO: C228755

DEPT NO: VII

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO ADMIT**  
17 **EVIDENCE OF CONTENTS OF CRIME STOPPERS REPORT**

18 DATE OF HEARING: AUGUST 1, 2008

19 TIME OF HEARING: 9:15 A.M.

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
21 LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points  
22 and Authorities in Opposition to Defendant's Motion in Limine to Admit Evidence of  
23 Contents of Crime Stoppers Report.

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

27 //

28 //

//





1 opinion that was based upon double and triple hearsay.

2 In fact, it may have been the defendant who made the call. That would be consistent  
3 with his actions after the murder. The defendant had been dating Debra Quarles, Sheila's  
4 mother, shortly before the murder. After the murder, he inserted himself back in her life.  
5 The defendant repeatedly asked Debra about the police investigation – did they know who  
6 did it? Did they have any suspects?

7 NOTHING in this report establishes the state of mind of Sheila as the defendant  
8 claims. It is, therefore, hearsay and completely irrelevant.

9 **CONCLUSION**

10 For the foregoing reasons, the Defendant's Motion in Limine to Admit Evidence of  
11 and Contents of Crime Stoppers Report must be DENIED.

12 DATED this 31st day of July, 2008.

13 Respectfully submitted,

14 DAVID ROGER  
15 Clark County District Attorney  
16 Nevada Bar #002781

17 BY

18   
19 LISA LUZAICH  
20 Chief Deputy District Attorney  
21 Nevada Bar #005056

22 **CERTIFICATE OF FACSIMILE TRANSMISSION**

23 I hereby certify that service of Opposition to Defendant's Motion in Limine to Admit  
24 Evidence of Contents of Crime Stoppers Report, was made this 31st day of July, 2008, by  
25 facsimile transmission to:

26 CLARK W. PATRICK, SPD  
27 FAX #455-6273

28 /s/ HOWARD CONRAD  
Secretary for the District Attorney's Office

hjc/SVU

**EXHIBIT "1"**

Long/Sherwood

**NEVADA CRIME STOPPERS**

400 E STEWART, LAS VEGAS, NEVADA

PH: 702-229-3445 Fax 702-229-3185

**CONFIDENTIAL - DO NOT INCLUDE IN CASE FILE**

TipSoft Generated Fact Sheet for Law Enforcement Use Only

TIP ID: 194-184

Client ID: 151

Call Taker: LM

RCVD: 3/29/2005

DLVD: 3/29/2005

Time Taken: 2:49:58 PM

OFFENSE TYPE	LOCATION
Homicide	Las Vegas

**NARRATIVE****GENERAL:**

Date crime occurred - Thursday March 24, 2005

Victim - Sheila (unknown last name) 18 year old female

How is caller aware of the crime - Just a hunch

Others with knowledge - A few more

Danger to Tipster - Unknown

How caller heard about Crime Stoppers - Newspaper Television

**SUSPECT #1:**

Name - ROBERT LEWIS

Race - Black Sex - male Age - 38 DOB - Unknown

Height - 5'7" Weight - 200 Hair Color - Black short, possibly shaved head Eye Color - brown

Scars/Tattoos - Silver teeth Facial Hair - Goatee Clothing - Casual

Address - Unknown address

Description of Residence - 2 storey building called Palm Village Apartments located on unknown # Peccos St (unknown apt number). It is the same building where the victim lived.

Directions - main crossing Road is Washington St.

Prior Criminal History - Yes, burglary and robbery in Las Vegas

Weapons - Unknown

Dogs/Animals - No

Gang Activity - No

Employer/Work Schedule - Does not work

Last time suspect was seen by caller was Wednesday March 23, 2005

**SUSPECT #2:**

Name - ANTHONY LEWIS (suspect # 1's nephew)

Race - Black Sex - male Age - 27 DOB - Unknown

Height - 5'6" Weight - 170 Hair Color - Black short Eye Color - Brown

Scars/Tattoos - tattoos on both arms, scar on top lip Facial Hair - Goatee Clothing - Casual

Address - Same as suspect # 1

Description of Residence - Unknown

Prior Criminal History - yes unknown charges

Weapons - Unknown

Dogs/Animals - No

Gang Activity - No

Employer/Work Schedule - Does not work

Last time suspect was seen by caller was one month ago.

3/30  
Homicide  
CS

h

**NEVADA CRIME STOPPERS**

400 E STEWART, LAS VEGAS, NEVADA

PH: 702-229-3446 Fax: 702-229-3185

**CONFIDENTIAL - DO NOT INCLUDE IN CASE FILE**

TipSoft Generated Fact Sheet for Law Enforcement Use Only

TIP ID: 194-164

RCVD: 3/29/2005

Client ID: 151

DLVD: 3/29/2005

**VEHICLE:**

Does not have a vehicle

Caller suspects the suspects listed above had something to do with the victim's death.

Caller stated the victim's mother found the victim's body at approximately 3:30PM on March 24, the victim was found in the bath tub without clothing.

Caller stated they were the victim's friend, the victim had told the caller she had a doctor's appointment at 1:30PM the day she was murdered. The victim had also told caller that suspect # 1 had approached her and told her he wanted to have sex with her, the victim rejected the suspect's request.

Caller heard from neighbors that at about 2:30PM they heard loud music coming from the victim's apartment, caller quoted, the victim had just purchased a new stereo, however she did not like to play loud music, caller believes the murderer(s) played the music loud to cover the victim's screams.

Caller also heard that just before the loud music was heard, some neighbors heard someone from the victim's apartment arguing and right after the loud voices the music began to play loudly.

Caller also finds suspicious that the victim's stereo and many other unknown property were stolen from the victim's apartment.

Caller did not know how the victim died, but caller heard on the news that no apparent trauma to the victim's body was found by police, apparently the victim was asphyxiated. Caller stated the victim was asthmatic and could not breathe very well. Caller heard the pillowcases from the pillows were missing, caller assumes that the murderer(s) could have used the pillows to kill the victim and they removed the pillowcases in order not to leave any evidence behind.

Caller suggested the suspects listed above should be questioned by police.

No further information was given.

-End of Report-

  
CLERK OF THE COURT

**NISD**  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN HAROLD FLOWERS, III,  
#1179383

Defendant.

Case No. C228755

Dept No. VII

**SUPPLEMENTAL NOTICE OF EVIDENCE IN SUPPORT OF  
AGGRAVATING CIRCUMSTANCES**

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through PAMELA WECKERLY, Chief Deputy District Attorney, pursuant to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to present the following evidence in support of aggravating circumstance at a penalty hearing:

Evidence and Testimony at the Trial Phase

Counsel for the Defendant have the grand jury transcript and exhibits from the instant case, C228755, as well as witness notices, pretrial motions, discovery, police reports and court documents concerning the case. Counsel also have the preliminary hearing transcript, exhibits and evidence from case C214390 and grand jury transcript, exhibits and evidence from case C216032, as well as impounded evidence, witness notices, pretrial motions, discovery. Counsel represents defendant in both cases. The State has also provided the

1 defense with police reports and court documents regarding the defendant's prior criminal  
2 history. Thus, Counsel for the Defendant are on notice of all of the evidence and testimony  
3 to be adduced at the guilt phase of these proceedings.

4 In the penalty phase of the trial, the State will be relying on the evidence and  
5 testimony adduced during the trial phase for the purpose of establishing the character of the  
6 defendant for penalty purposes.

7 Prior Felony Conviction of the Defendant

8 1. In support of the allegation pertaining to NRS 200.033(1), an aggravating  
9 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
10 The murder was committed by a person under sentence of imprisonment, the State intends to  
11 introduce a certified copy of Flowers's Judgment of Conviction from case C110585 in which  
12 Flowers was convicted of first degree arson on May 28, 1993. The Judgment of Conviction  
13 notes that he was sentenced to fifteen years in prison, making Flowers under sentence of  
14 imprisonment when he committed the charged offense in March 2005. Court documents  
15 regarding the conviction were provided in the Notice of Intent to Seek Death Penalty. In  
16 addition, the State may call Flowers's parole officer or a designee on the arson case to  
17 establish that he was subject to parole supervision in March 2005. Finally, the State may call  
18 a custodian of records from the Nevada Department of Prisons to establish that Flowers  
19 served time and was then paroled for the 1993 arson conviction.

20 Other Aggravating Circumstances

21 Furthermore, the following evidence pertaining to the Defendant will be used as  
22 character evidence during the penalty phase.

23 2. In support of the allegation pertaining to NRS 200.033(2)), an aggravating  
24 circumstance set for in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
25 The murder was committed by a person who has been convicted of a felony involving  
26 violence, the State intends to produce testimony from witnesses from case C110585 in which  
27 Flowers was convicted of first degree arson. The police reports regarding this incident were  
28 provided with the Notice of Intent to Seek Death Penalty in this case and attached to the

1 Notice of Intent to Seek Death Penalty in case C214390. The witnesses listed in those  
2 reports will be called to establish this aggravating circumstance. Those witnesses include,  
3 Claud and Barbara McGowan who left their residence at 9361 Parkdale with locked doors.  
4 Witness Richard Mann noticed smoke coming from the residence and went inside to see if  
5 anyone needed assistance. He also called the police. The officers who responded and  
6 investigated this crime, who also may be called as witnesses include, D. Albietz, LVMPD P#  
7 4204, J. Buczek, LVMPD P#3702, A. Cabrales, LVMPD P#2045, C. Figueroa, LVMPD  
8 P33341, Richard Good, T. Rowland, LVMPD P#4178, D. Ruffino, LVMPD P#1502, J.  
9 Tharp, LVMPD P#3599, W. Zimmerman, LVMPD P#4211, M. Luna, LVMPD P#175.  
10 Other lay witnesses who were involved in this case and may be called as witnesses include:  
11 Andrew Mann, Karen Moore, Aaron Murphy, Betty Bell, Brian Wayne, Clark County Fire  
12 Department Engine 14 Company, William Patterson, G. Redmon, Clark County Fire  
13 Department.

14 The State may also present any and all diagrams, photographs, or physical evidence  
15 related to the investigation of this incident as well as a certified copy of a Judgment of  
16 Conviction.

17 3. In support of the allegation pertaining to NRS 200.033(2)), an aggravating  
18 circumstance set for in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
19 The murder was committed by a person who has been convicted of a felony involving  
20 violence, the State intends to produce testimony from witnesses from case C109523 in which  
21 Flowers was convicted of robbery with use of a deadly weapon. The court documents and  
22 police reports regarding this incident were provided with the instant Notice of Intent to Seek  
23 Death Penalty and attached to the Notice of Intent to Seek Death in case C214390. The  
24 witnesses listed in those reports will be called to establish this aggravating circumstance.  
25 Those witnesses include Ranzy Rembert, Debra Larson, Cathi Jo Esplin, Rebecka Smyth,  
26 Sherri Lynn Burgess, and Ronald Ayotte. In this case, Ranzy Rembert was approached by  
27 defendant Flowers and another individual who claimed that they were interested in test  
28 driving a vehicle. Rambert was working at The Car Store in Las Vegas, Clark County,

1 Nevada. After this conversation, Rembert, Flowers, and a third individual pulled out a  
2 firearm and instructed Rembert to pull over, get out, and not look back. After Rembert  
3 exited the vehicle, defendant Flowers and the third individual drove off. The officers who  
4 responded and investigated this crime, who also may be called as witnesses, include: M.  
5 Rutte, LVMPD P#4017, Det. French, LVMPD P#375, M. Pirtle, LVMPD P#4017, A.  
6 Pilette.

7 The State may also present any and all diagrams, photographs, or physical evidence  
8 related to the investigation of this incident as well as a certified copy of a Judgment of  
9 Conviction.

10 4. In support of the allegation pertaining to NRS 200.033(4)), an aggravating  
11 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
12 The murder was committed while the person was engaged in the commission of a robbery  
13 and the person charged killed the person murdered, the State intends to rely on evidence  
14 presented during the guilt phase of the trial. The State will rely on the testimony of witness  
15 Debra Quarles, the mother of victim Sheila Quarles. Debra Quarles will testify that she had  
16 previously purchased a stereo for her home. Debra Quarles noticed the stereo was missing at  
17 the same time she discovered that her daughter had been murdered. The State will present  
18 evidence that Sheila Quarles was home at the time of the murder and that she died as a result  
19 of drowning with strangulation being a significant contributing factor in order to establish  
20 the force or threat element of robbery. The specific medical testimony will be offered  
21 through Dr. Knoblock or a designee. The State also references and incorporates count 4 of  
22 the indictment which charges Flowers with robbing Sheila Quarles.

23 5. In support of the allegation pertaining to NRS 200.033(13)), an aggravating  
24 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
25 The person subjected the victim to non-consensual sexual penetration immediately before  
26 the murder. To establish this aggravating circumstance, the State will present evidence in  
27 the guilt or penalty phase of a medical examiner, Dr. Knoblock or designee, who will state  
28 that Sheila Quarles sustained injuries to her vaginal area or introitus prior to death. This



1 aggravating circumstance will also be established with photographic evidence. Witness  
2 Kristina Paulette will establish that defendant Flowers's DNA was found in the vaginal of  
3 Sheila Quarles. The State further references count three of the indictment which charges the  
4 defendant with sexual assault. Further, the State may offer the testimony of SANE Nurse  
5 Linda Ebbert or a designee to explain how these types of injuries occur to sexual assault  
6 victims. In addition, the State will establish the condition of Quarles's body and clothing at  
7 the time she was found, either through witness Debra Quarels or Detective George Sherwood  
8 or Detective Dan Long.

9         6. In support of the allegation pertaining to NRS 200.033(2)(a), an aggravating  
10 circumstance set forth in the Notice of Intent to Seek Death Penalty, filed January 11, 2007:  
11 The murder was committed by a person who has been convicted of another murder and the  
12 provisions of subsection 12 do not otherwise apply to that murder (NRS 200.033(2)(a)), the  
13 State will present evidence regarding the May murders committed by Flowers. In other  
14 words, assuming the case involving victims Marilee Coote and Rena Gonzalez proceeds to  
15 trial before the instant case, defendant Flowers may be convicted of two counts of murder  
16 before this case proceeds to trial. This would be established through the following  
17 witnesses: Detective Don Tremel, Detective Sheila Huggins, and Dr. Lary Simms or  
18 designee. The State will also present evidence of photographs of these two murders as well  
19 as a Judgment of Conviction, if available. Should the case involving Marilee Coote and  
20 Rena Gonzalez not proceed to trial before the instant case, the State still intends to present  
21 evidence of those murders at a penalty hearing, just not as evidence of an aggravating  
22 circumstance.

23         7. In support of the allegation of aggravating circumstance pertaining to NRS  
24 200.033(2), an aggravating circumstance set forth in the Notice of Intent to Seek Death  
25 Penalty, filed January 11, 2007: The murder was committed by a person who has been  
26 convicted of a felony involving violence, the State will present evidence in accord with what  
27 has previously been described. In other words, assuming that the case involving victims  
28 Marilee Coote and Rena Gonzalez proceeds to trial before the instant case, the State's

1 position is that any convictions for the crime of sexual assault from that case constitutes an  
2 aggravating circumstance in the instant case. This would be established through the  
3 following witnesses: Detective Don Tremel, Detective Sheila Huggins, and Dr. Lary Simms  
4 or designee. The State will also present evidence of photographs of these two murders as  
5 well as a Judgment of Conviction, if available. Should the case involving Marilee Coote and  
6 Rena Gonzalez not proceed to trial before the instant case, the State still intends to present  
7 evidence of those crimes at a penalty hearing, just not as evidence of an aggravating  
8 circumstance.

9       8. In support of the allegation of aggravating circumstance pertaining to NRS  
10 200.033(2), an aggravating circumstance set forth in the Notice of Intent to Seek Death  
11 Penalty, filed January 11, 2007: The murder was committed by a person who has been  
12 convicted of a felony involving violence, the State will present evidence in accord with what  
13 has previously been described. In other words, assuming that the case involving victims  
14 Marilee Coote and Rena Gonzalez proceeds to trial before the instant case, the State's  
15 position is that any convictions for the crime of robbery from that case constitutes an  
16 aggravating circumstance in the instant case. This would be established through the  
17 following witnesses: Detective Don Tremel, Detective Sheila Huggins, and Dr. Lary Simms  
18 or designee. The State will also present evidence of photographs of these two murders as  
19 well as a Judgment of Conviction, if available. Should the case involving Marilee Coote and  
20 Rena Gonzalez not proceed to trial before the instant case, the State still intends to present  
21 evidence of those crimes at a penalty hearing, just not as evidence of an aggravating  
22 circumstance.

#### 23                               The Adult Criminal History of the Defendant

24       9. The State may also present evidence of defendant Flowers' conviction for  
25 burglary in case number C109622. This will be established through a certified copy of a  
26 Judgment of Conviction. This case was based on a series of residential burglaries and one  
27 robbery in the Parkdale, Palmdale, Cloverdale, Ferndale, and Ridgedale Street areas. The  
28 State may also call burglary victims Karen Moore, Jonathan Courtright, Nina Dellacourt,

1 Barbara King, Reanna McGraw, Betty Bell, Elwood Williams, and Roger Osgood. The  
2 State may also present the testimony of Det. Buczek, LVMPD P#3702, Det. Tharp, LVMPD  
3 P#3599, Det. Figueroa, LVMPD P#3341, Det. Stotts, LVMPD P#4321, Det. Tremel,  
4 LVMPD P#2038. Through these witnesses the State will also present any and all diagrams,  
5 photographs or physical evidence related to the investigation of the crimes of robbery and  
6 battery by a prisoner on January 25, 1993 and January 29, 1993.

7 10. The State may also present evidence of Flowers' arrest on March 11, 2005.  
8 This will be established through witnesses Officer R. Maupin, LVMPD P#5923 who  
9 conducted a vehicle stop and ran a records check which indicated that Flowers county and  
10 municipal warrants.

11 11. The State may also present evidence of Flowers' commission of the crime of  
12 destruction of county property on December 7, 1992 in which personnel of the Clark County  
13 Detention Center noted chips of glass from a window of Flowers' cell. This will be  
14 established through witnesses Officer Leeke and Officer Adams of the Detention Center.  
15 The State may also present photographic evidence, if any exists, through these two  
16 witnesses.

17 12. The State may also present evidence of the testimony of a representative of the  
18 Nevada Department of Parole and Probation, specifically, Flowers' parole officer, to testify  
19 to the defendant's performance on parole.

20 Other Evidence

21 13. The testimony of the Custodian of Records of the Nevada Department of  
22 Prisons regarding the disciplinary record of the Defendant while he was in the care and  
23 custody of the Nevada Department of Prisons and/or certified copies of such records.

24 14. The testimony of the Custodian of Records of the Clark County Detention  
25 Center regarding the disciplinary record of the Defendant while in the care and custody of  
26 the Clark County Detention Center and/or certified copies of such records.

27 15. The State may present evidence of the Defendant's conduct while in the care  
28 and custody of the Clark County Detention Center, specifically that on November 4, 2006

1 and December 18, 2007, the Defendant engaged in fights with other inmates. This will be  
2 established through witnesses Officer Dyer, Sgt. Close, Sgt. Rudolph, nurse Dan Lee, nurse  
3 Lolita of the Detention Center, and other percipient witnesses.

4 16. The testimony of family members of victim Sheila Quarles, specifically, her  
5 mother, Debra Quarles. Exhibits will include photographs and memorabilia regarding the  
6 life of Debra Quarles. The State will also present evidence from the family members of  
7 Marilee Coote, specifically her son, Dalton Coote. The State will also present evidence from  
8 the family of Rena Gonzalez, specifically, her daughter Angel Gonzalez and her mother  
9 Pauline Gonzalez.

10 17. Statements of the defendant in the form of phone calls made from the Nevada  
11 Department of Prisons and/or the Clark County Detention Center which demonstrate his  
12 character and attitudes towards violence and the criminal justice system.

13 DATED this 29<sup>th</sup> day of September, 2008.

14 Respectfully submitted,

15 DAVID ROGER  
16 Clark County District Attorney  
Nevada Bar #002781

17  
18 BY /s/PAMELA WECKERLY  
19 PAMELA WECKERLY  
20 Chief Deputy District Attorney  
Nevada Bar #006163

21 CERTIFICATE OF FACSIMILE TRANSMISSION

22 I hereby certify that service of NOTICE OF EVIDENCE IN SUPPORT OF  
23 AGGRAVATING CIRCUMSTANCES, was made this 29<sup>TH</sup> day of September, 2008, by  
24 facsimile transmission to:

25 SPECIAL PUBLIC DEFENDER'S OFFICE  
455-6273

26 BY Shellie Warner  
27 Employee of the District Attorney's Office

28 mmw/SVU

ORIGINAL

FILED

2008 SEP 29 P 2: 26

0001  
DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER  
Nevada Bar No. 0824  
RANDALL H. PIKE  
Deputy Special Public Defender  
Nevada Bar No. 1940  
CLARK W. PATRICK  
Deputy Special Public Defender  
Nevada Bar No. 9451  
330 South Third Street, Suite 800  
Las Vegas, NV 89155-2316  
(702) 455-6265  
Attorneys for Defendant

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.

NORMAN FLOWERS,  
Defendant.

CASE NO. C228755  
DEPT. NO. VII

DATE OF HEARING: \_\_\_\_\_  
TIME OF HEARING: \_\_\_\_\_

**MOTION TO RECONSIDER THE RULING ON DEFENDANT'S MOTION IN LIMINE TO  
PRECLUDE EVIDENCE OF OTHER BAD ACTS**

COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys,  
DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public  
Defender, CLARK W. PATRICK, Deputy Special Public Defender, and hereby moves the  
Court to reconsider it's previous ruling based upon information that was developed after the  
hearing on the matter.

This motion is made and based upon the following Points and Authorities, and any  
argument of counsel at the time of hearing of this motion.

**NOTICE OF MOTION**

TO: THE STATE OF NEVADA, Plaintiff; and

TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion

RECEIVED

SEP 29 2008

CLERK OF THE COURT

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

App. 000120

1 on for hearing before the above-entitled Court on the 9<sup>th</sup> day of October, 2008 at  
2 the hour of 8:30 a.m.

3 **POINTS AND AUTHORITIES**

4 **FACTUAL BACKGROUND**

5 After the Court issued it's ruling on the Defendant's motion in limine wherein the Court  
6 determined that the matters involving Marilee Coote would be admissible, the State of Nevada  
7 identified the source of the second DNA, a George Brass. Mr. Brass provided the attached  
8 statement to Detective Sherwood.

9 This information, and the additional information from Mr. Brass about the length of his  
10 relationship with Ms. Quarles directly contradicts the State's announced premiss at the time  
11 of the hearing that Ms. Quarles was strictly involved with women. Mr. Brass's relationship was  
12 not known to Ms. Quarles mother. It took over 3 years and additional investigation based in  
13 part on the information provided at the arguments for the Detectives to confront Mr. Brass and  
14 do the necessary DNA work. Mr. Brass was not in CODIS, due to his not yet being convicted  
15 on the pending armed robbery charges. His co-defendant in that case recieved the death  
16 penalty.

17 **ARGUMENT**

18 The Eighth Judicial District Rules of Court do not contain a provision that addresses a  
19 Motion for Reconsideration in criminal matters. The civil section of the rules does provide  
20 some guidance in the area however, stating in Rule 2.24 that

21 "(a) No motion once heard and disposed of may be renewed in the same cause,  
22 nor may the same matters therein embraced be reheard, unless by leave of the  
Court granted upon motion therefor, after notice of such motion to the adverse  
parties....

23 (c) If a motion for rehearing is granted, the court may make a final disposition  
24 of the cause without reargument or may reset it for reargument or resubmission  
25 or may make such other orders as are deemed appropriate under the  
circumstances of the particular case."

26 The Court has, the defense believes, appropriately denied the State's motion to  
27 consolidate the offenses which allegedly occurred on March 24, 2005 and May 3, 2005.  
28 Joinder is not proper as the events do not arise from the same transaction nor constitute a

1 common plan.

2 In the Coote matter, the defense believes that the State theory involves the presence  
3 of and participation of a second individual, a co-conspirator or potential co-defendant. In the  
4 case at bar, the now existent information regarding the long term heterosexual relationship  
5 between Ms. Quarles and Mr. Brass. Mr. Brass does not know Mr. Flowers.

6 Mr. Brass states that it was Mr. Lewis, the same Lewis who was identified in the crime  
7 stoppers report as being the probable murderer that told Mr. Brass that Sheila was home  
8 alone, and saw him walk in the apartment with Sheila. Mr. Lewis, the subject of some testing,  
9 refused to give a statement to police, but provided a buccal swab for DNA testing.

10 The Defense is left with a firm belief that had the above information been available  
11 at the time of the ruling of the court, that the evidence of the Coote case would not be admitted  
12 in the State's case in chief.

13 **EVIDENCE OF THE COOTE "OTHER BAD ACT" SHOULD NOT BE**  
14 **ALLOWED DURING THE GUILT PHASE BASED UPON THE NEWLY DISCOVERED**  
**EVIDENCE.**

15 As has been shown above, the evidence of the Coote crime is sufficiently different to  
16 fall outside the certain specific exceptions of NRS 48.045.

17 Because this Court is familiar with all of the bad act evidence, and is now aware of the  
18 allegations of Mr. Brass regarding his involvement as well as the timing, it is clear that the  
19 Coote case is not (1) an incident relevant to the crime charged; and although (2) the act may  
20 be subject to proof by clear and convincing evidence; nevertheless, given the new evidence,  
21 (3) the probative value of the evidence is not substantially outweighed by the danger of unfair  
22 prejudice. Tinch v. State, 113 Nev. 1170, 946 P.2d 1061 (1997). Accordingly, the State  
23 should be precluded from introducing the evidence of the Coote case in the case in chief of  
24 the case at bar.

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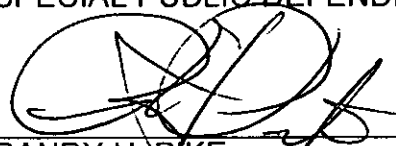
**CONCLUSION**

NORMAN FLOWERS respectfully requests that this Court reconsider it's ruling and preclude the State from introducing any evidence of the Coote case during the prosecution of this case.

DATED this 29<sup>th</sup> day of September, 2008.

RESPECTFULLY SUBMITTED:

DAVID M. SCHIECK  
SPECIAL PUBLIC DEFENDER



RANDY H. PIKE  
CLARK W. PATRICK  
330 South Third Street, 8th Floor  
Las Vegas, NV 89155-2316  
Attorneys for Defendant



1 JURL

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FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

2008 OCT 16 A 7:21

*[Signature]*  
CLERK OF THE COURT

THE STATE OF NEVADA

Plaintiff(s),

-vs-

NORMAN FLOWERS

Defendant(s).

CASE NO. C228755

DEPT. NO. VII

JURY

- |                      |                    |
|----------------------|--------------------|
| 1. MICHAEL MURRAY    | 8. BARBARA HELTON  |
| 2. RITA ASTURI       | 9. SHARON HAMMOND  |
| 3. ZANDRA BUSTAMANTE | 10. NIKLOS NOVOTNY |
| 4. JEFFREY MILLER    | 11. SHANNA BURLEY  |
| 5. WYATT WULFF       | 12. JAMES KNOX     |
| 6. VICKIE NICHOLLS   | 13. MIADORA NELSON |
| 7. TODD PIERSON      | 14. GUY STABLEIN   |

ALTERNATES

Secret from above

OCT 21 2008

BY:   
TINA HURD, DEPUTY

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

JURL

THE STATE OF NEVADA,

Plaintiff(s),

-vs-

NORMAN FLOWERS,

Defendant(s).

CASE NO. C228755

DEPT. NO. VII

**AMENDED**

**JURY**

- |                      |                   |
|----------------------|-------------------|
| 1. MICHAEL MURRAY    | 8. BARBARA HELTON |
| 2. RITA ASTURI       | 9. SHARON HAMMOND |
| 3. ZANDRA BUSTAMANTE |                   |
| 4. JEFFREY MILLER    | 11. SHANNA BURLEY |
| 5. WYATT WULFF       | 12. JAMES KNOX    |
| 6. VICKIE NICHOLLS   |                   |
| 7. TODD PIERSON      | 14. GUY STABLEIN  |

**ALTERNATES**

- |                    |                    |
|--------------------|--------------------|
| 10. NIKLOS NOVOTNY | 13. MIADORA NELSON |
|--------------------|--------------------|

DISTRICT COURT  
CLARK COUNTY, NEVADA

2008 OCT 21 A 9:04

THE STATE OF NEVADA  
Plaintiff(s),

-vs-

NORMAN KEITH FLOWERS  
Defendant(s).

CASE NO. C228755

DEPT. NO. VII

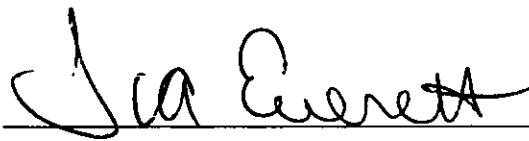
**DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL**

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 20<sup>TH</sup> day of October, 2008.

Edward A. Friedland, Clerk of the Court

By:



Tia Everett , Deputy Clerk

A finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence [as to any particular count] permits two reasonable interpretations, one of which points to the defendant's and the other to his innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation that points to his guilt.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

INSTRUCTION NO. \_\_\_\_

You are instructed that because the State failed to test the speaker wire that was found at the scene for blood and other biological evidence, the wire is irrebuttably presumed to have been held by Jessie Nava Jr.

Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991).

Instruction No. \_\_\_\_\_

The State in an effort to present the circumstances surrounding the commission of a crime, has presented evidence of pending allegations of crimes for which Mr. Flowers has not been convicted. You may consider this circumstantial evidence if you believe beyond a reasonable doubt that the other alleged crime must be so interconnected to the act(s) in question that a witness cannot describe the act in controversy without referring to the other alleged crime.

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Note: NRS 48.035 (3) requires the giving of a cautionary instruction explaining the reason for its admission at the request of an interested party.

Language taken from Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978 (1995).

If the evidence in this case is subject to two constructions of interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, and the other to innocence of the defendant and to the guilt of another, it is your duty, to adopt the interpretation which will admit of the defendant's innocence, and reject that which points to guilt.

You will notice the rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, even if the reasonable deduction points to defendant's guilt, the entire proof must be beyond a reasonable doubt to support a verdict of guilty.

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In Crane v. State, 88 Nev. 684, 687; 504 P.2d 12 (1972), the court said it was permissible to give this instruction when the evidence is circumstantial.

INSTRUCTION NO. \_\_\_\_\_

It is as much a prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

---

Mazzan v. State, 116 Nev. Adv. Op. No. 7, 30P.2d 1128, 1132 (September 17, 2000).



INSTRUCTION NO. \_\_\_\_\_

Corroborating evidence must independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice's testimony. If there is no independent, inculpatory evidence - evidence tending to connect the defendant with the offense, "there is no corroboration, though the accomplice may be corroborated in regard to any number of facts sworn to him.

Where the connecting evidence shows no more than an opportunity to commit a crime, simply proves suspicion, or is equally consonant with the reasonable explanation pointing toward innocent conduct on the part of the defendant, the evidence is to be deemed insufficient.

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Austin v. State, 87 Nev. 578, 585, 491 P.2d 724, 728-29 (1971).

111 Nev. at 1250-51 (quoting State v. Dannels, 226 Mont. 80, 734 P.2d 188, 194 (Mont. 1987) Quoting State v. Mitchell, 192 Mont. 16, 625 P.2d 1155, 1158 (Mont. 1980).

Instruction No. \_\_\_\_\_

The flight of Jesus Nava Jr. immediately after the commission of a crime, is not sufficient in itself to establish the guilt of Jesus Nava Jr., but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether Mr. Floers is guilty or not guilty.

caljic 2.52

**LESSER INCLUDED OFFENSES<sup>1</sup>**

If the State proves a defendant guilty of the charged offense beyond a reasonable doubt the jury shall convict the defendant of that offense. However, if the jury is not convinced of the defendant's guilt of the charged offense, they may return a verdict of guilty on an offense, which was not charged, the commission of which is necessarily included in the offense charged, if the evidence is sufficient to establish the defendant's guilt of such offense beyond a reasonable doubt.

[In this case the defendant is accused in an [Information/Indictment]<sup>2</sup> alleging an open charge of murder. This charge may include murder of the first degree, murder of the second degree, voluntary manslaughter and involuntary manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense<sup>3</sup>.

2<sup>nd</sup> degree

murder

<sup>1</sup> This instruction is the general instruction a specific instruction should be given for each potential lesser included.

<sup>2</sup> Please select the appropriate language.

<sup>3</sup> This language is for murder cases only.

INSTRUCTION NO. \_\_\_\_\_

**MANSLAUGHTER DEFINED**

1. Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation. It is not divided into degrees but is of two kinds, namely, voluntary manslaughter and involuntary manslaughter.

---

NRS 200.040.

1  
2 **MANSLAUGHTER DEFINED**

3       1.     Manslaughter is the unlawful killing of a human being without malice express  
4 or implied and without any mixture of deliberation. It is not divided into degrees but is of  
5 two kinds, namely, voluntary manslaughter and involuntary manslaughter.

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**MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED**

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

When the act causing the death, though unlawful, is done upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, the offense is voluntary manslaughter. In such a case (even if an intent to kill exists) the law is that malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

This instruction should only be used when the issue of killing in a heat of passion has been properly raised by the evidence presented either by the State or the defense.

A sudden heat of passion can occur without a direct physical assault. Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).

**MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED**

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

When the act causing the death, though unlawful, is done upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, the offense is voluntary manslaughter. In such a case (even if an intent to kill exists) the law is that malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

**MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED**

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

The killing must be voluntary, upon a sudden heat of passion, and caused by a provocation apparently sufficient to make the passion irresistible. "Heat of passion" as the term is used in these instructions means such passion as naturally would be aroused in the mind of a reasonable person in the same or similar circumstances. The circumstances and facts must be such as would cause a reasonable person to act rashly, without reflection and deliberation, from passion rather than from judgment. If you determine that a reasonable person who was placed in the same position in which the defendant was found, and knew what the defendant then knew, would have been thrown into a heat of passion, then such a killing is voluntary manslaughter.

A sudden heat of passion can occur without a direct physical assault.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

NRS 200.040, 200.050, 200.060. The crime of manslaughter does not require specific intent to kill. Hancock v. State, 80 Nev. 581, 397 P.2d 181 (1964)

A serious and highly provoking injury need not be a direct physical assault on the accused. Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).

This instruction should be used when the issue of killing in a heat of passion has been properly raised by the evidence presented either by the State or the defense.

A sudden heat of passion can occur without a direct physical assault. Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).



INSTRUCTION NO. \_\_\_\_\_

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A sudden heat of passion can occur without a direct physical assault.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

INSTRUCTION NO. \_\_\_\_\_

1  
2 6.20 BENEFIT OF DOUBT (MANSLAUGHTER)

3 If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you  
4 have a reasonable doubt whether the crime is murder or manslaughter, you must give the  
5 defendant the benefit of such doubt and find it to be manslaughter rather than murder.

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INSTRUCTION NO. \_\_\_\_\_

6.20 BENEFIT OF DOUBT (MANSLAUGHTER)

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

NRS 175.501.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, with the specific intent to permanently deprive the owner of his property. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resisting to the taking, in either of which cases the degree of force is immaterial. Such taking constitutes Robbery whenever it appears that although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

If the specific intent to take personal property from another was not formed until after the death of the victim a robbery has not been committed.

*Not a Robbery*  
*Crime*  
*not a robbery*

INSTRUCTION NO. \_\_\_\_\_

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If the intent to steal arose after the use of force, then the  
taking is not robbery.

INSTRUCTION NO. \_\_\_\_

A homicide committed while perpetrating or attempting to perpetrate a robbery is first-degree murder. This is known as the felony-murder rule.

To support a finding of felony-murder the State must prove beyond a reasonable doubt that the intent to rob was formed prior to the killing of the victim and that the killing occurred in the course of the robbery. If the State does not prove beyond a reasonable doubt that the intent to commit the alleged robbery was formed in advance of the killing, the jury may not find the defendant guilty of first-degree murder under the felony-murder rule.

Thomas v. State, 120 Nev. 37, 83 P.3d 818 (2004).

App. 000145

FILED IN OPEN COURT  
EDWARD A. FRIEDLAND  
CLERK OF THE COURT

OCT 22 2008

1:36pm

ORIGINAL

BY:

TINA HURD, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS,

Defendant.

CASE NO: C228755

DEPT NO: VII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.



1  
2 An Indictment is but a formal method of accusing a person of a crime and is not of  
3 itself any evidence of his guilt.

4 In this case, it is charged in an Amended Indictment that on or about the 24<sup>th</sup> day of  
5 March, 2005, the Defendant committed the offenses of BURGLARY, MURDER, SEXUAL  
6 ASSAULT, and ROBBERY within the County of Clark, State of Nevada, contrary to the  
7 form, force and effect of statutes in such cases made and provided, and against the peace and  
8 dignity of the State of Nevada,

9 COUNT 1 - BURGLARY

10 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit  
11 assault or battery and/or a felony, to-wit: murder and/or robbery and/or sexual assault, that  
12 certain building occupied by SHEILA QUARLES, located at 1001 North Pecos #H-63, Las  
13 Vegas, Clark County, Nevada.

14 COUNT 2 - MURDER

15 did then and there wilfully, unlawfully, feloniously, without authority of law, and  
16 with malice aforethought, kill SHEILA QUARLES, a human being, by manual strangulation  
17 and/or drowning, with his hands and/or an unknown object, said killing having been (1)  
18 wilfull, deliberate and premeditated; and/or (2) committed during the perpetration or  
19 attempted perpetration of sexual assault as set forth in Count 3 and/or burglary as set forth in  
20 Count 1 and/or robbery as set forth in Count 4, said acts being incorporated herein by this  
21 reference as though fully set forth.

22 COUNT 3 - SEXUAL ASSAULT

23 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
24 SHEILA QUARLES, a female person, to sexual penetration, to-wit: sexual intercourse, by  
25 the said Defendant placing his penis and/or an unknown object into the genital opening of  
26 the said SHEILA QUARLES, against her will.

1 COUNT 4 – ROBBERY

2 did then and there wilfully, unlawfully, and feloniously take personal property: to-wit:  
3 a stereo and speakers, cell phone, and/or other personal property from the person of SHEILA  
4 QUARLES or in her presence, by means of force or violence, or fear of injury to, and  
5 without the consent and against the will of the said SHEILA QUARLES.

6 It is the duty of the jury to apply the rules of law contained in these instructions to the  
7 facts of the case and determine whether or not the defendant is guilty of the offense charged.

8 Each charge and the evidence pertaining to it should be considered separately. The  
9 fact that you find a defendant guilty or not guilty as to one of the offenses charged should not  
10 control your verdict as to any other offense charged.

INSTRUCTION NO. A

Every person who, by day or night, enters any residence or structure with the intent to commit a larceny and/or an assault and/or a battery and/or a felony, such as sexual assault and/or robbery, therein is guilty of Burglary.

INSTRUCTION NO. 6

Consent to enter is not a defense to the crime of burglary so long as it is proven beyond a reasonable doubt that entry was made with the specific intent to commit a larceny and/or an assault and/or a battery and/or a felony therein.

INSTRUCTION NO. 6

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

In this case the defendant is accused in an Indictment alleging an open charge of murder. This charge may include murder of the first degree and murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

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2 Murder is the unlawful killing of a human being with malice aforethought, either  
3 express or implied. The unlawful killing may be effected by any of the various means by  
4 which death may be occasioned.  
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Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.



Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 11

Murder of the First Degree is murder which is (a) committed in the perpetration or attempted perpetration of a burglary, sexual assault, or robbery or (b) perpetrated by any kind of willful, deliberate and premeditated killing.

1  
2 Murder of the first degree is murder which is perpetrated by means of any kind of  
3 willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation,  
4 and premeditation -- must be proven beyond a reasonable doubt before an accused can be  
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between  
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of  
9 thought, including weighing the reasons for and against the action and considering the  
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all  
12 cases the determination must not be formed in passion, or if formed in passion, it must be  
13 carried out after there has been time for the passion to subside and deliberation to occur. A  
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to  
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the  
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as  
19 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence  
20 that the act constituting the killing has been preceded by and has been the result of  
21 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

1  
2       The law does not undertake to measure in units of time the length of the period during  
3 which the thought must be pondered before it can ripen into an intent to kill which is truly  
4 deliberate and premeditated. The time will vary with different individuals and under varying  
5 circumstances.

6       The true test is not the duration of time, but rather the extent of the reflection. A cold,  
7 calculated judgment and decision may be arrived at in a short period of time, but a mere  
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation  
9 and premeditation as will fix an unlawful killing as murder of the first degree.  
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2       There are kinds of murder which carry with them conclusive evidence of malice  
3       aforethought. One of these classes of murder is murder committed in the perpetration or  
4       attempted perpetration of a burglary, sexual assault, or robbery. Therefore, a killing which is  
5       committed in the perpetration of a burglary, sexual assault, or robbery is deemed to be  
6       murder of the first degree, whether the killing was intentional or unintentional or accidental.  
7       This is called the Felony Murder Rule.

8       The intent to perpetrate or attempt to perpetrate the burglary, sexual assault, or  
9       robbery must be proven beyond a reasonable doubt.

10       For the purposes of the Felony Murder Rule, the intent to commit the robbery must  
11       have arisen before or during the conduct resulting in death. However, in determining  
12       whether the defendant had the requisite intent to commit robbery before or during the killing,  
13       you may infer that intent from the defendant's actions during and immediately after the  
14       killing. There is no Felony Murder where robbery occurs as an afterthought of the killing.

INSTRUCTION NO. 15

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt. Therefore, even if you cannot agree on whether the facts establish premeditated murder or felony murder, so long as all of you agree that the evidence establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

INSTRUCTION NO. 16

All murder which is not Murder of the First Degree is Murder of the Second Degree.  
Murder of the Second Degree is Murder with malice aforethought, but without the admixture  
of premeditation and deliberation.

1  
2 If you find that the State has established that the defendant has committed murder of  
3 the first degree, you shall select murder of the first degree as your verdict.

4 The crime of murder of the first degree includes the crime of murder of the second  
5 degree. You may find the Defendant guilty of the lesser-included offense of murder of the  
6 second degree if:

7 1. after first fully and carefully considering the charge of murder of the first degree,  
8 you either (a) find the defendant not guilty of that charge, or (b) are unable to agree whether  
9 to acquit or convict on that charge; and

10 2. all twelve of you are convinced beyond a reasonable doubt the defendant is guilty  
11 of murder of the second degree.

12 If you are convinced beyond a reasonable doubt that the crime of murder has been  
13 committed by the defendant, but you have a reasonable doubt whether such murder was of  
14 the first or of the second degree, you must give the defendant the benefit of that doubt and  
15 return a verdict of murder of the second degree.



1  
2 A person who subjects another person to sexual penetration against the victim's will  
3 or under conditions in which the perpetrator knows or should know that the victim is  
4 mentally or physically incapable of resisting or understanding the nature of his conduct is  
5 guilty of sexual assault.

6 As used in these instructions, "sexual penetration" means any intrusion, however  
7 slight, of any part of a person's body or any object manipulated or inserted by a person into  
8 the genital or anal openings of the body of another, including sexual intercourse.

9 Sexual intercourse is the placing of the penis of the perpetrator into the vagina of the  
10 victim.

If a female yields to the sexual acts of a male aggressor because she reasonably believes that resistance would result in her death or serious bodily injury, her conduct does not constitute consent.

Physical force is not a necessary ingredient in the commission of sexual assault. The crucial question is not whether the victim was physically forced to engage in a sexual assault but whether the act was committed without her consent. There is no consent where the victim is induced to submit to the sexual act through fear of death or serious bodily injury.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, to prevent or overcome resistance to the taking, or to facilitate escape, in either of which cases the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

1  
2 The Defendant is presumed innocent until the contrary is proved. This presumption  
3 places upon the State the burden of proving beyond a reasonable doubt every material  
4 element of the crime charged and that the Defendant is the person who committed the  
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a  
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of  
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a  
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is  
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
13 verdict of not guilty.  
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2 It is a constitutional right of a defendant in a criminal trial that he may not be  
3 compelled to testify. Thus, the decision as to whether he should testify is left to the  
4 defendant on the advice and counsel of his attorney. You must not draw any inference of  
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter  
6 into your deliberations in any way.  
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2 The evidence which you are to consider in this case consists of the testimony of the  
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the  
5 testimony of a person who claims to have personal knowledge of the commission of the  
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof  
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or  
8 not guilty. The law makes no distinction between the weight to be given either direct or  
9 circumstantial evidence. Therefore, all of the evidence in the case, including the  
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However, if the  
12 attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and  
13 regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a  
15 witness. A question is not evidence and may be considered only as it supplies meaning to  
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court  
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must also  
20 be disregarded.  
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2 Evidence that the Defendant committed offenses other than that for which he is on  
3 trial, if proven to be clear and convincing, is not admitted and may not be considered by you  
4 to prove that the Defendant is a person of bad character or to prove that he has a disposition  
5 to commit crimes. Such evidence is admitted, and may be considered by you, only for the  
6 limited purpose of proving the defendant's identity, intent, lack of consent on the part of the  
7 victim, a common scheme, plan or motive, or the absence of mistake or accident, as it relates  
8 to the charges before you. If you find the evidence to be clear and convincing, you must  
9 weigh this evidence in the same manner as you do all other evidence in the case.  
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2 A witness who has special knowledge, skill, experience, training or education in a  
3 particular science, profession or occupation is an expert witness. An expert witness may  
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.  
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it  
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the  
8 reasons given for it are unsound.  
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2 The credibility or believability of a witness should be determined by his manner upon  
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his  
4 opportunity to have observed the matter to which he testified, the reasonableness of his  
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may  
7 disregard the entire testimony of that witness or any portion of his testimony which is not  
8 proved by other evidence.  
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2 Although you are to consider only the evidence in the case in reaching a verdict, you  
3 must bring to the consideration of the evidence your everyday common sense and judgment  
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as  
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel  
6 are justified in the light of common experience, keeping in mind that such inferences should  
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.  
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INSTRUCTION NO. 30

You are here to determine whether the State has proven the guilty of the Defendant beyond a reasonable doubt from the evidence in this case. You are not called upon to return a verdict as to the guilt of any other person. So, if you believe the State has proven the guilt of the Defendant beyond a reasonable doubt, you should so find, even though you may believe one or more other persons are also guilty.

INSTRUCTION NO. 31

In your deliberation, you may not discuss or consider the subject of punishment. At this time, your duty is confined to the determination of the guilt or innocence of the defendant.

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2 When you retire to consider your verdict, you must select one of your number to act  
3 as foreperson who will preside over your deliberation and will be your spokesperson here in  
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into  
6 evidence, these written instructions and forms of verdict which have been prepared for your  
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it  
9 signed and dated by your foreperson and then return with it to this room.  
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2 The verdict must represent the considered judgment of each juror. In order to return a  
3 verdict, your verdict must be unanimous.

4 It is your duty, as jurors, to consult with one another and to deliberate with a view to  
5 reaching an agreement, if you can do so without violence to individual judgment. Each of  
6 you must decide the case for yourself, but do so only after an impartial consideration of the  
7 evidence with your fellow jurors.

8 In the course of your deliberations, do not hesitate to reexamine your own views and  
9 change your opinion if convinced it is erroneous. But do not surrender your honest  
10 conviction as to the weight or effect of evidence solely because of the opinion of your fellow  
11 jurors, or for the mere purpose of returning a verdict.



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2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed  
4 by the foreperson. The officer will then return you to court where the information sought  
5 will be given you in the presence of, and after notice to, the district attorney and the  
6 Defendant and his/her counsel.

7 Readbacks of testimony are time-consuming and are not encouraged unless you deem  
8 it a necessity. Should you require a readback, you must carefully describe the testimony to  
9 be played back so that the court reporter can arrange her notes. Remember, the court is not  
10 at liberty to supplement the evidence.  
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2 Now you will listen to the arguments of counsel who will endeavor to aid you to  
3 reach a proper verdict by refreshing in your minds the evidence and by showing the  
4 application thereof to the law; but, whatever counsel may say, you will bear in mind that it is  
5 your duty to be governed in your deliberation by the evidence as you understand it and  
6 remember it to be and by the law as given to you in these instructions, with the sole, fixed  
7 and steadfast purpose of doing equal and exact justice between the Defendant and the State  
8 of Nevada.

9  
10 GIVEN: 

DISTRICT JUDGE

OCT 21 2008

OCT 22 2008 1:36 PM

ORIGINAL

BY:   
TINA HURD, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS,

Defendant.

CASE NO: C228755

DEPT NO: VII

VERDICT

We, the jury in the above entitled case, find the Defendant NORMAN KEITH FLOWERS, as follows:

COUNT 1 – BURGLARY

*(please check the appropriate box, select only one)*

☒ Guilty of Burglary

☐ Not Guilty

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1 **COUNT 2 – MURDER**

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of First Degree Murder

4 ***SPECIAL VERDICT***

5 *(please check the appropriate box or boxes)*

6 ☐ The jury unanimously finds the murder willful, deliberate, and  
7 premeditated.

8 ☒ The jury unanimously finds the murder was committed during the  
9 perpetration of a burglary, sexual assault, or robbery.

10 ☐ The jury does not unanimously find the defendant guilty under a  
11 single theory of murder of the first degree.

12 ☐ Guilty of 2nd Degree Murder

13 ☐ Not Guilty

14  
15 **COUNT 3 – SEXUAL ASSAULT**

16 *(please check the appropriate box, select only one)*

17 ☒ Guilty of Sexual Assault

18 ☐ Not Guilty

19  
20 **COUNT 4 – ROBBERY**

21 *(please check the appropriate box, select only one)*

22 ☐ Guilty of Robbery

23 ☒ Not Guilty

24  
25 DATED this 22 day of October, 2008

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FOREPERSON



FILED IN OPEN COURT  
EDWARD A. FRIEDLAND  
CLERK OF THE COURT

ORIGINAL

OCT 24 2008 12:54 PM

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

By:   
TINA HURD, DEPUTY

THE STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
NORMAN KEITH FLOWERS,  
  
Defendant.

Case No. C228755  
Dept. No. VII

C 228755

**SPECIAL VERDICT**

**MITIGATING CIRCUMSTANCES**

We, the Jury in the above entitled case, designate that one or more of the jurors have found the mitigating circumstances or circumstances which have been checked below:

- ☒ Mr. Flowers's was raised in a dysfunctional family
- ☒ Mr. Flowers was abandoned in Central America (Belize) by his mother at an early age.
- ☒ Mr. Flowers was physically abused as a child.
- ☒ Mr. Flowers was sexually abused as a child
- ☒ Mr. Flowers was subjected to mental abuse by his father
- ☒ Mr. Flowers was exposed to gang violence by his brother
- ☒ Mr. Flowers was humiliated and made fun of during his adolescence
- ☒ Mr. Flowers is a loving father to his son
- ☒ Mr. Flowers was not treated for the sexual abuse he endured
- ☒ Mr. Flowers execution to have severe impact on his son and his twin sister Norma

Additional mitigators found by the jury

☒ NO PRISON PROBLEMS IN PRISON

☒ NO POSITIVE INFLUENCE IN LIFE

☒ ALL ADULT LIFE IN PRISON

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Dated at Las Vegas, Nevada this 24 day of October, 2008.

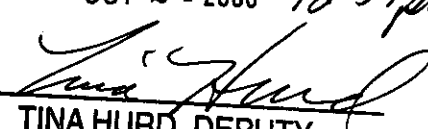


Foreperson

FILED IN OPEN COURT  
EDWARD A. FRIEDLAND  
CLERK OF THE COURT

OCT 24 2008 12:54 PM

ORIGINAL  
DISTRICT COURT  
CLARK COUNTY, NEVADA

BY:   
TINA HURD, DEPUTY

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 NORMAN KEITH FLOWERS,

12 Defendant.  
13

Case No. C228755

Dept No. VII

14 VERDICT

15 We, the Jury in the above entitled case, having found the Defendant, NORMAN  
16 KEITH FLOWERS Guilty of COUNT 2 – MURDER OF THE FIRST DEGREE, and  
17 having found that the aggravating circumstance or circumstances outweigh any mitigating  
18 circumstance or circumstances impose a sentence of:

- 19 ☐ A definite term of 50 years imprisonment, with eligibility for parole beginning  
20 when a minimum of 20 years has served,  
21 ☐ Life in Nevada State Prison With the Possibility of Parole.  
22 ☒ Life in Nevada State Prison Without the Possibility of Parole.  
23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 24 day of October, 2008.

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27 FOREPERSON  
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0001  
 DAVID M. SCHIECK  
 SPECIAL PUBLIC DEFENDER  
 Nevada Bar No. 0824  
 RANDALL H. PIKE  
 Deputy Special Public Defender  
 Nevada Bar No. 1940  
 CLARK W. PATRICK  
 Deputy Special Public Defender  
 Nevada Bar No. 9451  
 330 South Third Street, Suite 800  
 Las Vegas, NV 89155-2316  
 (702) 455-6265  
 Attorneys for Defendant

FILED

2008 OCT 30 A 11:36

*E. J. Smith*  
 CLERK OF THE COURT

## DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant,

CASE NO. C228755  
 DEPT. NO. VII

DATE OF HEARING: \_\_\_\_\_  
 TIME OF HEARING: \_\_\_\_\_

MOTION FOR NEW TRIAL

COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys,  
 DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public  
 Defender, CLARK W. PATRICK, Deputy Special Public Defender, and hereby moves the  
 Court and moves this Court pursuant to NRS 176.515 for a new trial.

This Motion is made and based on the pleadings and papers on file herein; the Points and  
 Authorities and Affidavit of Counsel attached hereto; and the argument of counsel at the  
 hearing of the Motion.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion  
 on for hearing before the above-entitled Court on the 12 day of November, 2008 at the hour  
 of 830 a.m.

35  
 RECEIVED  
 OCT 30 2008  
 CLERK OF THE COURT



1 **POINTS AND AUTHORITIES**

2 **FACTUAL BACKGROUND**

3 The Court has now heard the evidence that was presented to the Jury in this case.  
4 Based upon the evidence, the State, immediately prior to trial after the disclosure of George  
5 Brass's contact with Ms. Quarles prior to her death appropriately amended it's Information  
6 regarding the presence or involvement of a third party. The Court also heard the evidence  
7 regarding Jesse Nava, who was in possession of the stereo or "a stereo" after the death of  
8 Ms. Quarles. The Jury found did not convict the Defendant of the Robbery Count.

9 Based upon the information, it is more than arguable that without the admission of the  
10 Coote case, there was insufficient evidence presented to allow the jury to find guilt beyond a  
11 reasonable doubt.

12 **ARGUMENT**

13 NRS 176.515 states that:

14 "1. The court may grant a new trial to a defendant if required as a matter of  
15 law or on the ground of newly discovered evidence.

16 . . .

17 4. A motion for new trial based on any other grounds must be made within 7  
18 days after verdict or finding of guilt or within such further time as the court may  
fix during the 7-day period."

19 FLOWERS asserts, as set forth below, that the overwhelming prejudice of the  
20 admission of the COOTE case has become so apparent at the time of this trial; that the  
21 damage feared by Judge Bonaventure in his ruling on January 8, 2007 came to fruition. See  
22 Tinch v. State, 113 Nev. 1170, 946 P.2d 1061 (1997), and the pleadings and transcripts  
23 attached hereto as Exhibits A, B, and C.

24 Additionally, the admission of just a portion of the Defendant's statement (exhibit D  
25 attached hereto) regarding this case also evolved into an improper comment on Flowers  
26 invocation of right to counsel, and his silence in violation of the Fifth Amendment.

27 The prosecution is forbidden at trial to comment upon a defendant's election to remain  
28 silent following his arrest and after being advised of his rights as required by Miranda v.

1 Arizona, 384 U.S. 436 (1966); Neal v. State, 106 Nev. 23, 787 P.2d 764 (1980). See, Doyle  
2 v. Ohio, 426 U.S. 610 (1976). This Court has held that an attack on a defendant's silence  
3 delivered as merely an innocuous, passing comment during closing argument is not  
4 necessarily error. Fernandez v. State, 81 Nev. 276, 402 P.2d 38 (1965). However, the Court  
5 in Fernandez carefully drew a distinction between a comment (whether direct or indirect) on  
6 the defendant's failure to testify and a reference to evidence or testimony that stands  
7 uncontradicted, stating

8 "Paraphrasing Griffin [v. California, 85 S.Ct. 1229], what the jury may infer given  
9 no help from the Court (or prosecution) is one thing. What they may infer when  
10 the court (or prosecution) solemnizes the silence of the accused into evidence  
11 against him is quite another. Permitting such comment imposes a penalty for  
12 exercising a constitutional privilege. The dividing line must be approached with  
13 caution and conscience."

14 Fernandez, 81 Nev. at 279.

15 Similarly, the Court in McGuire v. State, 100 Nev. 153, 677 P.2d 1060 (1984) reversed  
16 a conviction as a result of the prosecutor commenting to the jury that the defendant had "never  
17 testified before" in the case, and then questioned the truth of the defendant's trial testimony  
18 by inquiring "why he would remain silent" until the time of trial if his alibi was true. McGuire,  
19 100 Nev. at 157.

20 The Nevada Supreme Court in Mahar v. State, 102 Nev. 488, 728 P.2d 439 (1986)  
21 found questioning of a prosecutor to be reversible error when it went to post-arrest silence.  
22 Use of silence as a form of impeachment of a criminal defendant while he is testifying

23 "is impermissible as violative of the due process right to a fair trial [citation].  
24 Implicit in the Miranda warning is the assurance that the defendant's silence will  
25 carry no penalty. Doyle, 426 U.S. at 618; Aesoph, 102 Nev. at 316, 721 P.2d  
26 at 383."

27 In the case at bar there is now doubt from the record that Flowers was under arrest (albeit  
28 for the COOTE case) when Detectives were questioning him. Flower's "invocation" of his right  
was equivocal... merely desiring to speak to his Court appointed attorney (Pipe (sic)).

...

...

1 CONCLUSION

2 It is respectfully requested that based on the foregoing argument, this Court grant Mr.  
3 Flowers a new trial.

4 DATED this \_\_\_\_ day of November, 2008.

5 RESPECTFULLY SUBMITTED:  
6 DAVID M. SCHIECK  
7 SPECIAL PUBLIC-DEFENDER

8 

9 RANDY H. PIKE  
10 CLARK W. PATRICK  
11 330 South Third Street, 8th Floor  
12 Las Vegas, NV 89155-2316  
13 Attorneys for Defendant  
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**EXHIBIT** A

App. 000191

0076

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS aka  
Norman Harold Flowers, III,  
#1179383

Defendant.

Case No. C216032/  
C228755  
Dept No. VI

## NOTICE OF MOTION AND MOTION TO CONSOLIDATE

DATE OF HEARING: 1/11/07

TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
PAMELA WECKERLY, Chief Deputy District Attorney, and files this Notice of Motion  
and Motion to Consolidate.

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

NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
will bring the foregoing motion on for setting before the above entitled Court, in Department  
VI thereof, on Thursday, the 11th day of January, 2006, at the hour of 8:30 o'clock a.m., or

1 as soon thereafter as counsel may be heard.

2 DATED this \_\_\_\_\_ day of December, 2006.

3  
4 DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

6  
7 BY

*Pamela Weckerly*  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163

9  
10 STATEMENTS OF FACT

11 A. Fact of Case C in District Court VI

12 On May 3, 2005, Silver Pines Apartments employees discovered 45 year old Marilee  
13 Coote lying on her living room floor. Ms. Coote was a reliable employee of the Andre  
14 Agassi Center. When she did not arrive at work by 7:30 a.m., a co-worker became  
15 concerned and asked the apartment workers to do a welfare check. After the apartment  
16 employees discovered the body, they contacted the police.

17 Initially, paramedics arrived, but Ms. Coote was already deceased. Police followed.  
18 Ms. Coote was found lying on her living room floor, facing up and completely nude. Inside  
19 her belly button were ashes from burnt incense. The skin between her upper thighs and her  
20 pubic area was burned. Coote's apartment was locked, but her purse and keys were missing.  
21 Inside Coote's washing machine, police found personal photos, bills, and identification  
22 belonging to Coote. The items appeared to have been washed because they had a soap  
23 residue on them. In the bathtub, under ten inches of water, police found other items of  
24 paperwork, a phone book, and jewelry boxes covered with a towel. The apartment was  
25 otherwise very neat and undisturbed.

26 The detectives initially did not view this incident as a homicide. Therefore, they  
27 documented the scene, but did not collect evidence. After conducting an autopsy, however,  
28 Dr. Knoblock concluded the Coote died as the result of strangulation. He also noted tearing  
of Coote's labia and anal area. Dr. Knoblock concluded that these tears were sustained ante-

1 mortem. Coote also had contusions on her arms and forearms.

2 While various officers were in Coote's apartment during the morning of May 3, 2005,  
3 another resident of the complex, Juanita Curry, came in contact with the defendant, Norman  
4 Flowers. This occurred between 7:00 and 10:00 a.m. Curry was an acquaintance of  
5 Flowers' girlfriend, Mawusi Ragland. Curry lived two floors below Coote. Curry noticed  
6 the police and paramedics going in and out of Coote's apartment. From apartment  
7 employees, Curry believed that Coote died of natural causes. Sometime that same morning,  
8 defendant Flowers knocked on Curry's door. He asked if he could use her phone. He said  
9 he was supposed to meet up with Mawusi that morning. She agreed and gave him the phone.

10 Curry is physically disabled and sometimes walks with a cane. Because of her  
11 compromised physical state, she was not comfortable allowing Flowers in her apartment, so  
12 she let him use her cordless phone in the doorway. After Flowers used the phone, he came  
13 back a few times later, each time with a new request. He asked to use the phone again. He  
14 asked for water. At one point, he asked to use her bathroom. She agreed, but when he went  
15 in the bathroom, she stepped out of the apartment. As she did so, he asked her to come in  
16 and help him find the bathroom light. She refused. When Flowers was at her doorstep, she  
17 also noticed that when the police walked back and forth, he would turn his head away. He  
18 commented, "the police make me nervous." During the final conversation in Curry's  
19 doorway, Flowers leaned down and tried to kiss Curry on the mouth. She turned away.

20 Curry observed Flowers walk across the parking lot to the doorway of Rena  
21 Gonzalez's apartment that morning. Curry left the complex a little before 11:00 in the  
22 morning. When she returned, she learned that the police had discovered the body of Rena  
23 Gonzalez. She gave a statement to police and identified Mawusi's boyfriend as someone she  
24 saw in the area of Rena Gonzalez's apartment.

25 Officers learned of the homicide involving Rena Gonzalez at approximately 4:00 p.m.  
26 Rena's Gonzalez's two daughters, the oldest of whom is seven years old, came home from  
27 school and found their mother on her knees leaning against her bed in her master bedroom.  
28 She was unresponsive. They ran and got their friend, Shayne. Shayne returned with them.

1 They tried to remove a phone cord around Gonzalez's neck and called 911.

2 Gonzalez's apartment was clean and undisturbed with the exception of the following:  
3 a broken blue plastic hair comb in the front hallway and a single green sandal were both in  
4 the front hallway. Officers could not locate Gonzalez's purse or keys.

5 Gonzalez was at the foot of her bed, with her body bent at the waist. Her upper torso  
6 was on the bed with her face down and arms outstretched. A black phone cord and black  
7 lanyard were around her neck. She was dressed in shorts, which were slightly pulled down,  
8 and a shirt. She had the matching blue hairclip hanging from her head and blood coming  
9 from her ear.

10 At autopsy, Dr. Simms noted extensive bruising to breast, right arm and right leg. Dr.  
11 Simms concluded that Gonzalez died as a result of strangulation. He also noted tearing to  
12 her vaginal and anal area. Dr. Simms concluded that these injuries took place post-mortem.

13 Detectives learned that Rena Gonzalez was a close friend of Mawusi Ragland. In  
14 fact, the two women would trade off watching each other's children. They determined that  
15 Gonzalez had walked her daughters to the school bus the morning of the 3rd and would have  
16 returned home around 8:30 a.m. Rena Gonzalez did not work.

17 Mawusi Ragland also lived at the Silver Pines Apartments. She lived in the  
18 apartment across from Coote. She told detectives that approximately three weeks before the  
19 homicide, she and Flowers had gotten into an argument and had not spoken since. In the  
20 argument, Mawusi implied that she would socialize with other men. Mawusi had discussed  
21 Flowers with her friend Rena Gonzalez as well, although Flowers and Gonzalez had not met.  
22 According to Mawusi, Gonzalez advised her not to date Flowers.

23 When Mawusi returned home on the evening of May 3, she saw police vehicles. She  
24 was told her friend, Rena, had been murdered and that her other friend, Marilee, had died of  
25 natural causes. On her apartment door, Mawusi noticed a note. It was from Flowers. It  
26 stated that he tried to catch her before she went to work, but that it looked like he picked a  
27 bad day because "big shit is happening over here." He also asked if she had dated other men  
28 since their argument. Flowers called Mawusi that evening. She was very emotional and



1 explained that both Marilee and Rena were dead. Flowers did not appear to be shocked upon  
2 hearing this news. She asked him to come over and help her through this difficult time. He  
3 told her he'd be right over. When Flowers did not arrive in the next 90 minutes, Mawusi  
4 called him to ask where he was. He said he had not left home because when tried to call her,  
5 she did not answer her phone. He also mentioned that he had seen Rena that morning and  
6 had a short conversation with her. Mawusi asked him what time he was at the complex and  
7 Flowers responded, "I didn't kill her."

8 After speaking with Mawusi, detectives interviewed Norman Flowers. Initially, he  
9 told officers that he had no contact with Marilee Coote on the morning of the murder. He  
10 said he had not seen her for months. He also explained that he met Rena Gonzalez several  
11 months earlier through Mawusi. He admitted that he had spoken with Rena that morning,  
12 but denied ever entering her apartment. Flowers agreed to provide a DNA sample.

13 Subsequently, Flowers' DNA sample was compared with swabs from Marilee  
14 Coote's sexual assault kit. Both vaginal and rectal swabs matched to Flowers. In addition,  
15 DNA was collected from the carpet area where Coote was lying, specifically, the carpet  
16 beneath her upper thighs. That sample also matched to Flowers.

17 Detectives interviewed Flowers again. He still maintained that he had never been in  
18 Gonzalez's apartment that morning. With regard to Marilee Coote, he first explained that he  
19 had had sex with her in the past, but not that day. Then, he acknowledged that he had sex  
20 with her the night before she died, but that she was alive and fine when he left. He denied  
21 having rough sex with her. Later in the interview, he claimed that he might have had rough  
22 sex with her, but that she was fine when he left. In a third interview, he said he did have  
23 rough sex with her, but that she was alive when he left. He also stated that there was a third  
24 man watching the two have sex. He said this man was a medium height, weight, and age  
25 black man, but he did not know his name. He claims this man remained in the apartment  
26 after he left. Thus, his latest claim was that the sex was consensual and another individual  
27 must have killed Coote.

28 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source

1 of this DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is  
2 excluded as the source of that DNA as well.

3 B. Facts of Case C228755 in District Court XIV

4 Less than two months prior, on March 24, 2005, Debra Quarles returned home from  
5 grocery shopping to her residence at 1001 North Pecos, Las Vegas, Clark County, Nevada,  
6 and found her eighteen year old daughter, Sheila Quarles unresponsive in a bathtub  
7 containing warm water. Debra had returned home at 2:30 in the afternoon. She was able to  
8 remove Sheila from the tub with the help of a neighbor who had helped her carry in  
9 groceries. Debra immediately called 911.

10 An autopsy later determined that Sheila died from drowning. However, strangulation  
11 was a significant contributing factor to her death. Sheila also had multiple vertical  
12 lacerations on her introitus, evidence of a violent sexual assault.

13 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30  
14 p.m. and her mother arrived home to find her at approximately 2:30 p.m. In addition,  
15 detectives learned that Sheila was involved in a lesbian relationship with an individual  
16 named Quinise Toney.

17 At autopsy, investigators collected samples from Sheila's vagina. Those swabs  
18 contained a mixture of DNA which included semen. Quinise Toney was excluded as being a  
19 source of this DNA. Sheila Quarles was the major component of the DNA. The male  
20 portion of the DNA was entered into a DNA database. When Flowers' DNA was collected  
21 in the May murders, his profile was entered into the DNA database as well. After this entry,  
22 investigators were notified that Flowers' profile was consistent with part of the minor  
23 component DNA from Sheila Quarles' vaginal swabs. In fact, 99.9934 percent of the  
24 population is excluded as being a source of that DNA, but Flowers is not. There was an  
25 additional, unknown male contributor to the vaginal swabs of Sheila Quarles as well.

26 After detectives were notified of the DNA match, they recontacted Debra Quarles.  
27 Quarles explained that she knew and had actually dated Norman Flowers several months  
28 before the murder. She also explained that he would occasionally give her a ride to her work

1 at the time and that he knew her family members. Quarles said that just prior to the murder,  
2 she saw Flowers at her apartment complex. At that time, he explained that he was working  
3 in maintenance at the complex. After her daughter's murder, Quarles suffered from  
4 depression. Flowers offered to drive her to appointments with her therapist. On several  
5 occasions, Flowers inquired to Debra whether the police had figured out who had murdered  
6 her daughter.

7 The defense has suggested that Flowers will offer an alibi defense to the March 2005  
8 crime.

9 The State moves to consolidate defendant's two cases.

#### 10 ARGUMENT

11 The issue of consolidation lies within the sound discretion of the trial court and will  
12 not be reversed absent a clear abuse of that discretion. Robins v. State, 106 Nev. 611, 789  
13 P.2d 558 (1990); Mitchell v. State, 105 Nev. 735, 782 P.2d 1340 (1989). "Error resulting  
14 from misjoinder of charges is harmless unless the improperly joined charges had a  
15 substantial and injurious effect on the jury's verdict." Weber v. State, 121 Nev. 554, 119  
16 P.3d 107, 119 (2005). Moreover, on appeal "the defendant carries the heavy burden of  
17 showing an abuse of discretion by the district court." Id. at 121. In exercising that  
18 discretion, courts consider potentially conflicting interests of judicial economy and  
19 efficiency of judicial administration, crowded court calendars, avoidance of multiple trials  
20 and possible prejudice to the defendant. See United States v. Fancher, 195 F. Supp. 634 (D.  
21 Conn.), affirmed, 319 F.2d 604 (4<sup>th</sup> Cir. 1963). However, to establish actual prejudice from  
22 joinder requires the defendant to demonstrate more than that severance might have made  
23 acquittal more likely. Weber, 119 P.3d at 121. It requires that the defendant demonstrate  
24 that the joinder may have prevented jurors from making a reliable judgment about guilt. See  
25 id. At 122

26 Nevada Revised Statute 174.155 states:

27  
28 The court may order two or more indictments or information or both be tried  
together if the offenses, and the defendants if there is more than one, could  
have been joined in a single indictment or information. The procedure shall be

1 the same as if the prosecution were under such single indictment or  
information.

2 Section 173.115 of the Nevada Revised Statutes provides:

3  
4 Two or more offenses may be charged in the same indictment or information  
in a separate count for each offense if the offenses charged, whether felonies or  
misdemeanors or both, are:

- 5 1. Based on the same act or transaction or
- 6 2. Based on two or more acts or transactions connected together or  
constituting parts of a common scheme or plan.

7 Finally, Eighth Judicial Court Rule 3.10 emphasizes the importance of judicial  
8 economy, providing:

9  
10 (a) When an indictment or information is filed against a defendant  
who has other criminal cases pending in the court, the new case may be  
11 assigned directly to the department wherein a case against that defendant is  
already pending.

12 (b) Unless objected to by one of the judges concerned, criminal  
cases, writs or motions may be consolidated or reassigned to any department  
13 for trial, settlement or other resolution.

14 This Court has defendant Flowers' first case set for trial in January 2007. As a capital  
case, it is likely to take longer to proceed to trial than a non-capital murder case and certainly  
15 other felony cases. Thus, the case will represent an imposition on the Court as well as  
16 members of a jury who will assess the facts of the case. Flowers' second case is set for trial  
17 in February 2007 in District Court XIV. It is also likely to be a capital case, meaning the  
18 same burdens will be placed on both the court and a potential jury hearing the case for a  
19 second time. Certainly, there is little question that consolidating the cases would be in the  
20 interests of judicial economy, court administration, and imposition of costs to the  
21 community.

22  
23 Moreover, the Nevada Supreme Court has held that "if . . . evidence of one charge  
24 would be cross-admissible in evidence at a separate trial on another charge, then both  
25 charges may be tried together and need not be severed." Robins, 106 Nev. at 619, 798 P.2d  
26 at 563 (citing Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342). In other words,  
27 joinder is proper when evidence from a separate case would be admissible by other means.

28 Section 48.045(2) of the Nevada Revised Statutes provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In applying NRS 48.045(2), courts must assess whether the probative value of the evidence is substantially outweighed by a risk of prejudice. Significantly, however, courts have recognized a distinction between evidence that is incriminating versus evidence that is actually prejudicial. For instance, in United States v. Harrison, 679 F.2d 942 (D.C. Cir. 1982), the prosecution presented evidence that the defendant had been engaged in drug dealing in the past over a period of time in order to establish motive, intent, preparation, and absence of mistake on his current drug charges. The court held that allowing the extrinsic evidence was proper. It explained:

There is nothing "unfair" in admitting direct evidence of the defendant's past acts by an eyewitness thereto that constituted substantive proof of the relevant intent alleged in the indictment. The intent with which a person commits an act on a given occasion can many times be best proven by testimony or evidence of his acts over a period of time prior thereto . . .

Id. at 948.

Therefore, while certain evidence may increase the likelihood of conviction and thus be incriminating, such evidence may not unfairly cast the defendant in a bad light and therefore be prejudicial.

In the instant case, Flowers' two cases are cross-admissible. Evidence of the March murder would be admissible in a trial focusing on the May murders because such evidence would be relevant to identity, intent, and motive and vice versa. In Gallego v. State, 101 Nev. 782, 711 P.2d 856 (1985), the Nevada Supreme Court noted how a defendant's prior murders could be relevant in establishing a common plan, intent, identity, and motive in a subsequent murder case. In Gallego, the defendant was charged with kidnapping, assaulting, and killing two young women by bludgeoning them with a hammer. The trial court permitted the State to introduce evidence that Gallego had previously kidnapped two young women from a shopping mall and shot and killed them. Id. at 789, 711 P.2d at 861. On appeal, Gallego challenged the introduction of such evidence.

1 The Nevada Supreme Court affirmed the conviction and introduction of the evidence  
2 on several grounds within NRS 48.045(2). The court noted that the evidence was relevant to  
3 Gallego's intent and motive, because both instances were prompted by a "sex slave" fantasy  
4 on the part of Gallego. The court also commented that the evidence was relevant because  
5 the prior murders were "not remote in time from the killings here considered" and that  
6 "substantial similarities" were shown to exist between the two events, suggesting that the  
7 evidence was relevant to issues of identity as well as a common scheme or plan. See id.

8 In other case, the Nevada Supreme Court has commented how a particular modus  
9 operandi to a crime can be relevant and admissible under NRS 48.045(2) when the identity  
10 of the perpetrator is at issue. The court has stated that modus operandi evidence is proper in  
11 "situations where a positive identification of the perpetrator has not been made, and the  
12 offered evidence establishes a signature crime so clear as to establish the identity of the  
13 person on trial." Mortensen v. State, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999).

14 In the case of Flowers, all three victims were casual acquaintances of Flowers. All  
15 three were killed in their residences. All three were killed during daylight hours. In addition  
16 to being murdered, all three also had some minor property taken from them as well. More  
17 significantly, of course, all three were sexually assaulted prior to their deaths. The victims  
18 all had damage to their vaginal and/or anal areas substantiating the sexual assault charges.  
19 All three victims were killed by means of strangulation. Admittedly, the cause of death for  
20 Sheila Quarles was a drowning; however, the strangulation was a significant contributing  
21 factor to the death. Certainly, the similarity of the three murders constitutes evidence of  
22 identity admissible under NRS 48.045(2).

23 In addition, evidence of the March 2005 killing is relevant to the May 2005 killings  
24 because it would constitute evidence of intent and lack of accident as well which are also  
25 admissible under NRS 48.045(2). In Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508  
26 (1985), reversed on other grounds by Petrocelli v. Angelone, 242 F.3d 867 (9<sup>th</sup> Cir. 2001),  
27 the Nevada Supreme Court explained how in a murder prosecution where defendant was  
28 claiming that a homicide was an accident, evidence of a prior killing committed by him

1 which he also claimed was accidental was relevant and admissible under NRS 48.045(2).

2 In one of his interviews regarding the May killings, Flowers maintained that while he  
3 may have had sex with Marilee Coote, but he did not kill her. This, of course, occurred after  
4 he adamantly denied having sex with her at all. In any case, given that one possible defense  
5 available to Flowers is that he had consensual sex with Coote and she somehow died during  
6 the encounter, evidence of the March 2004 killing is relevant to his intent during his  
7 encounter with Coote. The fact that he previously had had a violent sexual encounter which  
8 resulted in vaginal trauma to victim Sheila Quarles as well as her strangulation and death is  
9 evidence that Coote's strangulation was intentional and not an accident. See id.

10 Finally, evidence of the March 2005 murder is relevant to the May 2005 murders in  
11 terms of the sexual assault counts. In one of several interviews with detectives, Flowers  
12 claimed that he had consensual intercourse with Marilee Coote, notwithstanding the trauma  
13 to her genital area. He mentioned that they may have engaged in "rough" sex at one point  
14 during his interview. Evidence of the sexual assault trauma to Sheila Quarles would be  
15 relevant to the issue of whether Coote consented to a sexual encounter with Flowers. In  
16 Williams v. State, 95 Nev. 830, 603, P.2d 694 (1979), a sexual assault victim testified that  
17 she met the defendant while discussing a possible job as his secretary. At some point, the  
18 defendant offered her \$5000 for a "one night stand," but she refused. The defendant told her  
19 that he was trained in martial arts and demonstrated what he could do to her and then  
20 sexually assaulted her. The defendant maintained that the intercourse was consensual. The  
21 State presented the testimony of two prior victims, from incidents occurring nineteen months  
22 before the charged incident, who testified that they met the defendant through a job  
23 interview and were coerced into having sex with him after he demonstrated his karate  
24 knowledge. In affirming the admission of testimony regarding the prior incidents, the  
25 Nevada Supreme Court stated:

26  
27 In the instant case, evidence of Williams' sexual misconduct with other  
28 persons was admitted as being relevant to prove his intent to have intercourse  
with the victim without her consent. This evidence was introduced after  
Williams admitted committing the act, but claimed to have done so with the  
victim's consent. By acknowledging the commission of the act but asserting

1 his innocent intent by claiming consent as a defense, Williams himself placed  
2 in issue a necessary element of the offense and it was, therefore, proper for the  
3 prosecution to present the challenged evidence, which was relevant on the  
4 issue of intent, in order to rebut Williams' testimony on a point material to the  
5 establishment of his guilt.

6 Id. at 833.

7 Because all three victims were killed after they were sexually assaulted, the State  
8 must rely on circumstances and medical testimony to establish the lack of consent in the  
9 instant case. Nevertheless, like Williams, Flowers has put consent at issue because he claims  
10 that the sexual encounter with Marilee Coote was consensual. In maintaining that claim,  
11 Flowers makes relevant his prior conduct with Sheila Quarles who also was sexually  
12 assaulted by Flowers and subsequently killed.

### 13 CONCLUSION

14 Based on the foregoing, the State respectfully asks this Court to consolidate  
15 Flowers' two pending cases.

16 DATED this \_\_\_\_\_ day of December, 2006.

17 DAVID ROGER  
18 Clark County District Attorney  
19 Nevada Bar #002781

20 BY

21 Pamela Weckerly  
22 PAMELA WECKERLY  
23 Chief Deputy District Attorney  
24 Nevada Bar #006163  
25  
26  
27  
28



## 1 CERTIFICATE OF FACSIMILE TRANSMISSION

2 I hereby certify that service of the above and forgoing, was made this 26 day of  
3 December, 2006, by facsimile transmission to:

4  
5 SPECIAL PUBLIC DEFENDER  
6 FAX#455-6273

7  
8 BY M. [Signature]  
9 Employee of the District Attorney's Office  
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**EXHIBIT** B

App. 000205

1 0001

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3 SPECIAL PUBLIC DEFENDER  
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FILED

JAN 2 4 34 PM '07

*Linda B. Ruggiera*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 NORMAN FLOWERS,

15 Defendant.

CASE NO. C 216032  
CASE NO. C228755

DATE OF HEARING: 1-17-07  
TIME OF HEARING: 8:30 a.m.

16 **OPPOSITION TO STATE'S MOTION TO CONSOLIDATE**

17 COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys,  
18 DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public  
19 Defender, and CLARK W. PATRICK, Deputy Special Public Defender and hereby submits the  
20 following Points and Authorities in opposition to the State's Motion to Consolidate Case No.  
21 C216032 and Case NO. C228755.

22 **POINTS AND AUTHORITIES**

23 **FACTUAL BACKGROUND**

24 On June 7, 2005, a Criminal Complaint was filed in Justice Court charging Defendant  
25 NORMAN FLOWERS (hereinafter FLOWERS) with a single count of Murder (and other  
26 charges) on the alleged victim Marilee Coote. Approximately two weeks later, a Second  
27 Amended Criminal Complaint was filed charging FLOWERS with Murder (and other charges)  
28

1 alleging "this time" two (2) victims, Marilee Coote and Rena Gonzales.

2 On August 17, 2005, at the conclusion of FLOWERS' preliminary hearing, the Court  
3 dismissed all counts relating to victim Rena Gonzales. On August 29, 2005, an information  
4 was filed in District Court, Case Number C214390, charging Flowers with this single homicide  
5 (Marilee Coote).

6 At the initial Arraignment on August 30, 2005 FLOWERS appeared and pled "not  
7 guilty." In addition, FLOWERS asserted his Constitutional right to a speedy trial and the Court  
8 set a trial date of October 24, 2005. On the same day, counsel for FLOWERS received notice  
9 of the State's Intent to Seek and Indictment. Thereafter, on October 18, 2005 the State  
10 dismissed Case Number C214390, and FLOWERS was indicted in Case Number C216032  
11 and charged with two (2) counts of homicide, alleged to have occurred on May 3, 2005.

12 On November 8, 2005, FLOWERS received a Notice of Intent to Seek Death Penalty  
13 containing aggravator number eight (8) which alleged, as a basis for seeking the death  
14 penalty, two or more convictions for murder.

15 FLOWERS has now been indicted under Case Number C228755 charging him with a  
16 third homicide that occurred March 24, 2005, forty-one days prior to the first two.

17 The State is requesting to consolidate Case Nos. C216032 and C228755, and the three  
18 homicides. This is improper under section 173.115 of the Nevada Revised Statutes as the  
19 cases do not arise from the same transaction nor constitute a common plan. Further, joinder  
20 would be more prejudicial than probative. Therefore, this Court should deny the State's  
21 request.

## 22 ARGUMENT

23 The Court should not consolidate the offenses which allegedly occurred on March 24,  
24 2005 and May 3, 2005. Joinder is not proper as the events do not arise from the same  
25 transaction nor constitute a common plan. Further, joinder would be prejudicial to Defendant  
26 and result in a violation of due process.

27 ...

28 ...

A.

Consolidation Should Not Be Granted Because the March 24, 2005  
and May 3, 2005 Incidents Do Not Arise from a Common Transaction  
Nor Do They Comprise a Common Scheme

NRS 173.115 "Joinder of Offense" provides:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:

1. Based on the same act or transaction; or
2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

The policy behind joining offenses is judicial economy. Honeycutt v. State, 56 P.3d 362, 367, 118 Nev. Adv. Rep. 70 (2002). In the case at bar, the three incidents were not based on the same transaction, nor were they part of a common scheme or plan.

When offenses are factually similar and occur in close temporal proximity, they are properly joined. Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996). In Tillema, the defendant was arrested for a burglary of a vehicle on May 29, 1993 and a burglary of a vehicle and a burglary of a store on June 16, 1993. Id. at 267. Because both crimes involved vehicles in casino parking garages and were seventeen days apart, they "evidenced a common scheme or plan." Id. at 268. Additionally, the store burglary was connected to the vehicle burglary because it was part of a "continuing course of conduct." Id. at 269, *quoting* NRS 173.115(2) and Rogers v. State, 101 Nev. 457, 465-66, 705 P.2d 664, 670 (1985). In the second incident, Tillema burglarized the van and then immediately walked into a store, where he committed another burglary, so the two incidents were connected. Id.

Similar victims and motives, however, are not necessarily part of a common scheme or plan. Tabish v. State, 119 Nev. Adv. Rep. 35, 72 P.3d 584 (2003). The State was trying to argue that events involving Leo Casey and events involving Ted Binion were properly joined, having in common greed, money and the Jean sand pit. Id. at 590. The State also emphasized the similarities between Leo Casey and Ted Binion. Id. The Nevada Supreme Court noted that "money and greed could be alleged as connections between a great many

1 crimes and thus do not alone sufficiently connect the incidents." Id. That Court held that the  
2 incidents were too far apart in time (fifty days) and that the alleged connections did not  
3 demonstrate a common scheme or plan. Id. at 591.

4 Similarly, in Mitchell v. State, 105 Nev. 735, 782 P.2d 1340 (1989), incidents forty-five  
5 days apart were not considered part of the same transaction. Id. at 738. Additionally, the two  
6 offenses committed by that defendant were not part of a common plan. Id. The defendant was  
7 charged with grand larceny and sexual assault (the Petz charges) and sexual assault and  
8 murder (the Brown charges). Id. at 737. On two separate occasions, the defendant took two  
9 different women to the same bar, forty-five (45) days apart, and sexually assaulted them. Id.  
10 Our Supreme Court noted that taking two women dancing and then later assaulting them (on  
11 separate occasions) could not be considered a common plan, simply because the women  
12 were taken to the same bar. Id. at 738.

13 When considering joinder under NRS §173.115.2, it is useful to distinguish the facts of  
14 the case at hand with the facts of a case for which the Nevada Supreme Court found joinder  
15 permissible. In Floyd, the defendant argued that counts related to the sexual assault of a  
16 woman at gunpoint inside an apartment and the subsequent shooting of five employees at  
17 a nearby supermarket should be severed. However, the Nevada Supreme Court found that  
18 "joinder was proper because the acts charged were at the very least 'connected together'."  
19 Floyd v. State, 42 P.3d 249, 254 (2002). The court explained that a connection existed  
20 because the counts relating to the subsequent act began only fifteen minutes after the counts  
21 relating to the first act had ended.

22 Contrary to Tillema, and Floyd, the offenses in the instant case did not occur in close  
23 temporal proximity. If a connection between separate acts can be argued to exist because of  
24 their relative proximity in time, then it is reasonable to expect that the existence of such a  
25 connection is diminished as the length of time between the acts increases. Here, the incidents  
26 were forty-one (41) days apart, so there was no "continuing course of conduct." The incidents  
27 in Tillema flowed one into the other. With forty-one (41) days between them, the incidents at  
28 bar were too far apart in time to be part of the same transaction. So while a connection may

1 still remain between two acts after only fifteen minutes, extending that time more than three-  
2 thousand fold would seem to extinguish such a connection, utterly.

3 Here, there was also no common scheme or plan, similar to Tabish and Mitchell. In both  
4 of those cases, there were similar motives and similar crimes; however, that was not enough  
5 to establish a common scheme or plan. Here, the only other common denominator, besides  
6 the defendant himself, is the possibility that the defendant knew all of the victims. Again, that  
7 is not enough to establish a common scheme or plan. The victims were different, the incidents  
8 occurred in different locations, albeit two of the homicides occurred in the same apartment  
9 complex and were forty-one (41) days apart. One of the incidents allegedly involved a manual  
10 strangulation, one allegedly involved strangulation with a ligature, while the other allegedly  
11 involved a downing. As for the alleged sexual assaults, Flowers' DNA was recovered from  
12 Marilee Coote, however Flowers admits to having "rough" consensual sex with Coote, and  
13 there was "unknown" male DNA that was also recovered from Coote. The DNA recovered from  
14 Rena Gonzalez *excluded* Flowers as the donor. And while Flowers' DNA was recovered from  
15 Sheila Quarles, again there was "unknown" male DNA also recovered. There is nothing  
16 connecting the three incidents.

17 Because the incidents were not part of the same transaction, nor were they part of a  
18 common scheme or plan, the Defendant respectfully requests that this Court denies the  
19 State's request to consolidate the incidents of March 24, 2005 and May 3, 2005.

20 B.

21 Consolidation Should Not Be Granted Because  
22 the Evidence Is Not Cross-admissible

23 The Nevada Supreme Court has held that if evidence of one crime would be cross-  
24 admissible at a trial on another charge, the charges may be tried together. Mitchell v. State,  
25 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989). In the case at bar, the evidence of one  
26 offense is not necessary in proving the other offense, nor is it necessary in providing the jury  
27 with a complete picture. The three offenses are not connected in any way and the evidence  
28 is not cross-admissible. Moreover, admitting the evidence of one offense in the trial of the

1 other would be more prejudicial than probative. Mitchell, at 738, *citing Berner v. State*, 104  
2 Nev. 695 (1988); and citing NRS 48.045(2). The evidence would essentially amount to  
3 evidence of prior bad acts. This type of evidence is not allowed to show that a defendant has  
4 the propensity to commit the crime. Middleton v. State, 114 Nev. 1089, 1108, 968 P.2d 296,  
5 309 (1998). The State argues that the evidence would be cross-admissible because they can  
6 use evidence of one offense to show motive or intent, thus circumventing the propensity rule.  
7 NRS 48.045 (2004). However, that argument is tenuous, at best. Moreover, the prejudicial  
8 nature of the evidence far outweighs its probative value and the evidence is therefore not  
9 cross-admissible. See Tabish v. State, 73 P.3d 584, 593, *citing Tinch v. State*, 113 Nev. 1170,  
10 1176, 946 P.2d 1061, 1064065 (1997).

11 The Tabish case is useful in understanding when evidence is not cross-admissible  
12 because the prejudicial value outweighs the probative value. The defendants were charged  
13 with the September 17, 1998 murder of Ted Binion, as well as the July 1998 kidnaping and  
14 beating of Leo Casey. Tabish, at 586. Defendant Tabish was convicted in both offenses. Id.  
15 Both defendants appealed their convictions, arguing, among other things, that the joinder of  
16 the offenses was improper. Id. at 589. The State argued that the evidence was cross-  
17 admissible for the purposes of showing motive, plan and identity. Id. at 593. Our Supreme  
18 Court disagreed. Id. The court noted that although the evidence could have been used to show  
19 motive, plan or identity, the prejudicial value of the evidence was far greater than the probative  
20 value. Id. The court further reasoned that the evidence would cause a "spillover effect." Id.

21 The same reasons that make joinder of the counts inappropriate, make the severance  
22 of the same counts appropriate. The controlling state statute which describes relief from  
23 prejudicial joinder is NRS §174.165, which states in part, "[i]f it appears that a defendant or  
24 the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment  
25 or information, or by such joinder for trial together, the court may order an election or separate  
26 trials of counts, grant a severance of defendant's or provide whatever other relief justice  
27 requires."

28 When counts are not related, "the court must assess the likelihood that a jury not



1 otherwise convinced beyond a reasonable doubt of the defendant's guilt of one or more of the  
2 charged offenses might permit the knowledge of the defendant's other criminal activity to tip  
3 the balance and convict him. If the court finds a likelihood that this may occur, severance  
4 should be granted." Floyd v. State, 118 Nev. 17, 42 P.3d 249 (2002), citing, People v. Bean,  
5 46 Cal. 3d 919, 760 P.2d 996 (Cal. 1988).

6 This is exactly the danger the defendant faces in the instant case. The Defendant  
7 faces the risk of the jury accumulating evidence against him, as well as using evidence of one  
8 offense to infer propensity to commit a crime in the other offenses. The counts of each event  
9 are prejudicial in their nature and will be highly inflammatory to any jury. By joining the counts  
10 of each event, the State will be able to provide a circular argument, wherein the likelihood that  
11 the Defendant committed the offenses at one of the events is made more probable by the  
12 possibility that the Defendant committed the offenses at the other event. These are risks that  
13 the Defendant should not face in a trial where his liberty is at stake.

14 C..

15 Consolidation Should Not Be Granted Because a  
16 Heightened Standard of Review Is Required Due to  
the Fact the Death Penalty Is Being Sought

17 In a series of recent decisions, the California Supreme Court has made it abundantly  
18 clear that in a capital case it will no longer tolerate the indiscriminate joining together of two  
19 murder charges, especially when the effect of the joinder is to give rise to the special  
20 circumstance allegation of multiple murder (see, People v. Johnson [1987] 43 Cal.3d 296, 309,  
21 n.5; People v. Smallwood [1986] 42 Cal.3d; Williams v. Superior Court (1984) 36 Cal.3d 441).

22 In Williams, the Court ordered severance of two similar but unrelated murder charges  
23 and also set forth the standards for meaningful review of severance motions. In the course  
24 of its discussion, the Court emphasized:

25 "The final consideration in our analysis is that since one of the charged crimes  
26 is a capital offense, carrying the gravest possible consequences, the court must  
27 analyze the severance issue with a higher degree of scrutiny and care than is  
28 normally applied in a non-capital case. Even greater scrutiny is required in the  
instant matter, for it is the joinder itself which gives rise to the special  
circumstance allegation of multiple murder under Penal Code Section 190.2,  
subdivision (a)(3)." (36 Cal.3d at 454.)

1 In Smallwood, the Court reversed a death penalty case in its entirety solely on the basis  
2 that the trial court erred in denying defendant's pretrial motion to sever two murder counts.  
3 Citing Williams, the Court stressed "the fact that this case is a capital one, 'carrying the gravest  
4 possible consequences.'" (42 Cal.3d at 430.) The Court was highly critical of the trial court for  
5 ignoring that fact:

6 "This factor should have prompted the trial court to analyze the severance issue  
7 with a higher degree of scrutiny and care than is normally applied in a  
8 non-capital case. Here, the record demonstrates that the trial court ruled with  
9 virtually no scrutiny and care, denying a severance motion in the face of a clear  
10 showing of prejudice and despite the prosecutor's concession that no legitimate  
11 state goals would be served by joinder. Even if such an ill-considered ruling  
12 were justifiable in a less serious case, it was impermissible where questions of  
13 life and death were at stake." (Id., at 431.)

14 The Court acknowledged that in the past trial court rulings on severance motions "were  
15 typically accorded great deference." (Id., at 425.) But Williams had drastically altered the law  
16 of severance in capital cases:

17 "Williams represented a major advance by announcing for the first time that  
18 reviewing courts must analyze realistically the prejudice which flows from joinder  
19 in light of all the circumstances of the individual case. Williams also directed  
20 reviewing courts to weigh any claimed benefits to the prosecution from joinder  
21 in order to determine whether such benefits are real or theoretical. No longer  
22 may a reviewing court merely recite a public policy favoring joinder or presume  
23 judicial economy to justify denial of severance. Put simply, the joinder law must  
24 never be used to deny a criminal defendant's fundamental right to due process  
25 and a fair trial." (Id., at 425.)

26 Finally, in People v. Johnson, *supra*, the Court briefly considered the effect of Williams  
27 on the retrial of a case in which the prosecutor had joined a capital murder case with a related  
28 non-capital rape charge. The Court concluded: "(a)s for prejudice, the inflammatory nature  
of the rape--a brutal cross-racial rape in a church--coupled with the fact that the murder is a  
capital offense, weigh heavily against a joint trial upon retrial." (43 Cal.3d at 309-310, n. 5.)

### CONCLUSION

NORMAN FLOWERS respectfully requests that this Court deny the State's motion to  
consolidate because the three separate and distinct offenses are not part of the same

...

...

1 transaction or occurrence, are not part of a common scheme or plan, and as the evidence of  
2 one is not cross-admissible in the trial of the others,

3 DATED this 2 day of <sup>January 2007</sup> ~~December~~, 2006.

4 RESPECTFULLY SUBMITTED:

5 DAVID M. SCHIECK  
6 SPECIAL PUBLIC DEFENDER

7 

8 RANDY H. PIKE  
9 Deputy Special Public Defender  
10 CLARK W. PATRICK  
11 Deputy Special Public Defender  
12 330 South Third Street, 8th Floor  
13 Las Vegas, NV 89155-2316  
14 (702) 455-6265  
15 Attorneys for Defendant

16 **RECEIPT OF COPY**

17 RECEIPT OF COPY of the foregoing **OPPOSITION TO STATE'S MOTION TO**  
18 **CONSOLIDATE** is hereby acknowledged this 2 day of <sup>Jan</sup> ~~December~~, 2006.

19 

20 DAVID ROGER  
21 District Attorney  
22 200 Lewis Avenue, 3rd Floor  
23 Las Vegas, NV 89155  
24 Attorney for Plaintiff

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding  
Opposition to Motion to Consolidate

filed in or submitted for District Court Case number C216032

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

-OR-

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

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

\_\_\_\_\_

-or-

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

  
\_\_\_\_\_  
Signature

1/2/07  
\_\_\_\_\_  
Date

CLARK W. PATRICK  
\_\_\_\_\_  
Print Name

DEPUTY SPECIAL PUBLIC DEFENDER  
\_\_\_\_\_  
Title

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding  
Opposition to Motion to Consolidate  
filed in or submitted for District Court Case number C2228755

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

**-OR-**

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

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

\_\_\_\_\_

**-or-**

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

  
\_\_\_\_\_  
Signature

1/2/07  
\_\_\_\_\_  
Date

CLARK W. PATRICK  
\_\_\_\_\_  
Print Name

DEPUTY SPECIAL PUBLIC DEFENDER  
\_\_\_\_\_  
Title

**EXHIBIT** C

App. 000217

TRAN

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ORIGINAL

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
NORMAN FLOWERS, )  
 )  
Defendant. )

Case No. C216032  
Dept. No. 6

MOTIONS

Before the Honorable Joseph Bonaventure  
Monday, January 8, 2007, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State of Nevada: Pamela Weckerly, Esq.  
Elissa Luzaich, Esq.  
Deputies District Attorney  
Las Vegas, Nevada

For the Defendant: Randall Pike, Esq.  
Clark Patrick, Esq.  
Special Public Defenders  
Bret Whipple, Esq.  
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

NELSON & NELSON, CERTIFIED COURT REPORTERS  
Office: 702.360.4677 Fax: 702.360.2844

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JAN 12 2007  
COUNTY CLERK

Las Vegas, Nevada; Monday, January 8, 2007

\* \* \* \*

THE COURT: Flowers.

I read the briefs.

Does the State want to say anything?

MS. WECKERLY: No, Your Honor.

I know the Court's quite familiar with the facts of this case and the new case.

The only thing I would add is, when I read the opposition, it seemed to me that the focus of the opposition was on obviously the Binion case and the consolidation in that case.

THE COURT: And I know that case well.

You know, I still think I did right on that case, and you know, you never know what the Supreme Court is going to do.

We can go to trial on this case, and then a year from now, a year-and-a-half from now, they are going to reverse and say, Bonaventure shouldn't have consolidated, and you got to start over again, and you know, I don't know what to say.

MS. WECKERLY: The only distinguishing argument I would make for the record, Your Honor, is that I believe the Binion or Tabish opinion seems to



1 focus on the exception of common scheme or plan and  
2 how narrow that exception is, and of course the  
3 State's position in this case is not under that  
4 exception of cross admissibility, we're more focused  
5 on identity and intent and motive, and I think that's  
6 where the distinguishing feature of the case law is,  
7 and under the Gallego (Phonetic) case, and Williams  
8 case, and the other cases cited by the State, it is  
9 permissible to consolidate in this type of situation  
10 where you have three victims all sexually assaulted  
11 and all murdered by the same means effectively, and  
12 there is quite a bit of similarity between the three  
13 victims in this case, and of course the Defense in  
14 this case will be identity, making all the evidence  
15 all the more relevant.

16 THE COURT: Well, certainly if this goes to  
17 trial, whenever it does, we could always take a look  
18 at it, and if they open the door or something like  
19 that, and they want to open the door, maybe bring it  
20 in as a rebuttal, or evidence of other acts, I don't  
21 know, but does anybody want to say anything regarding  
22 this?

23 MR. PATRICK: Yes, Judge.

24 The same means?

25 All three of these murders were completely

1 different.

2 One was manual strangulation.

3 One had a ligature.

4 And one was a drowning.

5 The means are not close at all.

6 Also, between the first incident, Miss  
7 Quarles (Phonetic), and the other two, there was 41  
8 days elapsed, and you know the Court in Pablmo  
9 (Phonetic) said 17 days was okay because they were  
10 both in the parking garage, but if you look at  
11 Tabish, it was 350 days, and Mitchell was 45 days,  
12 and it's too distant in time to connect the three  
13 incidents.

14 And I think that all that is going to  
15 happen is, Mr. Flowers is going to be greatly  
16 prejudiced by the accumulation of evidence in this.

17 You know, the case against Miss Gonzalez is  
18 very weak.

19 The case against Miss Quarles is not all  
20 that strong.

21 But by putting them all together the  
22 State's going to be able to accumulate all of the  
23 evidence, and the jury will look at it and say, you  
24 know, they wouldn't have arrested him for all three  
25 of these unless he was guilty, and I think there is

1 an extreme risk of prejudice that outweighs any other  
2 considerations the Court would have, whether it be  
3 judicial economy or not.

4 I don't think that Mr. Flowers can get a  
5 fair trial if we try all three of these together.

6 THE COURT: All right. Anything else?

7 MS. WECKERLY: Well, Your Honor, the risk  
8 of prejudice really isn't legally defined as making  
9 acquittal more likely, it's whether there is a  
10 question about the jury verdict in a particular case,  
11 and by consolidating these three cases I don't think  
12 that we can say that there is a risk of an unfair or  
13 unfounded verdict.

14 The Defendant himself in the first instance  
15 with regard to the sexual assault and murder of  
16 Marilee Koot (Phonetic) said that -- initially he  
17 said he didn't have sex with her, but afterwards,  
18 after several comments being made, he said that he  
19 may have had sex, and then well, I did have sex with  
20 her, but someone else killed her.

21 And the fact that he then puts consent at  
22 issue in terms of that particular victim makes the  
23 other case of Sheila Quarles all the more relevant  
24 because here we have another instance where his DNA  
25 is found in someone sexually assaulted and ultimately

1 murdered, and that puts his own statements - puts his  
2 consent at issue and makes the other cases relevant  
3 because they go directly to that issue.

4 THE COURT: All right. I've reviewed it  
5 and pondered over it.

6 You know, I want to be fair.

7 I have to be fair to the State.

8 I certainly have to be fair to the  
9 Defendant.

10 It's a capital murder case.

11 You know, if this was a burglary or  
12 something like that, or whatever, but you got to  
13 really -- it's a heightened standard of review  
14 required on a death penalty case, and I just feel it  
15 will be more prejudicial, and I'm not going to  
16 consolidate them.

17 The motion to consolidate is denied.

18 I notice you have another motion to  
19 consolidate in Department 14.

20 What is that about?

21 MS. WECKERLY: Well, we just noticed this  
22 in that department in the event this was granted to  
23 let Judge Mosley know what happened.

24 THE COURT: Should I take that off  
25 calendar?

1 MS. WECKERLY: That can be off calendar.

2 THE COURT: I'll take that off calendar,  
3 January 17th.

4 So as far as I know now, I don't know what  
5 you want to do, but we have a calendar call coming  
6 up.

7 We'll talk about it.

8 MR. PATRICK: Thank you, Your Honor.

9 THE COURT: All right.

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C E R T I F I C A T E

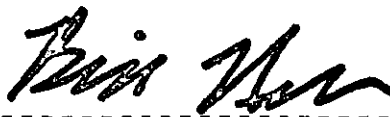
STATE OF NEVADA )

) ss.

CLARK COUNTY )

I, Bill Nelson, RMR, CCR 191, do hereby  
certify that I reported the foregoing proceedings;  
that the same is true and correct as reflected by my  
original machine shorthand notes taken at said time  
and place before the Hon. Joseph Bonaventure,  
District Court Judge, presiding.

Dated at Las Vegas, Nevada this 11th day of  
January, 2007.



Bill Nelson, RMR, CCR 191,  
Certified Court Reporter  
Las Vegas, Nevada

**EXHIBIT** D

App. 000226

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 1

EVENT #: 050324-1801

SPECIFIC CRIME: MURDER INVESTIGATION

DATE OCCURRED: 03/24/05

TIME OCCURRED: 1451 HRS

LOCATION OF OCCURRENCE: 1001 N. PECOS #H-63, LAS VEGAS, NV

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: NORMAN "KEITH" FLOWERS

DOB:

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE G. SHERWOOD, P# 3676, LVMPD Homicide Section, on 08/24/06 at 0830 hours. Persons present during this interview are NORMAN "KEITH" FLOWERS and DETECTIVE SHERWOOD.

Q. Operator, this is Sherwood, uhm, at Clark County Detention Center on 08/24/2006, talking to Norman Flowers, ID#1179383. Is it okay— whatta you go by Norman?

A. Uh, Norman, Keith.

Q. Okay. What would you rather I call you?

A. Uh, you can call me Keith.

App. 000227



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 2

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

Q. Okay. I'm gonna be talkin' to Keith Flowers. Uhm, date and time is 08/24/06 at 0830. We're at the Clark County Detention Center.

Uhm, Keith, prior to the interview, I told you that we're not going to discuss your case at all, is that correct?

A. Correct.

Q. Okay. And I also advised you of your Miranda rights, which I have to do because you're in custody, and had you sign a card sayin' that I advised you. Is that correct?

A. Correct.

Q. Okay. Uhm, first thing I wanna talk to you about, Keith, is I'm trying to find out who a friend of yours is. And he may be a friend of yours and he may not be a friend of yours. He's a black guy and he's got like a skin condition on his arms. Does that ring a bell of anybody?

A. What's the point of tryin' to find him? Why you tryin' to find him for?

Q. Well, because I need to ask him some questions on a case I'm investigating. And your name came up in the case that he's a friend of yours.

A. Uh, you... you're givin' me limited information.

Q. Okay. How 'bout... how 'bout I start and give you some more information. Okay. Uhm, do you know Debra Quarles?

A. (No verbal response)

Q. Let me show you a picture of her. Will that help?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 3

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

A. Yeah.

Q. Okay. Uh, okay, this is a picture of Debra Quarles, ID#857276. Do you know this lady?

A. I'm not sayin'.

Q. Well, I mean do you think you know her? I mean she said she knows you.

A. I'm not sayin'. I mean until I know what it's about, I'm not saying anything.

Q. Okay. Here's what I'm investigating. I'm investigating the... the death of her daughter. Uhm, it's possible that someone you know may have been involved in it. And I just... I'm tryin' to find out who that person is so that I can go and talk to him. I mean Debra tells me that she's a good friend of yours and that you would probably help me. And I wanted to come talk to you and appeal to you because Debra can't rest in peace 'cause her daughter's killer hasn't been caught. And the reason I think it's the guy with the skin condition is just prior to Sheila being found, there was a guy hanging out outside that matches the description of him, wearing like a long-sleeved shirt, which it wasn't extremely cold that day. It was a long-sleeve flannel shirt. And I'm thinkin', you know, maybe this guy is tryin' to hide his skin condition or something like that.

A. I don't understand what makes you guys think a person would even have a skin condition because they have the long shirt.

Q. Well, here's why. Because this guy... this guy that I'm looking for, I was told is a

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT

PAGE 4

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

friend of yours. And I was told that you gave Debra rides home from work, so maybe... maybe he saw Debra and maybe he saw Sheila and maybe he got interested in Sheila.

A. Who is Sheila?

Q. Uhm, Sheila is Debra's daughter.

A. Oh. Only knew her by her nickname.

Q. Puka? (Unknown spelling) Okay. So you didn't really know her well.

A. (No verbal response)

Q. Okay. Uhm, anyway, uhm, you know, I'm just— I'm tryin' to solve... solve a crime that happened. And I mean I know... I know you're probably not real anxious to cooperate with the police, but I wanted to appeal to you as a friend of Debra's, uhm, you know, to maybe just pointin' in the right direction.

A. Can't do it. No. I'm not— I don't wanna be involved.

Q. Okay. Well, I understand that. And I mean I... you know, I can... I can find out. Uhm, how well do you know Debra?

A. No, I won't answer no questions about any of that.

Q. Okay. Well, could I ask you a couple... just a couple more things, then we'll be done?

A. No. I got my own problems to deal with, so I don't wanna get involved in anybody else's matters.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 5

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

Q. So you don't wanna help Debra at all. You don't wanna... you don't wanna like try and help catch who killed her daughter?

A. (No verbal response)

Q. Really?

A. I'm not sayin' yes, I'm not sayin' no. I'm just— I don't wanna be involved in anybody else's problems. I have my own case to deal with.

Q. Well, and I understand that.

A. And—

Q. And that's why I told you, you know, man to man, Norman, I came down here and I told you that I'm not gonna ask you questions about your case because I know you have your own problems. But I also wanted to appeal to your human decency.

A. If I do anything, I... I have to talk to my lawyer first, so— Before I do anything. I mean that's what I learned so far, so before I speak about anything or—

Q. Well, I know. But we're not talkin' about the case that—

A. I understand. It has nothin' to do with my case or anything, but the fact is still, I have a... I have an attorney and I... I believe I should talk to my attorney before doin' anything in... in the present or in the future.

Q. Okay. Well, you know, I understand that. But like I said, I'm also not asking you questions in regard to the case that you're under arrest for.

A. I understand.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 6

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

- Q. I mean I'm talking to you about something that's totally non-related.
- A. I understand. It's obviously a legal matter because you read me my rights. So, therefore, I should speak to a legal counselor, you know what I'm sayin'. My lawyer. I mean I understand has nothin' to do with my case, but still, you know. I understand everything you said and I still would rather, you know—
- Q. So your friendship with Debra, you don't really wanna help her? I mean she— can I just tell you somethin'? Debra told me you guys were actually intimate. That you guys had a relationship for a while.
- A. Okay, that's what she told you. Well, I mean what's that supposed to mean?
- Q. Well, I'm just— I mean like I said, I thought if I appealed to your, you know, maybe a friend, that, you know, you might at least give me the courtesy of talking to me about a couple of the people— I mean I wanted to show you some pictures of people and see if you knew 'em and, you know, see if you just wanted to help me with somethin' totally non-related to... to what you're in here for.
- A. Like I said, I got my own problems.
- Q. Well, can— well, did you know Puka?
- A. Like I said, I got my own problem. Not sayin' anything. I'm not nobody's information giver or anything like that. I don't... I'm not doin' nothin' and sayin' nothin' until I talk to my lawyer.
- Q. Okay. So you wanna be done?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 7

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

A. Yeah, I guess. 'Cause I mean he might want me to speak to you. He might not want me to speak to you. I don't know. You know what I'm sayin'. I figure gettin' in other people problems create problems, so—

Q. Okay. Well, and I understand that. But like I said, I just... I mean I... I... my basic points of coming down here and talking to you were just to see, you know, if you would help Debra put... lay her daughter to rest. And, you know, I'll be honest with you, we have no idea who did this. Uhm, we're grasping at straws because I happen to think Debra's a pretty nice lady and I've been tryin' to do some work on this and get somethin' goin'. And that's all. I mean and chances are we'll never figure who did this. You know, we don't know... we don't know why they did it, we don't know what the motive for it was. I mean from what I heard, she had no enemies. So it's, uh, it's just like I said, it's one of those deals where, you know, I'm tryin' to do the right thing for the family. But like I also said, you know, if you don't wanna help, I mean I can't make you.

A. All I said was I'm gonna have to talk to my attorney first.

Q. Who's your attorney?

A. Uh, Randy Pipe (?). Randy Pipe (?).

Q. Okay. And do you want me to come ~~back and~~ talk to you or you just wanna be done with me and you talkin'?

A. That's up to him, so— that's up to him.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 8

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

Q. Okay.

A. It's up to him.

Q. Okay. Well, I'll shut the tape off and we'll be done then. Is that what you want?

A. Yes.

Q. Okay. That's the end of this, uh, tape. The date and time is same date, time is now  
0840 hours.

---

THIS VOLUNTARY STATEMENT WAS COMPLETED AT THE CLARK COUNTY DETENTION CENTER,  
LAS VEGAS, NV, ON THE 24TH DAY OF AUGUST, 2006, AT 0840 HOURS.

GS:cc  
06V1134

App. 000234

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CLERK OF THE COURT

1 **OPPS**  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 PAMELA WECKERLY  
6 Chief Deputy District Attorney  
7 Nevada Bar #00613  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 -vs- )

13 NORMAN FLOWERS,  
14 #1179383 )

15 Defendant. )

CASE NO: C228755

DEPT NO: VII

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL**

17 DATE OF HEARING: 11/12/08  
18 TIME OF HEARING: 8:30 A.M.

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
20 PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached  
21 Points and Authorities in Opposition to Defendant's Motion for New Trial.

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

25 ///

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 **A. Fact of Case C214390 in District Court XI**

4 1. **Marilee Coote**

5 On May 3, 2005, Silver Pines Apartments employees discovered 45 year old Marilee Coote  
6 lying on her living room floor. Ms. Coote was a reliable employee of the Andre Agassi Center.  
7 When she did not arrive at work by 7:30 a.m., a co-worker became concerned and asked the  
8 apartment workers to do a welfare check. After the apartment employees discovered the body, they  
9 contacted the police.

10 Initially, paramedics arrived, but Ms. Coote was already deceased. Police followed. Ms.  
11 Coote was found lying on her living room floor, facing up and completely nude. Inside her belly  
12 button were ashes from burnt incense. The skin between her upper thighs and her pubic area was  
13 burned. Coote's apartment was locked, but her purse and keys were missing. Inside Coote's  
14 washing machine, police found personal photos, bills, and identification belonging to Coote. The  
15 items appeared to have been washed because they had a soap residue on them. In the bathtub, under  
16 ten inches of water, police found other items of paperwork, a phone book, and jewelry boxes  
17 covered with a towel. The apartment was otherwise very neat and undisturbed.

18 The detectives initially did not view this incident as a homicide. Therefore, they documented  
19 the scene, but did not collect evidence. After conducting an autopsy, however, Dr. Knoblock  
20 concluded the Coote died as the result of strangulation. He also noted tearing of Coote's labia and  
21 anal area. Dr. Knoblock concluded that these tears were sustained ante-mortem. Coote also had  
22 contusions on her arms and forearms.

23 Ms. Coote was an acquaintance of defendant Norman Flowers's girlfriend, Mawusi Ragland,  
24 who also lived in the Silver Pines complex.

25 2. **Juanita Curry**

26 While various officers were in Coote's apartment during the morning of May 3, 2005,  
27 another resident of the complex, Juanita Curry, came in contact with the defendant, Norman  
28 Flowers. This occurred between 7:00 and 10:00 a.m. Curry also was an acquaintance of Flowers's

1 girlfriend, Mawusi Ragland. Curry lived two floors below Coote. Curry noticed the police and  
2 paramedics going in and out of Coote's apartment. From apartment employees, Curry believed that  
3 Coote died of natural causes. Sometime that same morning, defendant Flowers knocked on Curry's  
4 door. He asked if he could use her phone. He said he was supposed to meet up with Mawusi that  
5 morning. She agreed and gave him the phone.

6 Curry is physically disabled and sometimes walks with a cane. Because of her compromised  
7 physical state, she was not comfortable allowing Flowers in her apartment, so she let him use her  
8 cordless phone in the doorway. After Flowers used the phone, he came back a few times later, each  
9 time with a new request. He asked to use the phone again. He asked for water. At one point, he  
10 asked to use her bathroom. She agreed, but when he went in the bathroom, she stepped out of the  
11 apartment. As she did so, he asked her to come in and help him find the bathroom light. She  
12 refused. When Flowers was at her doorstep, she also noticed that when the police walked back and  
13 forth, he would turn his head away. He commented, "the police make me nervous." During the  
14 final conversation in Curry's doorway, Flowers leaned down and tried to kiss Curry on the mouth.  
15 She turned away.

16 Curry observed Flowers walk across the parking lot to the doorway of resident Rena  
17 Gonzalez's apartment that morning. Curry left the complex a little before 11:00 in the morning.  
18 When she returned, she learned that the police also had discovered the body of resident Rena  
19 Gonzalez. She gave a statement to police and identified Mawusi's boyfriend as someone she saw in  
20 the area of Rena Gonzalez's apartment.

21 3. Rena Gonzalez

22 Officers learned of the homicide involving Rena Gonzalez at approximately 4:00 p.m. that  
23 same day. Rena Gonzalez's two daughters, the oldest of whom is seven years old, came home from  
24 school and found their mother on her knees leaning against her bed in her master bedroom. She was  
25 unresponsive. They ran and got their friend, Shayne. Shayne returned with them. They tried to  
26 remove a phone cord around Gonzalez's neck and called 911.

1           Gonzalez's apartment was clean and undisturbed with the exception of the following: a  
2 broken blue plastic hair comb and a single green sandal were both in the front hallway. Officers  
3 could not locate Gonzalez's purse or keys.

4           Gonzalez was at the foot of her bed, with her body bent at the waist. Her upper torso was on  
5 the bed with her face down and arms outstretched. A black phone cord and black lanyard were  
6 around her neck. She was dressed in shorts, which were slightly pulled down, and a shirt. She had  
7 the matching blue hairclip hanging from her hair and blood coming from her ear.

8           At autopsy, Dr. Simms noted extensive bruising to Gonzalez's breast, right arm and right leg.  
9 Dr. Simms concluded that Gonzalez died as a result of strangulation. He also noted tearing to her  
10 vaginal and anal area. Dr. Simms concluded that these injuries took place post-mortem.

11           Detectives learned that Rena Gonzalez was a close friend of Mawusi Ragland. In fact, the  
12 two women would trade off watching each other's children. They determined that Gonzalez had  
13 walked her daughters to the school bus the morning of the 3rd and would have returned home  
14 around 8:30 a.m. Rena Gonzalez did not work.

15           4.     Mawusi Ragland

16           Mawusi Ragland also lived at the Silver Pines Apartments. She lived in the apartment across  
17 from Coote. She told detectives that approximately three weeks before the homicide, she and  
18 Flowers had gotten into an argument and had not spoken since. In the argument, Mawusi implied  
19 that she would socialize with other men. Mawusi had discussed Flowers with her friend Rena  
20 Gonzalez as well, although Flowers and Gonzalez had not met. According to Mawusi, Gonzalez  
21 advised her not to date Flowers.

22           When Mawusi returned home on the evening of May 3, she saw police vehicles. She was  
23 told her friend, Rena, had been murdered and that her other friend, Marilee, had died of natural  
24 causes. On her apartment door, Mawusi noticed a note. It was from Flowers. It stated that he tried  
25 to catch her before she went to work, but that it looked like he picked a bad day because "big shit is  
26 happening over here." He also asked if she had dated other men since their argument. Flowers  
27 called Mawusi that evening. She was very emotional and explained that both Marilee and Rena  
28 were dead. Flowers did not appear to be shocked upon hearing this news. She asked him to come

1 over and help her through this difficult time. He told her he'd be right over. When Flowers did not  
2 arrive in the next 90 minutes, Mawusi called him to ask where he was. He said he had not left home  
3 because when tried to call her, she did not answer her phone. He also mentioned that he had seen  
4 Rena that morning and had a short conversation with her. Mawusi asked him what time he was at  
5 the complex and Flowers responded, "I didn't kill her."

6 After speaking with Mawusi, detectives interviewed Norman Flowers. Initially, he told  
7 officers that he had no contact with Marilee Coote on the morning of the murder. He said he had not  
8 seen her for months. He also explained that he met Rena Gonzalez several months earlier through  
9 Mawusi. He admitted that he had spoken with Rena that morning, but denied ever entering her  
10 apartment. Flowers agreed to provide a DNA sample.

11 Subsequently, Flowers's DNA sample was compared with swabs from Marilee Coote's sexual  
12 assault kit. Both vaginal and rectal swabs matched to Flowers. In addition, DNA was collected  
13 from the carpet area where Coote was laying, specifically, the carpet beneath her upper thighs. That  
14 sample also matched to Flowers.

15 Detectives interviewed Flowers again. He still maintained that he had never been in  
16 Gonzalez's apartment that morning. With regard to Marilee Coote, he first explained that he had  
17 had sex with her in the past, but not that day. Then, he acknowledged that he had sex with her the  
18 night before she died, but that she was alive and fine when he left. He denied having rough sex with  
19 her. Later in the interview, he claimed that he might have had rough sex with her, but that she was  
20 fine when he left. In a third interview, he said he did have rough sex with her, but that she was alive  
21 when he left. He also stated that there was a third man watching the two have sex. He said this man  
22 was a medium height, weight, and age black man, but he did not know his name. He claims this  
23 man remained in the apartment after he left. Thus, his latest claim was that the sex was consensual  
24 and another individual must have killed Coote.

25 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source of this  
26 DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is excluded as  
27 the source of that DNA as well. The partial profiles obtained from Gonzalez's rectal swabs and the  
28 phone cord are consistent with a single male source and may be the product of laboratory transfer or

1 contamination. Upon retesting, no indication of the partial male profile was present in the rectal  
2 swabs.

3 B. Facts of Instant Case C228755 Before This Court VII

4 Sheila Quarles

5 Less than two months prior to the murders of Marilee Coote and Rena Gonzalez, on March  
6 24, 2005, Debra Quarles returned home from grocery shopping to her residence at 1001 North  
7 Pecos, Las Vegas, Clark County, Nevada, and found her eighteen year old daughter, Sheila Quarles,  
8 unresponsive in a bathtub containing warm water. Debra had returned home at 2:30 in the  
9 afternoon. She was able to remove Sheila from the tub with the help of a neighbor who had helped  
10 her carry in groceries. Debra immediately called 911.

11 An autopsy later revealed that Sheila died from drowning. However, strangulation was a  
12 significant contributing factor to her death. Sheila also had multiple vertical lacerations on her  
13 introitus, evidence of a violent sexual assault.

14 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30 p.m.  
15 and her mother arrived home to find her dead at approximately 2:50 p.m. A stereo was also missing  
16 from the residence. In addition, detectives learned that Sheila was involved in a lesbian relationship  
17 with an individual named Quinise Toney.

18 At autopsy, investigators collected samples from Sheila's vagina. Those swabs contained a  
19 mixture of DNA which included semen. Quinise Toney was excluded as being a source of any of  
20 this DNA. Sheila Quarles was the major component of the DNA. The male portion of the DNA was  
21 entered into a DNA database. When Flowers's DNA sample was collected in connection with the  
22 May murders (Coote and Gonzalez), his profile was entered into the DNA database as well. After  
23 this entry, investigators were notified that Flowers's profile was consistent with part of the minor  
24 component DNA from Sheila Quarles's vaginal swabs. In fact, 99.9934 percent of the population is  
25 excluded as being a source of that DNA, but Flowers is not. There was an additional, unknown male  
26 contributor to the vaginal swabs of Sheila Quarles as well.

27 After detectives were notified of the DNA match, they recontacted Debra Quarles. Quarles  
28 explained that she knew and had actually dated Norman Flowers several months before the murder.

1 She also explained that he would occasionally give her a ride home from her work at the time and  
2 that he knew her family members. Quarles said that just prior to the murder, she saw Flowers at her  
3 apartment complex. At that time, he explained that he was working in maintenance at the complex.  
4 After her daughter's murder, Quarles suffered from depression. Flowers offered to drive her to  
5 appointments with her therapist. On several occasions, Flowers inquired to Debra whether the  
6 police had figured out who had murdered her daughter.

7 The State moves to admit evidence of Flowers's subsequent murders and activity at the  
8 Silver Pines Apartment Complex in May in the instant murder case before this Court concerning  
9 victim Sheila Quarles. Prior to this case being transferred to Department VII, the case was in  
10 Department XIV. At that time, the defense moved to preclude the State from introducing such  
11 evidence. The State opposed. Judge Mosley did not grant the defense motion, commented that all  
12 three cases should be consolidated, but did not clearly state that the State could affirmatively move  
13 to admit such evidence. Thus, the State filed a motion for clarification.

14 Subsequently, this Court reviewed all of the incidents and ruled that the State would be  
15 permitted to bring in evidence of the Marilee Coote murder as an other bad act, but not defendant's  
16 conduct regarding Rena Gonzalez, Mawusi Ragland, and Juanita Curry. In addition, after this Court  
17 heard testimony and argument on this matter, the State was able to identify the second source of  
18 DNA in the Quarles case. Quarles's boyfriend, George Brass had sex with her in the morning just  
19 hours before she was murdered. Brass was able to establish that he was at work prior to Quarles's  
20 death—an alibi. At trial, Defendant Flowers suggested to this Court that his sexual contact with  
21 Quarles was consensual and that Brass or some other individual was the real killer.

## 22 ARGUMENT

23 As this Court is well aware, NRS 175.381 provides that the Court may enter a judgment of  
24 acquittal if the evidence adduced at trial is insufficient to sustain a conviction. Similarly, a  
25 defendant may file a motion for new trial within seven days after the verdict or finding of guilt. See  
26 NRS 176.515. In order to grant a motion for judgment of acquittal, the Court would have to  
27 determine that, as a matter of law, the evidence was legally insufficient to support a conviction. See  
28 State v. Rhodig, 101 Nev. 608, 707 P.2d 549 (1985). The standard for sufficiency of the evidence

1 on appeal “is whether the jury, acting reasonably, could have been convinced of the defendant’s  
2 guilt beyond a reasonable doubt.” Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992),  
3 overruled on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000). Sufficient  
4 evidence exists if the evidence, viewed in the light most favorable to the prosecution, would allow  
5 any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.  
6 Davis v. State, 110 Nev. 1107, 1116, 881 P.2d 657, 663 (1994); see also Azbill v. State, 88 Nev.  
7 240, 252, 495 P.2d 1064, 1072 (1972) (holding that in all criminal proceedings, the weight and  
8 sufficiency of the evidence are questions for the jury, and its verdict will not be disturbed upon  
9 appeal if there is evidence to support it; the evidence cannot be weighed by an appellate court).

10 In his motion, Defendant Flowers does not appear to be claiming that there was insufficient  
11 evidence for a jury to find him guilty at trial. Rather, he raises the propriety of the Court’s  
12 evidentiary ruling regarding admitting evidence of the Coote murder pursuant to NRS 48.045(2) and  
13 the ruling regarding the admissibility of his statement to Detective Sherwood.

14 As this Court is well aware, section 48.045(2) of the Nevada Revised Statutes provides:

15  
16 Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a  
17 person in order to show that he acted in conformity therewith. It may, however, be  
admissible for other purposes, such as proof of motive, opportunity, intent,  
preparation, plan, knowledge, identity, or absence of mistake or accident.

18 In applying NRS 48.045(2), courts must assess whether the probative value of the evidence is  
19 substantially outweighed by a risk of prejudice. Significantly, however, courts have recognized a  
20 distinction between evidence that is incriminating versus evidence that is actually prejudicial. For  
21 instance, in United States v. Harrison, 679 F.2d 942 (D.C. Cir. 1982), the prosecution presented  
22 evidence that the defendant had been engaged in drug dealing in the past over a period of time in  
23 order to establish motive, intent, preparation, and absence of mistake on his current drug charges.  
24 The court held that allowing the admission of the extrinsic evidence was proper. It explained:

25  
26 There is nothing “unfair” in admitting direct evidence of the defendant’s past acts by  
27 an eyewitness thereto that constituted substantive proof of the relevant intent alleged  
28 in the indictment. The intent with which a person commits an act on a given occasion  
can many times be best proven by testimony or evidence of his acts over a period of  
time prior thereto . . .



1 Id. at 948. Therefore, while certain evidence may increase the likelihood of conviction and thus be  
2 incriminating, such evidence may not unfairly cast the defendant in a bad light and therefore be  
3 prejudicial.

4 In the instant case, Flowers's subsequent conduct was admissible in the instant case.  
5 Evidence of the Coote murder was admissible in a trial focusing on the March murder because such  
6 evidence would be relevant to identity, intent, and motive and vice versa. In Gallego v. State, 101  
7 Nev. 782, 711 P.2d 856 (1985), the Nevada Supreme Court noted how a defendant's prior murders  
8 could be relevant in establishing a common plan, intent, identity, and motive in a subsequent murder  
9 case. In Gallego, the defendant was charged with kidnapping, assaulting, and killing two young  
10 women by bludgeoning them with a hammer. The trial court permitted the State to introduce  
11 evidence that Gallego had previously kidnapped two young women from a shopping mall and shot  
12 and killed them. Id. at 789, 711 P.2d at 861. On appeal, Gallego challenged the introduction of such  
13 evidence.

14 The Nevada Supreme Court affirmed the conviction and introduction of the evidence on  
15 several grounds within NRS 48.045(2). The court noted that the evidence was relevant to Gallego's  
16 intent and motive, because both instances were prompted by a "sex slave" fantasy on the part of  
17 Gallego. The court also commented that the evidence was relevant because the prior murders were  
18 "not remote in time from the killings here considered" and that "substantial similarities" were shown  
19 to exist between the two events, suggesting that the evidence was relevant to issues of identity as  
20 well as a common scheme or plan. See id.

21 In another case, the Nevada Supreme Court has commented how a particular modus operandi  
22 to a crime can be relevant and admissible under NRS 48.045(2) when the identity of the perpetrator  
23 is at issue. The court has stated that modus operandi evidence is proper in "situations where a  
24 positive identification of the perpetrator has not been made, and the offered evidence establishes a  
25 signature crime so clear as to establish the identity of the person on trial." Mortensen v. State, 115  
26 Nev. 273, 280, 986 P.2d 1105, 1110 (1999).

27 In the case of Flowers, both victims were casual acquaintances of Flowers. Both were killed  
28 in their residences. Both were killed during daylight hours. In addition to being murdered, both had

1 some minor property taken from them as well. More significantly, of course, both were sexually  
2 assaulted prior to their deaths. The victims both had damage to their vaginal and/or anal areas  
3 substantiating the sexual assault charges. Both victims were killed, at least in part, by means of  
4 strangulation. Admittedly, the cause of death for Sheila Quarles was a drowning; however, the  
5 strangulation was a significant contributing factor to the death. Certainly, the similarity of the three  
6 murders constitutes evidence of identity admissible under NRS 48.045(2).

7 In addition, evidence of the Coote murder was relevant to the March 2005 killing because it  
8 constituted evidence of intent and lack of accident as well—also admissible under NRS 48.045(2).  
9 In Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), reversed on other grounds by  
10 Petrocelli v. Angelone, 242 F.3d 867 (9<sup>th</sup> Cir. 2001), the Nevada Supreme Court explained how in a  
11 murder prosecution where defendant was claiming that a homicide was an accident, evidence of a  
12 prior killing committed by him which he also claimed was accidental was relevant and admissible  
13 under NRS 48.045(2).

14 Further, given that Flowers suggested that he had consensual sex with Quarles and someone  
15 else killed her, evidence of the Coote killing is relevant to his intent during his encounter with  
16 Quarles and whether she consented to the sex. The fact that he subsequently—at a minimum—had  
17 at least one violent sexual encounter which resulted in vaginal trauma to victim Marilee Coote as  
18 well as her strangulation and death is evidence that Quarles’s murder was intentional and not an  
19 accident. See id.

20 Finally, evidence of the Coote murder was relevant to the March 2005 murder in terms of the  
21 charged sexual assault counts. In Williams v. State, 95 Nev. 830, 603, P.2d 694 (1979), a sexual  
22 assault victim testified that she met the defendant while discussing a possible job as his secretary.  
23 At some point, the defendant offered her \$5000 for a “one night stand,” but she refused. The  
24 defendant told her that he was trained in martial arts and demonstrated how he could injure her and  
25 then sexually assaulted her. The defendant maintained that the intercourse was consensual. The  
26 State presented the testimony of two prior victims, from incidents occurring nineteen months before  
27 the charged incident, who testified that they met the defendant through a job interview and were  
28

1 coerced into having sex with him after he demonstrated his karate knowledge. In affirming the  
2 admission of testimony regarding the prior incidents, the Nevada Supreme Court stated:

3  
4 In the instant case, evidence of Williams' sexual misconduct with other persons was  
5 admitted as being relevant to prove his intent to have intercourse with the victim  
6 without her consent. This evidence was introduced after Williams admitted  
7 committing the act, but claimed to have done so with the victim's consent. By  
8 acknowledging the commission of the act but asserting his innocent intent by  
9 claiming consent as a defense, Williams himself placed in issue a necessary element  
10 of the offense and it was, therefore, proper for the prosecution to present the  
11 challenged evidence, which was relevant on the issue of intent, in order to rebut  
12 Williams' testimony on a point material to the establishment of his guilt.

13 Id. at 833.

14 Because Quarles was killed after she was sexually assaulted, the State had to rely on  
15 circumstances and medical testimony to establish the lack of consent. Consent was at issue because  
16 of the sexual assault charge itself, which requires lack of consent, and, like Williams, Flowers  
17 claimed that the sexual encounter was consensual. Therefore, the subsequent conduct of Flowers  
18 with regard to Marilee Coote was relevant.

19 Defendant Flowers's second claim of error, that the admission of his statement improperly  
20 commented on his invocation of his right to counsel, is factually inaccurate. Detective Sherwood  
21 provided Flowers with his Miranda rights, which he waived. The State elicited testimony regarding  
22 Sherwood's conversation with Flowers before he invoked. The State never elicited any information  
23 regarding Flowers's invocation. Thus, there was no error.

### 24 CONCLUSION

25 Based on the foregoing, the State respectfully asks this Court to deny the instant motion.

26 DATED this 10th day of November, 2008.

27 Respectfully submitted,

28 DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s/PAMELA WECKERLY  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that service of Opposition to Defendant's Motion for New Trial, was made this 10th day of November, 2008, by facsimile transmission to:

CLARK W. PATRICK, SPD  
FAX #455-6273

/s/ Deana Daniels  
Secretary for the District Attorney's Office

ORDR

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
PAMELA WECKERLY  
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Attorney for Plaintiff

FILED

Nov 18 2 36 PM '08

*[Signature]*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-VS-

NORMAN FLOWERS,  
#1179383

Defendant.

Case No. C228755  
Dept No. VII

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: 11/12/08  
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 12th day of November, 2008, the Defendant being present, REPRESENTED BY RANDALL PIKE and CLARK PATRICK, Deputy Special Public Defender's, the Plaintiff being represented by DAVID ROGER, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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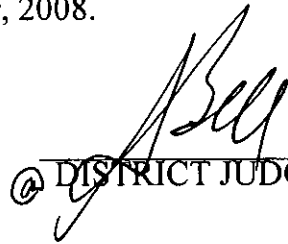
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CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the Defendant's Motion For New Trial, shall be, and  
2 it is DENIED.

3 DATED this 18<sup>th</sup> day of November, 2008.

4  
5  
6  @ DISTRICT JUDGE

7  
8 DAVID ROGER  
9 DISTRICT ATTORNEY  
Nevada Bar #002781

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11 PAMELA WECKERLY  
12 Chief Deputy District Attorney  
13 Nevada Bar #006163  
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