

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDDY MARTINEZ,
Appellant(s),
vs.

STATE OF NEVADA,
Respondent(s),

} Case No: 06C226586
} SC No: 57197
}

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT
FREDDY MARTINEZ # 1003276
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT
DAVID ROGER, ESQ.
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

06C226586

STATE OF NEVADA VS.
FREDDY MARTINEZ

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CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **MICHAEL WATSON**
6 Deputy District Attorney
7 Nevada Bar #009219
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

-vs-

15 FREDDYS A. MARTINEZ,
16 #1003276
17 Defendant.

CASE NO: C226586X

DEPT NO: XIV

18 **OPPOSITION TO DEFENDANT'S MOTION TO MAKE ADDITIONAL FUNDS**
19 **AVAILABLE FOR NDOC INMATES [sic] LEGAL ACCOUNT**

20 DATE OF HEARING: NOVEMBER 9, 2009
21 TIME OF HEARING: 9:00 AM

22 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
23 Michael Watson, Deputy District Attorney, and hereby submits the attached Points and
24 Authorities in Opposition to Defendant's Motion to Make Additional Funds Available for
25 NDOC Inmates [sic] Legal Account.

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

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///

1 POINTS AND AUTHORITIES

2 NRS 209.246 allows deductions from a prisoner's individual account for postage,
3 photocopying, and legal supplies related to legal documents and litigation. NRS 209.246 (3)
4 (2009). NRS 209.221 allows for the establishment of the Offenders' Store Fund, which
5 under subsection 5, requires that money be transferred from the Offender's Store Fund to
6 cover costs under NRS 209.246 if an offender has insufficient funds in his individual
7 account, and that funds will be transferred back to the Offenders' Store Fund once funds are
8 available in the offender's individual account. NRS 209.221 (5) (2009).

9 NRS 209.221 (8) sets out the process in which a prisoner must follow to establish that
10 he has insufficient funds in his individual account.

11 8. If an offender has insufficient money in his individual account in the
12 Prisoner's Personal Property Fund to repay or defray costs assessed to the
13 offender pursuant to NRS 209.246, the offender shall sign a statement
under penalty of perjury concerning his financial situation. Such a
statement must include, but is not limited to, the following information:

- 14 (a) The value of any interest the offender has in real estate;
15 (b) The value of the personal property of the offender;
16 (c) The assets in any bank account of the offender; and
17 (d) The employment status of the offender.

18 NRS 209.221 (8) (2009).

19 The defendant is requesting the Court order additional funds be added to his personal
20 property fund account, but had not followed the proper process in such a request. The
21 process as required in NRS 209.221 does not require a defendant to go through the Court for
22 a remedy.

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1 The defendant has provided no grounds to support this motion or to bypass the
2 requirements laid out in NRS 209.221, therefore the motion should be denied.

3 DATED this 2nd day of November, 2009.

4 Respectfully submitted,

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

8
9 BY /s/ MICHAEL WATSON

10 Michael Watson
11 Deputy District Attorney
12 Nevada Bar #009219

13
14 **CERTIFICATE OF MAILING**

15 I hereby certify that service of the above and foregoing, was made this 2nd day of
16 November, 2009, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17
18 FREDDY MARTINEZ #1003276
19 LOVELOCK CORRECTIONAL CENTER
20 1200 PRISON RD
21 LOVELOCK, NV 89419

22 M. Gregory
23 Secretary for the District Attorney's
24 Office

25
26
27
28 WATSM/mg

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45

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 ALEXANDER CHEN
6 Deputy District Attorney
7 Nevada Bar #010539
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

JAN 06 2010

John L. Sullivan
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,

12 Plaintiff,

13 -vs-

14 FREDDY A. MARTINEZ,
15 #1361243

16 Defendant.

Case No. C226586
Dept No. XIV

17 **ORDER DENYING DEFENDANT'S MOTION TO MAKE ADDITIONAL FUNDS**
18 **AVAILABLE FOR NDOC INMATES [SIC] LEGAL ACCOUNT**

19 DATE OF HEARING: 11/09/2009

20 TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 9th day of November, 2009, the Defendant not being present, IN PROPER PERSON, the
23 Plaintiff being represented by DAVID ROGER, District Attorney, through ALEXANDER
24 CHEN, Deputy District Attorney, and the Court having heard the arguments of counsel and
25 good cause appearing therefor,

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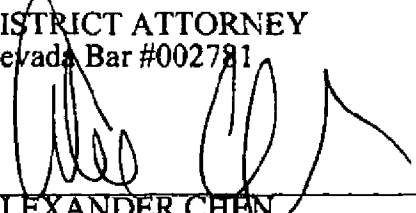
JAN 06 2010

CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the Defendant's Motion to Make Additional Funds
2 Available for NDOC Inmates [sic] Legal Account, shall be, and it is DENIED.

3 DATED this 29 day of December, 2009.

4
5 
6 DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781
11 

12 ALEXANDER CHEN
13 Deputy District Attorney
14 Nevada Bar #010539

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Case No. C226586
Dept. No. XIV

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APR 02 2010
John A. Johnson
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * * * *

FREDY'S A. MARTINEZ [#]1003276)
Petitioner,)
-vs-)
STATE OF NEVADA)
Respondent.)

4/14/10

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW Petitioner, FREDY'S A. MARTINEZ, in pro se,
and moves the Court for an order appointing counsel in the
instant petition for writ of habeas corpus (post-conviction).

This motion is made and based upon NRS 34.750; all papers,
pleadings and documents on file herein; and the points and
authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford counsel. See Application to
Proceed In Forma Pauperis on file herein.

The substantive issues and procedural requirements of this
case are difficult and incomprehensible to Petitioner.

Petitioner, due to his incarceration, cannot investigate,
take depositions or otherwise proceed with discovery herein.

Petitioner's sentence is: SEE ATTACHED.

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APR 02 2010

CLERK OF THE COURT

1 There ✓ are are not additional facts in support of
2 this motion attached hereto on separate page(s).

3 Counsel would assist Petitioner with a clearer presentation
4 of his issues before this Court and would likewise facilitate
5 and ease this Court's task of discerning the issues and
6 adjudicating same upon their merits.

7 Discretion lies with the Court to appoint counsel under NRS
8 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254
9 (1997). The Court is to consider: (1) the complexity of the
10 issues; (2) whether Petitioner comprehends the issues; (3)
11 whether counsel is necessary to conduct discovery; and (4) the
12 severity of Petitioner's sentence. NRS 34.750(1)-(1)(c).

13 Under similar discretionary standards, Federal courts are
14 encouraged to appoint counsel when the interests of justice so
15 require - a showing which increases proportionately with the
16 increased complexities of the case and the penalties involved in
17 the conviction. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.
18 1986). Attorneys should be appointed for indigent petitioners
19 who cannot "adequately present their own cases." Jeffers v.
20 Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

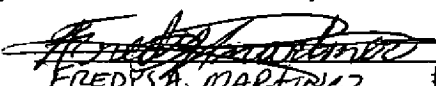
21 Although Petitioner need meet but one (1) of the enumerated
22 criteria of NRS 34.750 in order to merit appointment of counsel,
23 he meets all of them. He also presents a classic example of one
24 meriting counsel under the interest of justice test bespoken by
25 the Ninth Circuit. Indeed, Petitioner's sentence, coupled with
26 the other factors set forth above, demonstrate that appointment
27 of counsel to him would not only satisfy justice, but
28 fundamental fairness, as well.

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CONCLUSION

For the reasons set forth above, the Court should appoint
counsel to represent Petitioner in and for all further
proceedings in this habeas corpus action.

Dated this 19 day of MARCH, 2010.


FREDYS A. MARTINEZ #003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the
foregoing MOTION FOR APPOINTMENT OF COUNSEL to the below address
on this 19 day of MARCH, 2010, by placing same
in the U.S. Mail via prison law library staff:

Attorney For Respondent

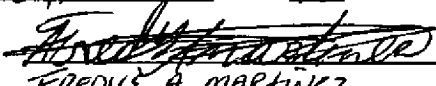

FREDYS A. MARTINEZ

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding
MOTION FOR APPOINTMENT OF COUNSEL DOES not contain the social
security number of any person.

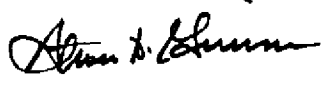
Dated this 19 day of MARCH, 2010.


FREDYS A. MARTINEZ

Petitioner In Pro Se

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CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **JAMES R. SWEETIN**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005144**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **FREDYS A. MARTINEZ,**
14 **#1361243**

15 **Defendant.**

CASE NO: C226586

DEPT NO: XIV

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION**
17 **FOR APPOINTMENT OF COUNSEL**

18 **DATE OF HEARING: APRIL 14, 2010**
19 **TIME OF HEARING: 9:00 AM**

20 **COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through**
21 **JAMES R. SWEET, Chief Deputy District Attorney, and hereby submits the attached Points**
22 **and Authorities in Opposition to Defendant's Motion for Appointment of Counsel.**

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

26 **//**

27 **//**

28 **//**

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary while in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
7 – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a Deadly
8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
10 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Batter
11 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counse on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to ONE
14 HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 Defendant filed the instant motion on April 2, 2010. The State's opposition is as
23 foilows.

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ARGUMENT

I. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF AN ATTORNEY.

Defendant is not entitled to appointment of an attorney. In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution.”

NRS 34.750 provides, in pertinent part:

“[a] petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition *is not dismissed summarily*, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:

- (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.”

(emphasis added).

Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death], one does not have “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at 164.

The Nevada Supreme Court has observed that a defendant “must show that the requested review is not frivolous before he may have an attorney appointed.” Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS 177.345(2)). Defendant cannot make the threshold showing that any petition he might file will not be summarily dismissed as time barred. Therefore, his request for appointment of counsel should be denied.

1 CONCLUSION

2 Based on the foregoing arguments, the State respectfully requests that Defendant's
3 motion be denied.

4 DATED this 9th day of April, 2010.

5 Respectfully submitted,

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

9 BY /s/ JAMES R. SWEETIN

10 JAMES R. SWEETIN
11 Chief Deputy District Attorney
12 Nevada Bar #005144
13
14
15
16
17
18

19 CERTIFICATE OF MAILING

20 I hereby certify that service of the above and foregoing, was made this 9th day of
21 April, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

22 FREDYS MARTINEZ, BAC#1003276
23 LOVELOCK CORRECTIONAL CENTER
24 1200 PRISON ROAD
25 LOVELOCK, NV 89149

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

hjc/SVU

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Live to file.

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FREDYS MARTINEZ # 1003276
1200 PRISON RD
LOVELOCK NV 89419

FILED

APR 21 2010

Pro se

CLERK OF COURT

Petitioner

v.

C 220586

State of Nevada "et al"

Respondent

Dept. 3 XIV

In Clark County D.C.
Nevada.

5/5/10

A Motion to Vacate A. J.O. C.

The defd was convicted by trial to, N.R.S. 205.060-200.481-N.R.S. 193.165-200.310-200.320. and in good cause appearing, (because he was not found guilty at trial to count 4), but sentenced to life he is pleading he should have been acquitted of all counts of the verdict should of been "unanimous" cause and prejudice a, Fundamental Miscarriage of Justice. Citing, Schlup V. Delo 513 U.S. 298, 326., 115 S.Ct. 851, 130 L.Ed. 2d 808 (1995) reasonable doubt and a colorable claim of actual innocence of a crime he did not committed as

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CLERK OF THE COURT

1 sentence by the honorable Judge
2 Stewart L. Bell, on May the 24,
3 of 2007, *Kitzelman v. Rautzahn* 68
4 Nev 342., Represented by the,
5 O.P.D. 309 So. 3rd St 2nd fl, L.V.
6 N.V. Case No. 06F15924X, and,
7 Affirmed
8 on direct appeal, Doc. No. 49608.

9 The omitted claims have merit
10 and are procedurally default due to
11 lack of communication. See *Kitchen v.*
12 U.S. 227 F 3d 1014 (7th Cir. 2000) a
13 significant and obvious issue is
14 the petitioner is from the country
15 of Honduras Central America, no or
very little english.

He now contends the translation of
statements where boched leading to
incompetent or misleading evidence
See *Baltazar-Monterrosa v. State* 137
P. 3d 1141, (Nev. 2006).

He now also contends he did not
get a fair trial because his state-
ments to the jury where not interpreted
a denial of due process, See *Caballero*
v. Seventh Judicial Dist. Court ex rel.
County of White Pine, 167 P. 3d 419-420, (Nev.
2007). ~~Amended Petition~~ 4-8-2010 See next page.

ff

PROPER PERSON SETTINGS

CASE #C226586

DEPARTMENT:14

DEFENDANT:FREDYS A MARTINEZ # 1003276

DATE FILED:April 2, 2010

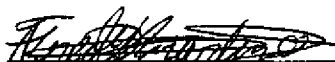
MATTERS TO BE HEARD:MOTION FOR APPOINTMENT OF COUNSEL.

HEARING DATE: 4/14/2010

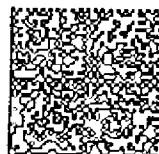
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COPIES GIVEN TO:

- ☒ **DISTRICT ATTORNEY**
- ☐ **PUBLIC DEFENDER**
- ☒ **PROPER PERSON**
- ☐ **ATTORNEY GENERAL**
- ☐ **ATTORNEY OF RECORD**



Fredy A. Martinez #1003276.
LOVELOCK, CORR, CTR.
1200 PRISON ROAD.
LOVELOCK, NV 89419-5110.



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CHARLES J. SHORT, Clerk of the Court

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LAS VEGAS NV 89155-1160

INMATE LEGAL
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Loveland Correctional Center

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APR 22 2010

leave to file
CLERK OF COURT

Fredy's A. Martinez, Pro se

Respondent ID No. 1003276

V C-226586

State of Nevada

Dept 14

Appellee

Notice of Appeal

The matter came on before the 8th J.D.C. in and for the county of Clark in the above name case. Motion for Appointment of Counsel denied, the 9th day of April of 2010. In good faith, see *Ellis v. U.S.* 78 S.Ct 974 (1958). Citing, *Caballero v. J.D.C.* 167 P.3d 415-123 Nev 316. (Nev. 2007).

DATE: 4.19.2010

28 U.S.C. § 1746.

L.C.C.

1200 Prison Rd.

Love Lock NV

8949

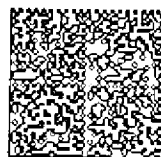
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CLERK OF THE COURT

Fredys. A. Martinez #1003276
LOVELOCK, CORR. CTR.
1200 PRISON ROAD
LOVELOCK, NV 89419.



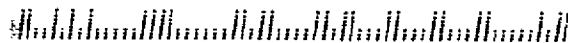
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STEVEN D. GRIERSON, Clerk of the Court.
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160.

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CLERK OF COURT

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

) Case No: C226586

) Dept No: XIV

9 vs.)

10 FREDYS A. MARTINEZ,)

11 Defendant(s),)

12
13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): FREDYS A. MARTINEZ

16 2. Judge: DONALD M. MOSLEY

17 3. Appellant(s): FREDYS A. MARTINEZ

18 Counsel:

19 Fredys A. Martinez #1003276

20 1200 Prison Rd.

21 Lovelock, NV 89419

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney

25 200 Lewis Ave.

26 Las Vegas, NV 89101

27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

1 7. Appellant Represented by Appointed Counsel On Appeal: N/A

2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

3 9. Date Commenced in District Court: September 29, 2006

4 10. Brief Description of the Nature of the Action: Criminal

5 Type of Judgment or Order Being Appealed: Misc. Order

6 11. Previous Appeal: Yes

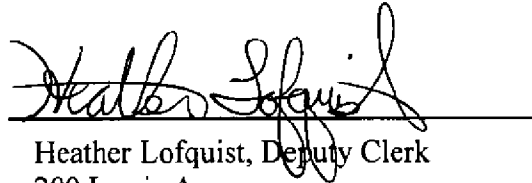
7 Supreme Court Docket Number(s): 49608

8 12. Child Custody or Visitation: N/A

9
10 Dated This 23 day of April 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Heather Lofquist, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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Ann L. Loring
CLERK OF THE COURT

1 **ORDR**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 THOMAS M. CARROLL
6 Chief Deputy District Attorney
7 Nevada Bar #004232
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA
15

16 THE STATE OF NEVADA,

17 Plaintiff,

18 -vs-

19 FREDDY MARTINEZ, aka,
20 Fredys A. Martinez, #1361243

21 Defendant.
22

Case No. C226586
Dept No. XIV

23 ORDER DENYING DEFENDANT'S PRO PER MOTION FOR APPORINTMENT OF
24 COUNSEL

25 DATE OF HEARING: April 14, 2010

TIME OF HEARING: 9:00 A.M.

26 THIS MATTER having come on for hearing before the above entitled Court on the
27 14th day of April, 2010, the Defendant not being present, represented in proper person, the
28 Plaintiff being represented by DAVID ROGER, District Attorney, through THOMAS M.
29 CARROLL, Chief Deputy District Attorney, and the Court having heard the arguments of
30 counsel and good cause appearing therefor,

///

///

///

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CLERK OF THE COURT

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1 IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of Counsel,
2 shall be, and it is DENIED.

APR 22 2010

3 DATED this _____ day of April, 2010.

4
5 
6 DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10 
11 THOMAS M. CARROLL
12 Chief Deputy District Attorney
13 Nevada Bar #004232
14
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28 jm

Case No. 2220580

Dept. No. XIV

FILED

APR 30 2010

CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

* * * * *

Fredy S. Martinez

Pro se, Petitioner,

-vs-

JACK PALMER, "et al"

Respondent.

State of Nevada

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS: Atty. Gen. Catherine C. Masto.

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing

CLERK OF COURT

APR 30 2010

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1 future petitions challenging your conviction and sentence.

2 (6) You must allege specific facts supporting the claims in
3 the petition you file seeking relief from any conviction or
4 sentence. Failure to allege specific facts rather than just
5 conclusions may cause your petition to be dismissed. If your
6 petition contains a claim of ineffective assistance of counsel,
7 that claim will operate to waive the attorney-client privilege
8 for the proceeding in which you claim your counsel was
9 ineffective.

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

12 PETITION

13 1. Name of institution and county in which you are presently
14 imprisoned or where and how you are presently restrained of your
15 liberty: Lovelock Correctional Center, Pershing County, Nevada.

15 2. Name and location of court which entered the judgment of
16 conviction under attack: Clark County the honor-
able Judge, Stewart L. Bell.

17 3. Date of judgment of conviction: May, 30, 07.

18 4. Case number: C-220586,

19 5. (a) Length of sentence: life/with

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

22 6. Are you presently serving a sentence for a conviction
23 other than the conviction under attack in this motion?

24 Yes No X

25 If "yes," list crime, case number and sentence being
26 served at this time: Factually illegal, 930 P.2d.
100,112 Nev. 1533 Pandabo V. State, (1996)

26 7. Nature of offense involved in conviction being challenged:
27 N.R.S. 205.060-200.451-193.165-200.360.
N.R.S. 200.364-200.310, N.R.S. 200.320.

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

- 1
2 (a) Not guilty X
3 (b) Guilty _____
4 (c) Guilty but mentally ill _____
5 (d) Nolo contendere _____

6 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: there was no examination. See Porter v.

7 Horn 276 F. Supp. 2d 278, (E.D.Pa. 2003).

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

- 9
10 (a) Jury X (b) Judge without a jury _____

11 11. Did you testify at the trial? Yes _____ No X

12 12. Did you appeal from the judgment of conviction?

13 Yes X No _____

14 13. If you did appeal, answer the following:

15 (a) Name of court: The State Supreme Court

16 (b) Case number or citation: 49608

17 (c) Result: 5-7-08

18 (d) Date of result: _____

(Attach copy of order or decision, if available.)

19 14. If you did not appeal, explain briefly why you did not:

20 N/A

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

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

23 (a) (1) Name of court: Clark County

24 (2) Nature of proceeding: Motion to Vacate
25 A... J.O.C. not filed.

26 (3) Grounds raised: N/A

27
28 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes _____ No X

Yes ☐ No ☒

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

P.D.O. Mr Philip J. Khon.

Co. Mrs Kathleen M. Hamers

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

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

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

(a) Ground one: The Right to A Fair Trial,

U.S.C.A. Const Amend 6th & 14th.

Supporting FACTS (Tell your story briefly ~~without~~ citing cases or law.): The Judge did not have

an interpreter, A denial of due process

rendering the proceedings fundamentally

unfair, he was prejudice he cause he

could not communicate with jury, see

Caballero V. Seventh J.D.C., 107 P.3d 415,

123 Nev. 316 (Nev. 2007).

(b) Ground two: Miranda Rights.

U.S.C.A. Const Amend, 5th.

Supporting FACTS (Tell your story briefly ~~without~~ citing cases or law.): Upon his arrest he did not

under stand way or could not have been

advised of the proceeding, Miranda or,

clearly advised, see Suarez V. Superior

Court Co. 283 Fed. Appx. 470 (9th Cir 2008).

1 exhaustion requirement, procedurally default
2 N.R.S. 34.810, N.R.S. 34.720, (1)(a)(b).

3 (c) Ground three: A Fundamental Miscarriage
4 of Justice, Cause and Prejudice.

5 Supporting FACTS (Tell your story briefly ~~without~~
6 citing cases or law.): found not guilty as to
7 count 4 raises the bar to counsel, and a
8 dequate procedure, he should have been
9 acquitted on all counts, See Porter V. Horn
10 276 F. Supp 278-291-294-296-297, (E.D. Pa.
11 2003), Coleman V. Thompson, 501 U.S. 722-750.

12 (d) Ground four: A Catch All Claim, Ineffective
13 Appeal Counsel omitted Trial Counsel Claim.

14 Supporting FACTS (Tell your story briefly ~~without~~
15 citing cases or law.): he was prejudiced due to
16 communication and multiple representation
17 , See Cylex V. Sullivan 100 S.Ct 1708, the Catch
18 Amend, entitles effective assistance
19 Hudson V. Hunt 235 F.3d 892 (2000),
20 Evitts V. Lucey 105 S.Ct 830 (1985),
21 Kitchen V. U.S 277 F.3d 1014 (2000).
22 F.R.Civ.P. 8(a). Respectfully.

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

25 EXECUTED at Lovelock Correctional Center on the 27 day of
26 the month of April of the year 20 .

27 *[Signature]*
28 100327C6 #
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

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VERIFICATION

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

[Signature] #
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I, *Fredy S. Martinez*, hereby certify, pursuant to N.R.C.P. 5(b), that on this 29 day of the month of April of the year 2010, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Jack Palmer, Warden
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada

Catherine Cortez Masto
Nevada Attorney General
100 No. Carson Street
Carson City, Nevada 89701-4717

David Roger
Clark County District Attorney
200 Lewis Ave

L.V., Nevada 89155

(District Attorney of County of Conviction)

[Signature] #
1003286
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

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1200 PRISON Road
Love Lock, NV 89419-

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MAY 11 2010
Clerk of Court

DISTRICT COURT
CLARK COUNTY, NEVADA

FREDYS MARTINEZ,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: C226586
Dept No: 14

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on April 30, 2010. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 14th day of July, 2010, at the hour of 9 o'clock for further proceedings.

Jury Trial
JOC
Direct Appeal
Remittitur
Will Filed
Untimely

5-31-07
6-6-08
4-30-10
District Court Judge

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Fredys Martinez

Pro Se

L.C.C. Doc. 1003270

1200 Prison Rd

lovelock NV 89419

FILED

MAY 13 2010

CLERK OF COURT

In the 87th J.D.C. In and for

The County of Clark

5/26/10

Fredys Martinez

N.R.S. 34.770.(3).

Petitioner

v.

C-22-2586

State of Nevada

Dept. 14

Motion for An Evidentiary Hearing

Come's Now we request the

honorable court to produce the

prisoner, above name to determine

the legality of restraint, 50 P.3d

692, 118 Nev. 500, Gebert v. State,

(Nev. 2002). and,

MC1

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CLERK OF THE COURT

MAY 13 2010

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1 in good cause appearing, David
2 Roger, D.A., by and through Chief
3 Thomas J. Moreo, D.D.A., and the
4 court to consider the matter upon
5 his trial counsel, appellate records
6 and counsel, trial, briefs, transcript
7 , arguments by Atty Gen, State
8 opp's with any opinion here in.

9 As additionally, pleading on the
10 merits, a defd has a constitutional
11 right to witnesses, See U.S.V. Oliver,
12 908 F.2d 260, 262 (8th Cir. 1990). The
13 6th amendment clearly includes
14 conflict free representation, See
15

1 Cuyler v. Sullivan, 446 U.S. 335,

2 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

3 he claims he did not waive his

4 right to testify and by doing so

5 he was prejudiced, in so far as the

6 outcome of the proceeding would

7 have been different, see U.S. v. Gomez

8 908 F.2d 497-500 (9th Cir.).

9 Closing Argument

10 He had a right to a jury instruct

11 ion on his theory of innocence, Id.

12 U.S. v. Ravel, 930 F.2d 721-726 (9th

13 Cir.) is based on requested relief as

14 may be granted, F.R.Civ.P. 8 (a).

Anthony Martinez 5-7-2010

Fredys. A. Martinez #1007276
LOVE LOCK, CORR, CTR
1200 PRISON ROAD
LOVE LOCK, NV 89419-5110



STEVEN D. GRIERSON
CLERK OF THE COURT
200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS, NV 89155-1160

INMATE LEGAL
MAIL CONFIDENTIAL
LEGAL MAIL

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Lowell Correctional Center

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CLERK COURT

1 ORDR

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 CARRIE A. MORTON
6 Deputy District Attorney
7 Nevada Bar #0010160
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 FREDDY MARTINEZ, aka
14 Fredys A. Martinez,
15 #1361243

16 Defendant.

Case No. C226586
Dept No. XIV

17 ORDER DENYING DEFENDANT'S PRO PER MOTION TO VACATE A J.O.C.

18 DATE OF HEARING: 5/5/10
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 5th day of May, 2010, the Defendant not being present, IN PROPER PERSON, the Plaintiff
22 being represented by DAVID ROGER, District Attorney, through CARRIE A. MORTON,
23 Deputy District Attorney, and the Court having heard the arguments of counsel and good
24 cause appearing therefor,

25 ///

26 ///

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CLERK OF THE COURT

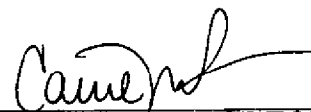
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1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Vacate a J.O.C.,
2 shall be, and it is denied.

3 DATED this 18th day of May, 2010.

4
5 
6 DISTRICT JUDGE 8

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781

11 
12 CARRIE A. MORTON
13 Deputy District Attorney
14 Nevada Bar #0010160
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Allen L. Schuman

CLERK OF THE COURT

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 THOMAS M. CARROLL
6 Chief Deputy District Attorney
7 Nevada Bar #004232
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 FREDYS A. MARTINEZ,
13 #1361243

14 Defendant.

CASE NO: C226586

DEPT NO: XIV

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR EVIDENTIARY**
16 **HEARING**

17 DATE OF HEARING: 05/26/2010
18 TIME OF HEARING: 9:00 AM

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 THOMAS M. CARROLL, Chief Deputy District Attorney, and hereby submits the attached
21 Points and Authorities in Opposition to Defendant's Motion for Evidentiary Hearing.

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 petition would be time barred now anyway as Remittitur issued in his case in 2008.
2 Defendant subsequently filed a Petition for Writ of Habeas Corpus (Post-Conviction) on
3 April 30, 2010.

4 Defendant filed the instant motion on May 13, 2010. The State's opposition is as
5 follows.

6 **ARGUMENT**

7 **I. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

8 Defendant appears to be requesting an evidentiary hearing for his petition, which is
9 scheduled to be heard on July 14, 2010. Defendant's Motion, May 13, 2010. Defendant's
10 petition can be resolved without expanding the record as his petition is procedurally barred.
11 Therefore, there is no need to hold an evidentiary hearing. Marshall v. State, 110 Nev. 1328,
12 885 P.2d 603 (1994). Defendant's request should be denied.

13 **CONCLUSION**

14 Based on the foregoing arguments, the State respectfully requests that Defendant's
15 motion be denied.

16 DATED this 21st day of May, 2010.

17 Respectfully submitted,

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

20
21
22 BY /s/ THOMAS M. CARROLL
23 THOMAS M. CARROLL
24 Chief Deputy District Attorney
25 Nevada Bar #004232
26
27
28

1 **CERTIFICATE OF MAILING**

2 I hereby certify that service of the above and foregoing, was made this 21st day of
3 May, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4
5 FREDDY MARTINEZ #1003276
6 LOVELOCK CORRECTIONAL CENTER
7 1200 PRISON RD
8 LOVELOCK, NV 89419

9 M. Gregory
10 Secretary for the District Attorney's
11 Office
12
13
14
15
16
17
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FILED

MAY 24 2010

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SS

Fredys Martinez
Respondent

John B. Williams
CLERK OF COURT

ID No. 1003276
C226586

State of Nevada
Defendent

Dept. 14.

In the 8th J.D.C. In And
the County of Clark

Answer and Responce, N.B.S. 34.360,
N.B.S. 34.830, and in good cause, See
Strickland Standard, of Review, the
right to a reasonable trial defense, 4000
U.S. 608, 80 L Ed 2d 674, 104 S Ct 2052,
(1984), may not be overlooked, U.S. C.A.
Const Amend, 6th.

Motion for An Evidentiary
Hearing

Come's Now Judge, D.M. Mosley
should make the determination on
the merits, grounds, authorities in
support of his pleading, Id, Geber v.
State 50 P.3d 1096. (Nev. 2002), N.B.S.
34.770 (1)(2)(3).

28 U.S.C. 1740 *Handwritten signature* 5.17.2010

5.17.2010

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MAY 21 2010

CLERK OF THE COURT

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SOME PAGES IN THIS DOCUMENT ARE LIGHT OR UNREADABLE
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THE IMAGES THAT FOLLOW ARE THE BEST POSSIBLE

To: The Heavy Court: 5.17.2010

From: Fred, A. Martinez #1003276

DATE: 3.15.2010

To my lawyer: Mr. James A. Bussett

Concerning my appeal at the Supreme Court.

I received your letter you had send me

on March 26th 2010. I will be going to the court and the papers concerning my case.

The last letter that I've received from you before this one was in 05-23-02 in the

case of this time. I've been waiting

for a letter to you about my situation

with B. I've been waiting on the court

that they had made. I've been waiting

for a letter to you about my situation

with B. I've been waiting on the court

that they had made. I've been waiting

for a letter to you about my situation

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for a letter to you about my situation

with B. I've been waiting on the court

that they had made. I've been waiting

for a letter to you about my situation

DATE: 3.15.2010

Mr. Kedric: My Lawyer Ms. Kathleen M. H. had sended you a letter because you had never answer me any of my letters. In her letter Ms. Kathleen was asking you for copies of my direct appeal.

But you'd never sended any papers to her if you had ~~been~~ ^{been} ~~asking~~ ^{asking} about ~~process~~ ^{process} of appeal in my future courts.

Thanks Federal Courts.

~~Frederick~~

To: The Heavy Court: 5.17.00

1.30.2010

Fredy A. Martinez #1003276

Esta carta ha dirigida a la Jébis Cort.
par que el esta de Nevada.

me esta Cobrando un secuestro con arma
mortal, emptimer grado, Robo con arma
mortal, y Pleito con arma mortal.
emptimer lugar.

La primera persona que llamo la policía de
Las Vegas, que fue X Jose, Kiro, Castillo, el
visigiera miro que cosa era la que lo llevaba
en mis manos, la segunda persona que disen
que me se cueste hi ella sabe que lo tenia
en mis manos ella era mi ~~mi mujer~~ mi mujer
por que tenia relaciones sexuales con ella por
mas de dieciseis años ella dise que sabe con que
letras que la pierda para mi podria ser que se
lastimo por ir peliando con mi go por que me que-
ria acer chocar que lo tubia un accidente y
asi poder me robar todas mis bienes materiales
que lo tenia a nombre de ella la trailla los dos
Cotas Ford el del dos mil tres y el clasico
del mil 1.974. o del 78. y del oro y la plata
embestigen en las casas de empeño si el año
2006 ella empeño mi oro y tambien la tele con
el sistema que esta mbaamos pagando en la agencia
Ray y de las qe calles Bokansa, y, Ester todo esto ella
la plania por que ella Bianca m. H. sabia que lo yba
para mi taba do a mes Kite en Nevada gracias

los las vendian siempre.

Fredy A. Martinez #1003276

This letter is addressed to: The Heavy Court;
Because the state of Nevada is charging
me, of kidnapping with a lethal weapon
in first degree, armed robbery, and fight
with a deadly weapon.

First of all: the first person that called
the police of Las Vegas was; José Quiroz
Castillo, but he'd never saw what I had
on my hands. The second person that
they said I've kidnapped doesn't even
know what I had on my hand.

She was my wife. Because I had sexual
relations with her for more than sixteen
years. She said that she doesn't know
what it was that I used to scratch her leg.
In my opinion it could be possible that she'd
scratched her self when she was fighting
with me, because she was trying to make me
crash, to make me have an accident so she
can keep all my personal property. (Materials)
things that I had under her name:
like the trailer, the two Ford Cars, the
one from 2003 model, and the classic model
1974 or 78. and all the gold and silver.

~~Fredy A. Martinez~~

5.17.2010

21

Investigate in the pawn shop during the year 2006, to see if she'd pawned my gold, and the T.V. with the surround system that we were paying at the agency, on the streets of Bonanza and Easter. All this she had planned because she, Bianca M. H. Knew that I was going to my work (Job) in Mesquit NV. Thanks.

~~Amber Henderson~~ 6.17.2010

Parte #1

The Heavy Court. 17.2010

1.30.2010.

Fredys A. Martinez #1003276

Esta carta la dirijida ala corte Pesada, deis cort
el motivo de esta carta es porque des de el dia
de mi arresto a bi alado mis derechos sibilis y
umanos y en el juicio el juez no permito
que el Jurado es cu Chaka mide clarasion
en donde el dectective Chabes me esta
fotosando a que me aga culpable de un
crimen que no ise tambien de quella ybaa
matar a Bianca eso es una gran mentira
porque llo puse mi bida ^{por ella} en infinidades de beses
inclusa despues de la operasion que le isieron
en el cerebro ella pierde la memoria cuando
y le dan ataques de estetica bella toma
medisina de por vida tres beses al dia lloles-
pido de que pidan el reporte medico de Bianca
M.H. en el G.M.C. y todas las llamadas delas
personas quella maran ala polisia delas veces
a Nevada y de mes kite y el bide del dia
de mi arresto y el reporte delas Polisias o de
los dectectives que le quitaron las llaves a
Bianca para tomarle fotos ala Cuñela del
Corte el reporte de la de clarasion de mis
compañeros de trabajo y de mi patren, toni, y del
seper del tta que ellos no queren gastar
tiempo ni dinero en las embestigaciones conmigo
por que soi ispano icren que no tengo papeles llo
tengo asilo politico por favor allu den me grasias

Dios les bendiga en todo.

This letter it is addressed to the Heavy Court, and the reason for this letter is because since the first day of my arrest, my civil rights had been violated.

And during the trial the judge never allowed the jury to hear my declaration. About when the detective Chavez, is forcing me to declare my self guilty of a crime I've never did, and also about me trying to kill Bianca.

Thats a big lie. Because I had put my life for her in many times. Even after the surgery she had done on her head (brain).

Because she loses her memory when she gets hysteria attacks, for this matter she has to take medicine for life, three times a day.

Now I please ask you to get Bianca's Medical report in the G. M. C. hospital.

And all the records from all the calls people made when they called the police of Las Vegas, NV, and from Mesquit as well, and the video from the day of my arrest, and the police report, and the detective's report, who take the car keys from Bianca, to take pictures of the car's trunk,

And also a copy of the declaration of my co-workers, and from my boss, Toni, the trailer park supervisor.

They don't want to spend money neither money on the investigations about me. Because I'm Hispanic and they think that I don't have papers.

But I do have Political Asylum.
Help me. Thank's.

~~Fredys A. Martinez~~ 5.17.2010

parte #2

To: The Heavy Court: 5.17.2010

4

1.30.2010

A kedric yo le mandado cartas por todo el año, 2009, y el nunca contestó una carta mía. También lle mande o por una orden de restricción de por vida en contra de estas personas, la carta la ise notorizada para el aboga de mi apelación en la suprema corte para que el kedric, Bassett, para que el la activara en contra de Bianca, Makina, Herminio Hernandez, y de, Franklin, M. H. y de su hijo, y de, Jose, Kiro, Castillo, esta orde de restricción es de por vida en los estados unidos, y en Canada o en cual quier país de extradición a los estados unidos por que ellos me han echo mucho daño a mi y solo vus can mi dinero ellos nosaben de mi asilo politico que tengo en los estados unidos por que nunca tenia una licencia de manejar conmigo lo todo lo ponía a nombre de Bianca por sí caía a la carcel por mucho tiempo por los fikes de trafico lo quiero mucho a Bianca y a su hijo ellos eran la personas que mas quería en este mundo asta de mi propia familia me abia alejado por ellos lo ya no les guardo rencor ni odio pero no los quiero cerca de mi futura vida Dios que les vendiga en donde quiera que se encuentren lo les pido que embes tigen bien este caso y que los abogados que me axinen dialegen conmigo y que mantesten mis cartas y las llamadas porque boia des pedir a, kedric, Bassett, por no informarme,

I'd asked for a restraining Order against this persons, for life, all this by means of a Notarized Letter. To my appeal lawyer, for his use in the supreme Court, Mr. Kedric Bassett, so he can use it against; Bianca Marina Hernandez and her son, Franklin Martinez and Jose Quiroz Castillo.

This Restraining Order, is for life, against them in the U.S.A, in Canada, or any country of extradition to the United States.

Because they had done a lot of damage to me, and they Just want my money. they don't know about my Political Asylum that I have in the U.S.A. Because I never had a driver licence, with me.

Everything I had I'd puted under Bianca's name in case I go to jail for a long period of time, because of my traffic tickets.

I love Bianca and her son, they were the two persons that I'd loved the most in this world. I'd even got away from my own family. I don't have resentment neither hate for them, but I don't want them near my future life. God bless them anywhere they are.

I'm Just asking you to investigate this case very well, and that the lawyers that are assign to me, have a dialogue with me, and to please answer my letters, and to answer my phone calls, because I'm going to terminate; —

— Mr. Kedric Bassett, for not keep me inform.

~~Armed and Dangerous~~ 5.17.2010

I don't have resentment neither hate for them. But I don't want them near my future life. God bless them any where they are.

I'm just asking you to investigate this case very well. And that the lawyers that are assign to me, to have a dialogue with me, and to please answer my letters, and to answer my phone calls, because I'm going to terminate;

Mr. Kedric Bassett, for not keep me inform.

~~Proctor~~

5.17.2010

parte #3

To: The Heavy Court: 5.17.2010

5

1.30.2010.

Fredy, Arcangel, Martinez, matamoros, 1972.

~~Quetzal, Martinez~~

Yo a mi abogado de apelación de Juicio le estube mandando cartas todo el año 2009 pidiéndole información de como iba mi caso de apelación de Juicio en la Suprema Corte pero el nunca me contesto ninguna de esas cartas ni me manda los papeles de que resolvio en la Corte. Yo no sé si todo-bia estoi en la Corte, si la negaron o si ella se paso el tiempo para las siguientes apelaciones pero si así fuera lo le pido que te abran mi caso otra vez en la Corte pesada, Jévis Cort. lo les pido un abogado y un intérprete porque yo no leo ni escribo inglés, y ni tengo dinero para copias legales, y ni para pagar traductor de mis cartas y así el proceso de la ley en los casos de ninguna clase lo les pido que me ayuden en mi siguiente paso de mi apelación de Juicio, abia pensado despedir ya a, Kedric, Bassett, por no haberme mantenido informado respecto ala apelación de Juicio yo le estube mandando cartas legales y que las de medico Contra medicos y Contra la institución por violar mis derechos Positivispano. tambien Contra la de la librería legal pero no puedo sacarle copias a esos otros papeles lo les mando unas copias de al gunos de estos papeles por que no puedo desaherme de los originales o de al gotras copias que tengo, gracias por su tiempo Dios les ven diga entodo y por todo Gracias.

Part #3

5

During the whole year 2009 I was writing to my appeal lawyer, asking for information about my case, and how things were going at the Supreme Court. But he'd never answer any of my letters neither send me any papers telling me what happened in Court. at this point I don't even know if I'm still on Court. if my appeal was denied or if the time is over for my next appeals. If this is my situation. I please ask you to reopen my case once again. at the heavy Court.

I please ask you for a lawyer and a interpreter, because I can't read or write English, and I don't have any money to pay legal copies, neither to pay a translator of my letters, and I don't even know how the law works or the processes on any type of case. I'm asking you for help in the next step of my appeal.

I had ~~thinked~~ about terminating Mr: Kedric Bassett, for not keeping me inform on my appeal case.

I've been sending legal letters and medical complains against doctors and against the institution, for the violation of my rights for being Hispanic. ~~Finaly Martinez~~ 5.17.2010

Also against the law library, but I can't make no copies of those papers.

I could send you copies of some of those copies, but I don't want to give the originals away, or some other copies that I have with me.

Thank's for your time, God bless you on everything, and for everything.

Thank's.

~~Andres Montano~~

5.17.2010

I'm asking to the Federal Authority, to please make all the investigations, that the authorities from the Nevada State never did.

So they can provide more information for my defence of this three charges.

Because after my trial, they had violated all my rights since the day of my arrest, and during my trial, and after the trial, and in the prisons.

The D.A. accused me of many things in my trial that I did not even know the victims were accusing me of.

Because everything that Bianca Marina H. Said, was all plan by her, so she could keep all my property, and my cars, my Gold Jewellery.

I was not beating her like the D.A. Said, Show me pictures of the bruises on Bianca's face, and the Bruises on her left hand, and also tell me where on the (Fwy 15) NORTH.

I had sex with my wife, I had sex with her in different places besides the house, and the car. I please ask you to analyse the first call, and the second call the van driver did ask him who was beating who. Because she was trying make me crash. So I had to stop near a trailer park so she could calm down, this was by the main entrance of the Trailer Park. After she had calmed down, we left and she used a deadly weapon against me.

~~Handwritten signature~~ 5.17.2010

parte #5

To: The Heavy Court: 5.17.2010

(7)

1.30-2010

antes de que llo y ella tubieramos xeso por que ella sabia de que todo las mentiras de ella abian llegado asu fin llo todas las beses es que tenia xeso con ella le pedia per miso tambien esedia le pedi per miso sino me lte en lleven nos aun ~~de~~ detector de mentiras a los dos llo no la se cuestre ella mellebo todas las cosas dela traila para este apartamento con el pretesto que iban a setar el parqueo delas trailas endonde viviamos y las paso al apartamento dela mamá de Jose, quiro, Castillo, que era su amiga y que ella la cuidaba en las noches por que estaba enferma esta señora del Corazon y como Bianca trabajaba como enfermera de Familias desabilidades ella tambien medi jo que, Jose, era ~~Omosexual~~ ~~Omosexual~~ ~~Omosexual~~ para que llo no le quitara la alluda del cato y las alajas y dela latele pantalla gigante con sistema y di vidi llo si empte he trabajado casi solo por chas ~~o~~ Como contratista llose di ferentes clase de trabajo, llo pake ese dia antes de echargasolina en me apate se basian india en el yunque para buscar un galon de gasolina esedia llo no tenia dinero sino que asta mesquite me abian gastado la gasolina que siempre llenabamos el tanque pero ese dia solo ~~tenia~~ ~~tenia~~ un cuarto de tanque des pues me pake con un hombre que trabajaba en las makinas para aser caretetas llo le pedi dinero a ella y ella medi jo que no tenia

Before me and her (Bianca) had sex. Because she knew that all her lies had come to the end, everytime I had sex with her, I would ask for permission (Her).

And on that day I'd ask her for permission, and if you don't believe me, take us both to a lie detector.

I'd never kidnapped her. She took all my things from my trailer, to this apartment with the excuse that they were about to closed the trailer park, where we were living at. So she took my things to:

JOSE's QUIROZ Castillo's MOM. She was her friend, a friend that she (Bianca) some times took care of at night time, Because she (her friend) was sick from heart disease.

And Because Bianca was working as a Nurse for disable families,

She (Bianca) also told me that Jose was homosexual. So I would not stop helping her, or take away, my car, and my gold Jewell, my neither the BIG SCREEN T.V. with the System and D.V.D.

Most of the time I used to work by myself, or as a contractor.

I know how to do different types of Jobs. On the way to Mesquite I've run out of gas, so I stopped on that day at Moapa Indian Reservation and went to the local Yonk Yard to look for a gas container. I did not have money with me, and I asked her (Bianca) but she told me she did not have any. (she was with me)

5-17-2010

Parte #6

To: The Heavy Court: 5.17.2010

1:30.2010

dinero con ella pero ella dijo en el Juicio que
sitena dinero con ella, ese dia en la gasolineta
le pregunte que si me prestaba una delas puls-
etas de oro que llo le abia comprado para bendela
pero ella me dijo que no llo kes pete todas sus
desisiones, la Fiscal dise que le dije a Bianca
que nunca iba a bol ber a ber a su hijo Franklin
eso es mentita por que si asi Fuera llo
nunca le uviera da do las llaves del Caro
eso es mentita de la Fiscal y de los
detectibes y de Bianca tal bes presionada
por los detectibes y por los Fiscales que
les ofresen dinero a ella llo lo isieron unaves
y no lo dudo que lo bol bieron a aser estabes
llo les pido todas las evidencias del dia de
mi caso que no aportaron a mi Juicio de que
ustedes lo ~~exijan~~ ~~exijan~~ ~~exijan~~ vide a de mi
ar esto reporte de quien te mia las llaves del
Caro la de clarasion de mis compañeras de
trabajo, la de clarasion del supervisor dela
Contrusion, y el por que el juez Bel, no perm-
itio que el Jurado es cuchara mi de clarasion
con el detectibe Chabes en donde este
me esta asiendo presion disiendo que lo diga
que lo ise por que estaba enojado. y por que permitio
segr el Juicio sin el tener su propio interprete
para interpreta mi de clarasion al Jurado, y por que
no me diere un mis Juicio en los cargos que quede.

Part #6

On that day at the gas station I asked her if I could borrowed one of her bracelets that I bought her, so I could sell it, but she said no, and I'd respected her decision.

The D.A. said that I told Bianca,

That she was never gona be able to see her son Franklin again.

Thats a lie. Because if that would be truth I would not have give her the car keys.

That was a D.A's and detectives Lie, and Bianca's as well.

May be she was pressurized by the D.As and the detectives. the offered money to her. they already did it ones before and I have no doubt they did it again.

This time I'm asking for all the evidences that they did not provide on the day of my trial. Please ask for the video from the day of my arrest. a report about who had the car keys. My co-workers declaration. my supervisor's statement. Because the Judge Mr. Bell, did not permitted the Jury to heard my declaration about detective Mr. Chavez, puting pressure on me, telling me to declare that I did it. Because I was mad.

8

Because I was mad.

And why he (the Judge) permitted the Jury to continued with out having his own interperter. To interperter my declaration to the Jury.

And why they did not give me the same judgement in the charges.

~~And the Judge~~ 5.17.2010

Parte #4

To: The Heavy Court: 5.17.2010

#6

1.30-2010

Yo les pido a las autoridades federales que por favor que hagan todas las investigaciones que no si eran las autoridades del estado de Nevada para aporatarlas para que ello fuera defendido en estos tres cargos que que de des pues del juicio ellos amblado todos mis derechos desde el dia de mi arresto y en el juicio y des pues del juicio y en las prisiones.

La Fiscal me acusa de muchas cosas en el juicio que llo ni sabia de que me estaban acusando su puesta mente las victimas porque todo lo que Bianca marina H. dijo todo fue echo planiado para que dase cuenta mis cosas y cosas y ala las de ote, yo no le iba dando golpes como dice la Fiscal que me enseñen los golpes marcados de la cara de Bianca y los morados de la mano izquierda y que me muestre en que parte del frigui el 15 norte llo tube sexo con mi mujer llo tenia sexo con ella en diferentes parte aparte de la casa y del carro. llo le pido que analisen la primera llamada, y la segunda llamada que iso un chofer de una ven de quien era que iba gal piando a quien por que ella era la que queria que llo chocara y llo me tube que parar cerca de un parqueo de trailas para que ella se calmara esta era la entrada principal de estas trailas fe des pues que ella settan quiliiso nos fuimos y ella uso una deli una arma mortal en contra mia

Fredys. A. Martinez #1003276.
Love Lock, CORR, CTR.
1200 Prison Road.
Love Lock, NV 89419.

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

Case No. C226586

Dept. No. XIV

FILED

JUN 3 3 53 PM '10

Steven D. Grierson
CLERK OF THE COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * * * *

Fredys, Martinez, pro se

Plaintiff,

-vs-

NOTICE OF APPEAL

STATE OF NEVADA

Defendant.

NOTICE IS GIVEN that Plaintiff, Prisoner And
in pro se, hereby appeals to the Nevada Supreme Court the
Motion to Vacate A, J.O. C.
as filed/entered on the 21 day of April, 2010,
(complete if applicable) and the petitioner a
have name, as filed/entered on the 21 day of
April, 2010, in the above-entitled Court.

Dated this 28 day of MAY, 2010.

CLERK OF THE COURT

RECEIVED

JUN - 3 2010

RECEIVED

JUN - 1 2010

CLERK OF THE COURT


Fredys A. Martinez
Fredys A. Martinez #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 21 day of April, 2010, by placing same in the U.S. Mail via prison law library staff:

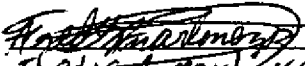

Fredy A. Martinez #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. C226586 does not contain the social security number of any person.

Dated this 28 day of MAY, 2010.


Fredy A. Martinez #1003276

Plaintiff In Pro Se

Fredys, A. Martinez #1003276.
Love Lock, CORR. CTR.
1200 Prison Road.
Love Lock, NV 89419.



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JUN 04 2010

John L. Johnson
CLERK OF COURT

1 ASTA .

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 FREDDY MARTINEZ aka Fredys A. Martinez,)

11 Defendant(s),)
12

) Case No: C226586

) Dept No: XIV
13

14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): FREDYS A. MARTINEZ

16 2. Judge: DONALD M. MOSLEY

17 3. Appellant(s): FREDYS A. MARTINEZ

18 Counsel:

19 Fredys A. Martinez #1003276
20 1200 Prison Rd.
21 Lovelock, NV 89419

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney
25 200 Lewis Ave.
26 Las Vegas, NV 89101
27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

1 7. Appellant Represented by Appointed Counsel On Appeal: N/A

2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

3 9. Date Commenced in District Court: September 29, 2006

4 10. Brief Description of the Nature of the Action: Criminal

5 Type of Judgment or Order Being Appealed: Misc. Order

6 11. Previous Appeal: Yes

7 Supreme Court Docket Number(s): 49608, 55890

8 12. Child Custody or Visitation: N/A

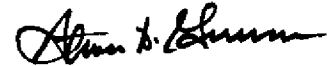
9
10 Dated This 4 day of June 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Heather Lofquist, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
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CLERK OF THE COURT

1 **RSPN**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **THOMAS M. CARROLL**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004232**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **FREDYS A. MARTINEZ,**
13 **#1361243**
14 **Defendant.**

CASE NO: C226586

DEPT NO: XIV

15 **STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION**
16 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

17 **DATE OF HEARING: 07/14/2010**
18 **TIME OF HEARING: 9:00 AM**

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 THOMAS M. CARROLL, Chief Deputy District Attorney, and hereby submits the attached
21 Points and Authorities in Reponse to Defendant's Petition for Writ of Habeas Corpus (Post-
22 Conviction).

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

26 ...

27 ...

28 ...

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary While in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
7 – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a Deadly
8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
10 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Battery
11 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counsel on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to
14 ONE HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 On April 2, 2010, Defendant filed a motion for appointment of counsel. The State's
23 opposition was filed on April 9, 2010. Defendant's motion was denied on April 14, 2010,
24 and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal on
25 April 22, 2010.

26 Defendant filed a Motion to Vacate his Judgment of Conviction on April 21, 2010.
27 The court denied Defendant's motion without requiring a response from the State on May 5,
28 2010. The court noted that Defendant should have filed a Writ of Habeas Corpus but such a

1 petition would be time barred now anyway as Remittitur issued in his case in 2008.
2 Defendant subsequently filed a motion for an evidentiary hearing on May 13, 2010, the State
3 filed its opposition to the motion on May 21, 2010, and the motion was denied on May 26,
4 2010. On June 3, 2010, Defendant filed a notice of appeal.

5 Defendant filed the instant petition on April 30, 2010. The State's response is as
6 follows.

7 ARGUMENT

8 **I. DEFENDANT'S PETITION IS TIME BARRED**

9 The mandatory provisions of NRS 34.726 state:

10 1. Unless there is good cause shown for delay, a petition that challenges the
11 validity of a judgment or sentence must be filed within 1 year after entry of the
12 judgment of conviction or, if an appeal has been taken from the judgment,
13 *within 1 year after the supreme court issues its remittitur*. For the purposes
14 of this subsection, good cause for delay exists if the petitioner demonstrates to
the satisfaction of the court:

- 15 (a) That the delay is not the fault of the petitioner; and
- 16 (b) That dismissal of the petition as untimely will unduly prejudice the
17 petitioner. . .

18 NRS 34.726(1) (Emphasis added).

19 The one-year time bar is strictly construed. In Gonzales v. State, 118 Nev. 590, 593,
20 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was
21 filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS
34.726(1). Gonzales reiterated the importance of filing the petition with the district court
within the one year mandate, absent a showing of "good cause" for the delay in filing.
Gonzales, 118 Nev. at 593, 590 P.3d at 902.

22 Here, Defendant filed a direct appeal on June 5, 2007 and Remittitur issued on
23 Tuesday, June 3, 2008. Consequently, Defendant had until Wednesday, June 3, 2009, to file
24 his post-conviction habeas petition. Defendant filed the instant petition on April 30, 2010,
25 almost one (1) year after the one-year time limitation. Therefore, Defendant's petition is
26 untimely and must be dismissed. Gonzales, 118 Nev. at 593, 590 P.3d at 902.

27 **II. APPLICATION OF PROCEDURAL BARS IS MANDATORY**

28 The Nevada Supreme Court has specifically held that the district court has a duty to

1 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
2 disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070
3 (2005), the Nevada Supreme Court held as follows:

4 Given the untimely and successive nature of [defendant's]
5 petition, the district court *had a duty imposed by law* to consider
6 whether any or all of [defendant's] claims were barred under
7 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
8 . . . [and] the court's failure to make this determination here
9 constituted an arbitrary and unreasonable exercise of discretion.

10 [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,
11 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties
12 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can
13 they empower a court to disregard them.) Defendant is required to show good cause to
14 overcome the procedural bars before his petition may be considered on the merits. Thus, a
15 Defendant's petition will not be considered on the merits if it is subject to the procedural
16 bars and no good cause is shown. Id.

17 **III. DEFENDANT HAS NOT DEMONSTRATED GOOD CAUSE OR**
18 **ACTUAL PREJUDICE SUFFICIENT TO OVERCOME THE ONE-**
19 **YEAR TIME BAR**

20 Defendant has not offered any good cause or demonstrated actual prejudice sufficient
21 to overcome the procedural bars. "In order to demonstrate good cause, a petitioner must
22 show that an impediment external to the defense prevented him or her from complying with
23 the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
24 (2003); citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v.
25 State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66,
26 769 P.2d 72, 41 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252
27 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988). Such an external
28 impediment could be "that the factual or legal basis for a claim was not reasonably available
to counsel, or that 'some interference by officials' made compliance impracticable."
Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488,
106 S.Ct. 2639, 2645 (1986)). Clearly, any delay in filing of the petition must not be the
fault of the petitioner. NRS 34.726(1)(a).

1 In addition, to find good cause there must be a "substantial reason; one that affords a
2 legal excuse." Hathaway, 119 Nev. at 248, 71 P.3d at 506 (quoting Colley v. State, 105 Nev.
3 235, 236, 773 P.2d 1229, 1230 (1989).

4 Defendant does not provide any explanation as to why his petition was almost a year
5 late. Thus, Defendant's petition should be dismissed.

6 **CONCLUSION**

7 Based on the foregoing arguments, the State respectfully requests that Defendant's
8 petition be dismissed.

9 DATED this 14th day of July, 2010.

10 Respectfully submitted,

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

14 BY /s/ THOMAS M. CARROLL
15 THOMAS M. CARROLL
16 Chief Deputy District Attorney
17 Nevada Bar #004232

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing, was made this 14th day of
20 July, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 FREDYS A. MARTINEZ BAC#1003276
22 LOVELOCK CORRECTIONAL CENTER
23 1200 PRISON RD
24 LOVELOCK, NV 89419

25 M. Gregory
26 Secretary for the District Attorney's
27 Office
28

95

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JUL 13 2010

FREDYS A. MARTINEZ A/K/A FREDDY A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55890

Alison T. Lindeman
CLERK OF COURT

District Court Case No. C226586

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 9th day of June, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 7th day of July, 2010.

Tracie Lindeman, Supreme Court Clerk

By: *A. Ingersoll*
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55890

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion for appointment of counsel. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

No statute or court rule permits an appeal from an order denying a motion for appointment of counsel. Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990). Accordingly, we lack jurisdiction, and we

ORDER this appeal DISMISSED.

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

(O) 197A



CERTIFIED COPY

This document is a true and correct copy of
the original on file and of record in my office.

DATE: July 7, 2010
BY: [Signature]
[Circular Seal]

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55890

District Court Case No. C226586

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

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

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

DATE: July 7, 2010

Tracie Lindeman, Clerk of Court

By: _____

Deputy Clerk

cc (without enclosures):

Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Fredys A. Martinez

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 13 2010.

Deputy

HEATHER LOFQUIST

District Court Clerk

10-15920

114

1 Fredys A. Martinez #1003276
2 Lovelock Correctional Center
3 1200 Prison Road
4 Lovelock, Nevada 89419

FILED

JUL 23 2010

John L. Blum
CLERK OF COURT

5
6 Petitioner In Pro Se

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 * * * * *

10 Fredys A. Martinez,)
11 Petitioner,,)
12 -VS-)
13 STATE OF NEVADA,)
14 Respondents.)

Case No. C226586
XIV

MOTION FOR
APPOINTMENT OF COUNSEL

8-9-2010

15 COMES NOW Petitioner, Fredys A. Martinez, in pro se, and moves
16 this Court for an order appointing him counsel in and for the instant § 2254
17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.
19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file
20 herein; and the following points and authorities.

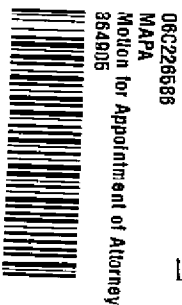
21 POINTS AND AUTHORITIES

22 I. STATEMENT OF FACTS

23 Petitioner is unable to afford counsel. See Application to Proceed In
24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex
26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of his incarceration, cannot investigate, take
28 depositions, or otherwise discover evidentiary materials on his own accord.



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CLERK OF THE COURT

1 Petitioner's sentence structure is 5 To 16, 4-10, life + 6, and a 5 to life

2 There ___ are ___ are not additional facts attached hereto on additional
3 page(s) to be incorporated herein.

4 Counsel could not only assist Petitioner with a much better presentation
5 of the substantive and procedural issues before this Court, e.g., merits of the
6 claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise
7 make much easier this Court's task of discerning the issues and adjudicating
8 them as upon a competent counsel's ability to present same to the Court.

9 The ends of justice would best be served in this case via the appointment
10 of counsel, as Petitioner's sentence structure, in conjunction with the
11 complexities of the legal issues herein, plead for such an appointment.

12 **II. ARGUMENT FOR APPOINTMENT**

13 Appointment of counsel in § 2254 cases is authorized within 18 U.S.C.
14 § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint
15 counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d
16 295, 297-98 (9th Cir. 1995). This interest is best served when indigent
17 petitioners who are unable to "adequately present their cases" are appointed
18 counsel to do so for them. Id.

19 Although appointment is usually within this Court's sound discretion, a
20 handy formula for this Court's consideration is a balancing of the complexities
21 of the issues with a consideration of the severity of the petitioner's penalty.
22 Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023
23 (1987). Ultimately, however, absent a due process implication, this Court has
24 discretion to appoint counsel when it feels that it promotes justice in doing
25 so. Id. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980)(court
26 must appoint counsel where the complexities of the case are such that denial of
27 counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d
28 948 (8th Cir. 1970)(counsel must be appointed where petitioner is a person of

1 such limited education as to be incapable of presenting his claims fairly).

2 Petitioner submits that the facts above, in conjunction with these legal
3 principles, compel appointment of counsel. Indeed, the complexities of the
4 issues in relation to Petitioner's sentence, implicate the need of counsel to
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to
8 represent Petitioner in and for all further proceedings in this § 2254 habeas
9 corpus action.

10 Dated this 18 day of JUL, 20010.

11 Respectfully submitted,

12 ~~Fredy A. Martinez~~
13 Fredy A. Martinez #1003276
14 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

15 Petitioner In Pro Se

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21

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27

28

- 3 and LAST -

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing Habeas Corpus-court (post conviction) to the below address(es) on this 27 day of April, 20010, by placing same into the hands of prison staff for posting in the U.S. Mail, pursuant to FRCP 5(b):

David Roger
Clark County District Attorney
200 Lewis Ave
Las Vegas, Nevada 89155

Counsel for Conviction

() check for additional addresses below

Fredys A. Martinez 1003276
#

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

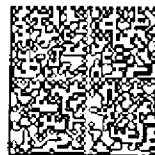
Fredys A. Martinez In Pro Se

ADDRESS(ES) Continued from Above: (If applicable)

_____, Nevada 89____

_____, Nevada 89____

Fredys. A. Martinez #1003276
LOVELOCK, CORR. CTR
1200 Prison Road
LOVELOCK, NV 89419



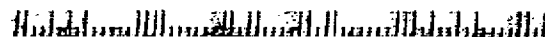
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200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

INMATE LEGAL
MAIL CONFIDENTIAL

LEGAL MAIL

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A large, stylized handwritten mark, possibly a signature or a large 'X', is drawn across the middle of the page.

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JUL 20 2010

Lowell Correctional Center

**E-FILE LITE
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Alvin L. Shuman
CLERK OF THE COURT

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
THOMAS M. CARROLL
Chief Deputy District Attorney
Nevada Bar #004232
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-

FREDYS A. MARTINEZ, 1361243

Defendant.

CASE NO: C226586

DEPT NO: XIV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF
COUNSEL**

DATE OF HEARING: 08/09/10
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through THOMAS M. CARROLL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Appointment Of 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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06C226586
OPPM
Opposition to Motion
884812



1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary while in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
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8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
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12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counsel on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to
14 ONE HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 On April 2, 2010, Defendant filed a motion for appointment of counsel. The State's
23 opposition was filed on April 9, 2010. Defendant's motion was denied on April 14, 2010,
24 and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal on
25 April 22, 2010. The Nevada Supreme Court dismissed Defendant's appeal and Remittitur
26 issued on July 7, 2010.

27 Defendant filed a Motion to Vacate a Judgment of Conviction on April 21, 2010. The
28 court denied Defendant's motion without requiring a response from the State on May 5,

1 2010. The court noted that Defendant should have filed a Petition for Writ of Habeas
2 Corpus (Post-Conviction) but such a petition would be time barred now anyway as
3 Remittitur issued in his case in 2008. On June 3, 2010, Defendant filed a notice of appeal.
4 This appeal is still pending.

5 On April 30, 2010, Defendant filed a Petition for Writ of Habeas Corpus (Post-
6 Conviction). The State filed it's response to Defendant's petition on July 9, 2010 and the
7 untimely the petition was summarily dismissed on July 14, 2010.

8 On May 13, 2010, Defendant filed a motion for an evidentiary hearing, the State filed
9 its opposition to the motion on May 21, 2010, and the motion was denied on May 26, 2010.

10 Defendant filed the instant motion on July 23, 2010. The State's response is as
11 follows.

12 **ARGUMENT**

13 **I. THE DISTRICT COURT LACKS JURISDICTION OVER THIS CASE**

14 This court does not have jurisdiction to entertain Defendant's instant motion because
15 on June 3, 2010, Defendant filed a Notice of Appeal with the Nevada Supreme Court
16 challenging the denial of his Motion to Vacate a Judgment of Conviction. Jurisdiction in an
17 appeal is vested *solely* in the supreme court until the remittitur issues to the district court."
18 Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). [Emphasis added.]
19 Defendant divested this court of jurisdiction when he filed the Notice of Appeal on June 3,
20 2010, and therefore, his instant motion should be dismissed. To the extent this court chooses
21 to consider Defendant's motion on its merits, the State responds as follows:

22 **II. DEFENDANT'S IS NOT ENTITLED TO APPOINTMENT OF** 23 **COUNSEL**

24 Defendant is not entitled to appointment of counsel because his untimely Petition for
25 Writ of Habeas Corpus (Post-Conviction) was summarily dismissed on July 14, 2010. In
26 Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court ruled that the
27 Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague
28 v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly

1 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-
2 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision
3 as being coextensive with the Sixth Amendment to the United States Constitution."

4 NRS 34.750 provides, in pertinent part:

5 "[a] petition may allege that the Defendant is unable to
6 pay the costs of the proceedings or employ counsel. If the court
7 is satisfied that the allegation of indigency is true and the petition
8 **is not dismissed summarily**, the court may appoint counsel at
9 the time the court orders the filing of an answer and a return. In
10 making its determination, the court may consider whether:

- 11 (a) The issues are difficult;
- 12 (b) The Defendant is unable to comprehend the
13 proceedings; or
- 14 (c) Counsel is necessary to proceed with
15 discovery." (emphasis added).

16 Under NRS 34.750, it is clear that the court has discretion in determining whether to
17 appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a)
18 [entitling appointed counsel when petition is under a sentence of death], one does not have
19 "[a]ny constitutional or statutory right to counsel at all" in post-conviction proceedings. Id.
20 at 164.

21 The Nevada Supreme Court has observed that a defendant "must show that the
22 requested review is not frivolous before he may have an attorney appointed." Peterson v.
23 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
24 177.345(2)). Defendant cannot make the threshold showing that any further petition he
25 might file will not be summarily dismissed as untimely because his last petition was
26 summarily dismissed as untimely on July 14, 2010. Therefore, his request for appointment
27 of counsel should be denied.
28

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1 CONCLUSION

2 Based on the foregoing arguments, the State respectfully requests that Defendant's
3 motion be DENIED.

4 DATED this 5th day of August, 2010.

5 Respectfully submitted,

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

9 BY /s/ THOMAS M. CARROLL

10 THOMAS M. CARROLL
11 Chief Deputy District Attorney
12 Nevada Bar #004232

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing, was made this 5th day of
15 August, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16
17 FREDYS A. MARTINEZ BAC#1003276
18 LOVELOCK CORRECTIONAL CENTER
19 1200 PRISON RD
20 LOVELOCK, NV 89419

21 M. Gregory

22 Secretary for the District Attorney's
23 Office
24
25
26
27
28

ORIGINAL

FILED

SEP 3 11 23 AM '10

John L. ...
CLERK COURT

1 **ORDR**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 BARBARA SCHIFALACQUA
6 Deputy District Attorney
7 Nevada Bar #0010436
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

08C226586
ODM
Order Denying Motion
920303



10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 FREDDY MARTINEZ, aka,
14 Fredys A. Martinez, #1361243

15 Defendant.

Case No. C226586
Dept No. XIV

17 ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL

18 DATE OF HEARING: August 9, 2010
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 9th day of August, 2010, the Defendant not being present, represented in proper person, the
22 Plaintiff being represented by DAVID ROGER, District Attorney, through BARBARA
23 SCHIFALACQUA, Deputy District Attorney, and the Court having heard the arguments of
24 counsel and good cause appearing therefor,


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SEP 9 2010
CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of Counsel,
2 shall be, and it is DENIED.

3 DATED this 30th day of August, 2010.

4
5 
6 DISTRICT JUDGE 8

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10 
11 BARBARA SCHIFALACQUA
12 Deputy District Attorney
13 Nevada Bar #010436
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Case No. C226586
Dept. No. XIV

FILED

NOV 16 2010

Ann L. Linn
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

* * * * *

Fredys Martinez,
Pro Se, Petitioner,
-vs-
State of Nevada,
Respondent.

NOTICE OF APPEAL

NOTICE IS GIVEN that Petitioner, Fredys, prisoner And
in pro se, hereby appeals to the Nevada Supreme Court the
Findings of Fact, Conclusions of Law and Order denying /
dismissing Petition for Writ of Habeas Corpus, which was filed /
entered on the 14 day of July, 2010.
Dated this 8 day of NOVEMBER, 2010.

Fredys, Arcangel Martinez
~~Theresa Martinez~~ #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

Fred Martinez

RECEIVED
NOV 16 2010
CLERK OF THE COURT

06C226586
NOASC
Notice of Appeal (criminal)
1054938



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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 8 day of NOVEMBER, 2010, by placing same in the U.S. Mail via prison law library staff:

Fredy A. Martinez
Fredy A. Martinez #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. C226586 does not contain the social security number of any person.

Dated this 8 day of NOVEMBER, 2010.

Fredy A. Martinez
Fredy A. Martinez #1003276

Petitioner In Pro Se

Fredys. A. Martinez #1003276
LOVELOCK, CRR, CTR
1200 PRISON ROAD
LOVELOCK, NV 89419



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Lovelock Correctional Center

CHARLES J. SHORT, Clerk of the Court
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LAS VEGAS, NV 89155-1160

LEGAL MAIL

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FILED

NOV 18 2010

Allen & Blum
CLERK OF COURT

1 ASTA

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 FREDDY MARTINEZ #1003276,)

11 Defendant(s),)
12

) Case No: C226586

) Dept No: XIV
)

06C226586

ASTA

Case Appeal Statement

1057388



13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): FREDDY MARTINEZ

16 2. Judge: DONALD MOSELY

17 3. Appellant(s): FREDDY MARTINEZ

18 Counsel:

19 FREDDY MARTINEZ #1003276
20 1200 PRISON RD.
21 LOVELOCK, NV 89419

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney
25 200 Lewis Ave.
26 Las Vegas, NV 89101
27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

1 7. Appellant Represented by Appointed Counsel On Appeal: N/A

2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

3 9. Date Commenced in District Court: September 29, 2006

4 10. Brief Description of the Nature of the Action: Criminal

5 Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

6 11. Previous Appeal: Yes

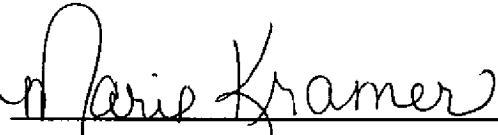
7 Supreme Court Docket Number(s): 49608; 55890; 56153

8 12. Child Custody or Visitation: N/A

9
10 Dated This 18 day of November 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Marie Kramer, Deputy Clerk

15 200 Lewis Ave

16 PO Box 551601

17 Las Vegas, Nevada 89155-1601

18 (702) 671-0512

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY A.
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 56153
District Court Case No. 06C226586

FILED

DEC 16 2010

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 12th day of November, 2010.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
December 07, 2010.

Tracie Lindeman, Supreme Court Clerk

By: Amanda Ingersoll
Deputy Clerk

06C226586
CCJA
NV Supreme Court Clerks Certificate/Judgn
1107904



IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56153

FILED

NOV 12 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying "a motion to vacate."¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

The record on appeal supports the decision of the district court to deny relief. To the extent that appellant sought to modify or correct an illegal sentence, appellant's claims fell outside the very narrow scope of claims permissible in those motions. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). To the extent that appellant sought to challenge

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

SUPREME COURT
OF
NEVADA

(O) 1947A

10-29594

the validity of his judgment of conviction, his claims must be raised in a post-conviction petition for a writ of habeas corpus.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Hardesty J.
Hardesty

Douglas J.
Douglas

Pickering J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Freddy A. Martinez a/k/a Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We express no opinion as to whether appellant could meet the procedural requirements of NRS chapter 34.

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.



Supreme Court State of Nevada
CERTIFIED
This document is a full, true and correct copy of
the original on file and of record in my office
DATE: Dec 7 2010
Supreme Court Clerk, State of Nevada
By A. J. Jersal Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY A.
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 56153
District Court Case No. 06C226586

REMITTITUR

TO: Steven Grierson, District Court Clerk

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

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

DATE: December 07, 2010

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll
Deputy Clerk

cc (without enclosures):
Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on DEC 16 2010.

Deputy HEATHER LOFQUIST
District Court Clerk

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 THOMAS M. CARROLL
6 Chief Deputy District Attorney
7 Nevada Bar #004232
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **FREDYS MARTINEZ, #1361243**

18 **Defendant.**

CASE NO: C226586

DEPT NO: XIV

19 **FINDINGS OF FACT, CONCLUSIONS OF**
20 **LAW AND ORDER**

21 **DATE OF HEARING: July 14, 2010**
22 **TIME OF HEARING: 9:00 A.M.**

23 **THIS CAUSE** having come on for hearing before the Honorable Donald Mosley,
24 District Judge, on the 14 day of July, 2010, the Petitioner not being present, proceeding in
25 forma pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by
26 and through Barbara Schifalacqua, Deputy District Attorney, and the Court having
27 considered the matter, including briefs, transcripts, no arguments of counsel, and documents
28 on file herein, now therefore, the Court makes the following findings of fact and conclusions
of law:

FINDINGS OF FACT

1. On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was
charged by way of Grand Jury Indictment with: Count I – Burglary While in Possession of a
Deadly Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon

FILED

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David Roger
CLERK OF THE COURT

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Findings of Fact, Conclusions of Law and C
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CLERK OF THE COURT

1 (Felony – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon
2 (Felony – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a
3 Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165).

4 2. Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury
5 found Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II –
6 Battery with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a
7 Deadly Weapon. The jury found Defendant not guilty of Count IV.

8 3. Defendant was present in court with counsel on May 24, 2007, and sentenced
9 as follows: as to Count I – SIXTY (60) to ONE HUNDRED EIGHTY (180) months; as to
10 Count II – FORTY-EIGHT (48) to ONE HUNDRED TWENTY (120) months, to run
11 concurrently with Count I; and as to Count III – SIXTY (60) months to LIFE, plus an equal
12 and consecutive term of SIXTY (60) months to LIFE for the use of a deadly weapon, the
13 entire sentence to run concurrently to Counts I and II. Defendant was given two hundred
14 eighty-one (281) days credit for time served.

15 4. Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice
16 of Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
17 May 7, 2008. Remittitur issued on June 3, 2008.

18 5. On April 2, 2010, Defendant filed a motion for appointment of counsel. The
19 State's opposition was filed on April 9, 2010. Defendant's motion was denied on April 14,
20 2010, and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal
21 on April 22, 2010.

22 6. Defendant filed a Motion to Vacate his Judgment of Conviction on April 21,
23 2010. The court denied Defendant's motion without requiring a response from the State on
24 May 5, 2010. The court noted that Defendant should have filed a Writ of Habeas Corpus but
25 such a petition would be time barred now anyway as Remittitur issued in his case in 2008.

26 7. Defendant subsequently filed a motion for an evidentiary hearing on May 13,
27 2010, the State filed its opposition to the motion on May 21, 2010, and the motion was
28 denied on May 26, 2010. On June 3, 2010, Defendant filed a notice of appeal.

1 8. Defendant filed the instant Petition for Writ of Habeas Corpus on April 30,
2 2010. The State filed its Response on July 9, 2010.

3 9. On July 14 2010, the court held a hearing regarding Defendant's petition.
4 Defendant was not present and the court did not entertain arguments from either party.

5 10. Defendant's Judgment of Conviction was filed on May 31, 2007. He filed a
6 direct appeal on June 5, 2007. The Nevada Supreme Court ultimately dismissed Defendant's
7 appeal and Remittitur issued on Tuesday, June 3, 2008.

8 11. Consequently, Defendant had until Wednesday, June 3, 2009, to file his post-
9 conviction habeas petition.

10 12. Defendant filed the instant petition on April 30, 2010, almost one (1) year after
11 deadline with which to file a post-conviction petition had passed.

12 13. Defendant's petition is extremely untimely and is time barred as outside the
13 one-year time limitation.

14 14. A petition subject to procedural bars may be considered on its merits if good
15 cause is shown.

16 15. Defendant pled no facts to explain the delay in filing his petition. Thus,
17 Defendant has not demonstrated good cause to overcome the procedural bar.

18 CONCLUSIONS OF LAW

19 1. The mandatory provisions of NRS 34.726 state:

20 Unless there is good cause shown for delay, a petition that
21 challenges the validity of a judgment or sentence must be filed
22 within 1 year after entry of the judgment of conviction or, if an
23 appeal has been taken from the judgment, **within 1 year after**
24 **the Supreme Court issues it's Remittitur.** For the purposes of
25 this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 24 (a) That the delay is not the fault of the petitioner; and
25 (b) That dismissal of the petition as untimely will unduly
prejudice the petitioner. (Emphasis added).

26 2. The one year time bar is strictly construed. In Gonzales v. State, 118 Nev. 61,
27 590 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed
28 two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS

1 34.726(1). Gonzales reiterated the importance of filing the petition with the district court
2 within the one year mandate, absent a showing of "good cause" for the delay in filing.
3 Gonzales, 53 P.3d at 902.

4 3. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005),
5 the Nevada Supreme Court held as follows:

6 Given the untimely and successive nature of [defendant's]
7 petition, the district court *had a duty imposed by law* to consider
8 whether any or all of [defendant's] claims were barred under
9 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
... [and] the court's failure to make this determination here
constituted an arbitrary and unreasonable exercise of discretion.

10 [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,
11 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties
12 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can
13 they empower a court to disregard them.) Thus, a Defendant's petition will not be considered
14 on the merits if it is subject to the procedural bars and no good cause is shown. Id.

15 4. "In order to demonstrate good cause, a petitioner must show that an
16 impediment external to the defense prevented him or her from complying with the state
17 procedural default rules." Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
18 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
19 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72
20 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.
21 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

22 5. Such an external impediment could be "that the factual or legal basis for a
23 claim was not reasonably available to counsel, or that 'some interference by officials' made
24 compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
25 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
26 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
27 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

28 6. In addition, to find good cause there must be a "substantial reason; one that

1 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,
2 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
3 1981). The lack of the assistance of counsel when preparing a petition, and even the failure
4 of trial counsel to forward a copy of the file to a petitioner, have been found to be non-
5 substantial, not constituting good cause. See Phelps v. Director Nevada Department of
6 Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d
7 797 (1995).


8 ORDER

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
10 Corpus (Post-Conviction) shall be, and it is, hereby denied.

11 DATED this 13th day of September, 2010.

12 
13 DISTRICT JUDGE 8

14
15 DAVID ROGER
16 DISTRICT ATTORNEY
Nevada Bar #002781

17
18 BY 
19 THOMAS M. CARROLL
20 Chief Deputy District Attorney
Nevada Bar #004232

Martinez: 18 or 19 an hour, I know it all already, everything, but she has made everything stagnant for me. I can't make a lot of money because....I...yes...feel that....every time that we want to make a lot of money she is going to take it out of the bank and she is going to take it, do you understand me?.....and I love hare a lot, that's why... I have found another and I have always been like this....because of her.

Officer Chavez: Yes....but you also.....You

Martinez: I think that now, who is pressuring her, now is her son, her son is already 16 years old....and it's him I believe that he is...she owes respect is him.....I think.....

Officer Chavez: I don't believe it's her son....it's hard....

Martinez: And nothing can be done, now.....

Officer Chavez: Noise...Yeah!....Were you going to do something?

2nd Officer: I was going to start typing...

Officer Chavez: Oh, Ok, ..bro.. sorry....bro....

2nd Officer: I figure that Español is going to be the only way to do this, right?

Officer Chavez: Right! Right!

2nd Officer: Cause it's gonna to back and forth, right?

Officer Chavez: Yeah, you'll be lost, I am just saying

2nd Officer: No, I am going to do the whole thing, I am going to summarize everything. Do you (illegible)? You're good?

Ok, ok, Nah! you're good

Officer Chavez: Yeah!, I'm good This soda is for him though, this soda is gonna be for him, so I am going leave one handcuff on...

2nd Officer: Do you have a key?

Officer Chavez: Um...Huh

2nd Officer: Ok, that's what I wanted to know. Are you cool with that?

Officer Chavez: Absolutely, that's fine, yeah don't worry about it, that's cool.....

2nd Officer: If you need me just yell.....

Officer Chavez: All right.

Noise

Officer Chavez: Ahhhh (Noise) Ok,.... put your hand here....Ok...all righty....I know that (illegible)feeling good so that(illegible) and you already drank your soda,(illegible conversation)

Martinez: (illegible) in confidence

Officer Chavez: (illegible conversation)

Ahhhhhhhhyaya, nananan ay yayay

Officer Chavez: Only, your only go by Freddy Martinez, and your birthdate?

Martinez: it's, it's on 8- 28- of 69

Officer Chavez: on 8-28?

Martinez: of 69.

Officer Chavez: the 8-28.... of 69?

Martinez: Uh um, yes

Officer Chavez: and... ah.... Where do you live? Your address.....



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Martinez: on 4615 E Lake Mead, Trailer72
 Officer Chavez: E. Lake Mead?
 Martinez: Yes.. Trailer 72
 Officer Chavez: E. Lake Mead, 72?
 Martinez: Yes.... Trailer 72, Trailer.....
 Officer Chavez: 72.... this is Las Vegas, Nevada89125 and your telephone?
 Martinez: I don't have one there...
 Officer Chavez: Why?
 Martinez: There is my neighbor's phone in my wallet....
 Officer Chavez: Ok...(illegible) ahhhh, Then were are only going to talk about your story.... of your story...Illegible, Because there is something that is, that doesn't look very good, on the other side.
 Martinez: Yes....no....yes....no, on that side they are going to hound me....illegible...they are ferocious, waiting all the time...
 Officer Chavez: I can see that there is something that is.....
 Officer Chavez: Ready, ahhh, This is... ah, is Detective Chavez, Illegible, detail, 40408 conducting interview of event 06-0616-10637, ahhh....location of interview is, 4750 W. mmm...Oakey, Las Vegas, NV 89...ahh...121 ahhh...interview is taking place on today's date which is August the 16th the year 2006 the time right now is ahhh...19:... excuse me at 18:43, 18:43. Subject that I'll be interviewing.... last name of Martinez, first name, of Freddy. Date of birth 08/28 of 69.... ahh, he resides at 4615 E Lake Mead, Space No. 72..Las Vegas, Nevada, 89115, ah... no telephone number. Also this interview is going to be conducted in Spanish....Do you want me to call you Freddy?
 Martinez: Yes
 Officer Chavez: Fred, Freddy.
 Martinez: Yes... Yes, It's Ok.....
 Officer Chavez: Freddy, what do you like?
 Martinez: Freddy
 Officer Chavez: (Illegible) Ok ahhh..., I know that today, the Mesquite Police detained you, and that you had a problem with ... Your wife...
 Martinez: Yes
 Officer Chavez: Ah, and we're, ah, we are going...ah and we went over there, and we picked you up around more or less 5 in the afternoon, We went in the car, well, our car, and Detective Carter, you sat in the back, well.... you were handcuffed and I sat in the back with you, and Detective Carter in front driving and do you remember that I read your rights.....
 Martinez: Rights....
 Officer Chavez: All of your rights, all in English, because you know English, but also, in Spanish, right...
 Martinez: Yes
 Officer Chavez: Ok... ahhh, you have the right to remain silent, anything you say can be used against you in a court of law, you also have the right to

have an attorney present, if you can't afford an attorney one will be appointed before questioning, do you understand these rights?

Martinez: Yes.....

Officer Chavez: Ok..... And also all in Spanish...

Martinez: In Spanish, yes.....

Officer Chavez: Ok... You have the right to stay silent, everything that you say, could be used in court, you have the right to have an attorney, if you can't afford an attorney, the court will give you one free, understand.....rights...oh, Ok.... aaay,

Martinez: Yes

Officer Chavez: (Illegible).... How is my Spanish.....

Martinez: It's good, it's good.....

Officer Chavez: If you don't understand my Spanish, please, tell me..... and I will work on trying to find another way to tell you.... I

Martinez: No.....it's good...it's very good.....

Officer Chavez: Ok..... ay.. ay.. ay..(illegible) What happened now?... Because truthfully, no...Freddy... because it's best to tell the truth...Because sometimes things happen and, and.... no...

Martinez: Ok... ok, I have never been in.... ah, this story with her in a recorder....never.... I have always had problems... there with her because like that, she has me see T.V....(illegible)I have a no driver's license ticket and they are charging me all that money

Ok, but, now, I have spend 16 years with her, and in 16 years... I have taken care of her son and her, in good and bad times, I have paid all the bills....

Officer Chavez: Her, what is her name?....

Martinez: Bianca Marina Hernandez.....

Officer Chavez: Aha.....

Martinez: And her son's name is Franklin Martinez, and... well.. ah... I have spent 16 years with her.....

Officer Chavez: How did you meet?

Martinez: Ah... I arrived in ... 89, in...89 and until (illegible) and that's where we met, she had just moved in with my brother, and from then on our romance began.....and...to this date

Officer Chavez: But she was with your brother, did she marry your brother??

Martinez: She didn't marry, only like that.....

Officer Chavez: They only lived together, ok..... and.....

Martinez: Yes

Officer Chavez: And... They had a boy?

Martinez: Yes

Officer Chavez: And what's the boy's name again,?

Martinez: Franklin Martinez

Officer Chavez: Franklin? Ok.. Ok... Franklin Martinez

Martinez: And ...everything that she owns, and everything that she has accomplished until now, is because of me, if you don't...if you don't believe me you can visit my neighborhood, my friends and

3

How I have behaved ...towards them... and they will tell you...
both of the...they wear jewelry because of me....

Officer Chavez: Ok, ok.....

Martinez: Do you understand me?...

Officer Chavez: Aha

Martinez: And well... now lives with ... some friends, but she says....she says
that she does not have anything... that she does not have a
relationship or anything....

Officer Chavez: Ok, ok..... illegible trying to get the direction of things...you,
Was having a relationship with your brother, they had a son and
his name is Franklin...ah...

Martinez: Um hum, yesand their love ended.....

Officer Chavez: And the love.... ended.....

Martinez: And it remained as a show only...

Officer Chavez: And it remained as a show only.....and how long ago it ended...
the...the....

Martinez: The love....theirs?

Officer Chavez: No, well I don't say that love..... because some people say
that they stay together.....but..... love does not exist..... How long
let's say they stayed together let's saylike a family?

Martinez: Around what... ahhh like around three years.....

Officer Chavez: Around three years...

Martinez: Yes... now, afterwards everything on that side..... everything was
separated

Officer Chavez: Ok ...you say that around three years.....

Martinez: Yes, around there, around three, five years...school was
starting.....

Officer Chavez: School was starting.... and himwhat? he went away?

Martinez: Yes, yes he was..... or..... They would always see each other, but
he would always go to my country Honduras.... and he would
return..... And her and I we would stay..... it all ready charged...

Officer Chavez: So, when you stayed here with Bianca and Franklin, the boy....

Martinez: With her, yes.....

Officer Chavez: Did you have sex at that time?

Martinez: Yes, well, we have had all the time.....

Officer Chavez: And..... We are talking about relationships of that kind... sexual
relationships....

Martinez: Yes, well yes.... of that type.... until this day..... this date, we
have never separated..... about having sex.....

Officer Chavez: Yes

Martinez: We haven't had problems, we haven't had any kind of problems,
the only thing is that I want her to tell me the truthI want her to
tell me if she has another man or not.....

Officer Chavez: Um hum.....

Martinez: That is to say.... well... she..... has always told me lies..... and I
don't want any more lies, so that I can focus on my job, on my

4

5

life.....so that I can live..... because.... many of my friends work in construction, we make money and the women take it away and then they leave, that's what I don't want... understand me.....

Officer Chavez: Aha.....

Martinez: Because... I don't now... that is not fair , it's not fair..... they should speak with the truth, and they should get out of the way..... they should go away and not return to see me they shouldn't visit..... they shouldn't even speak.....

Officer Chavez: And what?.... and what are you looking for?

Martinez: The truth..... if she has another man or not.....because living in the other apartments or living here I have always supported her, rent and everything..... fixing of the car and everything..... everything she has now it's because of me..... and I don't want to continue..... do you understand me, supporting her..... and ..her being with another person, do you understand me?...

Officer Chavez: aha ...ok

Martinez: That's what I don't want.....

Officer Chavez: And her ?..... how long ago she moved?.....because how long ago you and her?..... You and her lived together?....

Martinez: Yes we were together... ah..... at the trailer... with everything.....

Officer Chavez: The trailer is located at this address?..... here at 4615 Lake Mead?.....

Martinez: Yes, it's in her name....

Officer Chavez: It's in her name?... For how long?.....

Martinez: A month more or less.....

Officer Chavez: But..... For how long have you been living there?

Martinez: Around two years.....

Officer Chavez: Around two years.... ok...and who lived there or who was living there?

Martinez: Lived there..... the three of us...but about a month ago.....

Officer Chavez: When we talk about the three of you, it's you.....

Martinez: Franklin, Bianca and I.....and around..... a month ago they arrived. Ah it was around what time.....

Officer Chavez: Ok

Officer Chavez: Listen, in the two years that you were together..... or lived together, let's say..... were you living as a couple?

Martinez: We lived there together..... but always showing respect to the son....

Officer Chavez: Ok, OkBecause the son looks at you like an uncle?

Martinez: yes

Officer Chavez: Ok.... Then... never in front of the son...

Martinez: No

Officer Chavez: And..... in front of other people?

Martinez: Neither.....

Officer Chavez: And why not?

Martinez: Because she never allowed me to legalize it.... She didn't....you understand me, she never told me...legalize me as your wife..

Officer Chavez: Ok...But you did have sex?

Martinez: Yes

Officer Chavez: And when did you have sex?

Martinez: When we could, because I would sometimes work.... when I worked, or....he....he would go to school.....the boy went to school....she worked somewhere else, she sometimes had to loose a day of work a week so that I could be with her..... because... ah.... her friends, my friends, my family, and we couldn't.....

Officer Chavez: (Illegible) And that lasted for almost two years?

Martinez: Yes, there yes..... but all my life has been like that...like that all my life.....

Officer Chavez: Only secrets...

Martinez: Yesonly secrets all my life..... only secrets for 16 years....

Officer Chavez: Uh hum..... And you never told your brother?

Martinez: He....they know, they know ... she.... would always say, always would tell him...that, what a pity.... that I.... was his brother, because if I wasn't she would marry me..... she would always tell him, she.... and... well.... what I want is to know the truth... for her to give me the liberty of leaving me or returning to her....Because to tell you the truth I don't hate either of them, I love them more than my own life.... both of them, they are both my life, but... if they don't want.....they don't want to be with me...then they should tell me the truth...straight up and it's over.....everything is over.

Officer Chavez: But the truthlike what? How do you say, I mean, what?

Martinez: Like the truth.... they should tell me, you know what Freddy, forget about us ... forget about us, we have already, we have already..... don't worry about us, we.... or... I already have another man... or... something like that, but tell the truth.... or that It's because of my son or my son can't live with you, and.... you understand me.... something, something that she might have in her heart, she can tell me, but listen... what is the motive, if its because of the boy.... because I know that she still loves me, she loves me a lot, the boy also,....Because I know that she is ill, she's very sick....and that's my worry.... that is why I am always checking on her...I worry about her health, and I well, I don't want...other people.... that do not know her history, her life, about her health, that they would lean on her too much.....maybe wanting her to do a lot of housework because at the house she would never do anything....she lived like a queen.....like a princess....

Officer Chavez: Um Hum

Martinez: She wouldn't do anything... I would cook.... I would take her coffee to the bed....she wouldn't do anything...her son and I would do everything, would wash the dishes.... and would do everything

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because we knew that she was ill....there.... I see how fatigued she is I can see her appearance fallen... I see her, even if she doesn't want me to...but I see her....

Officer Chavez: But..... tell me something..... Why did she move from the house? How long has it been since she moved from the house?

Martinez: It's been.... it has been one month. They arrived... I left and all of a sudden the took everything..... that is how they took everything out from the house....I don't fight for the material things, material things I can recuperate from morning to night I am not interested. I am interested in them.....ah..

Officer Chavez: But.... Why did they leave?

Martinez: I don't know..... I don't know.....the truth...she... she has a...a.... she has the kinds of friends that I do not visit....it's a friendship that I do not... they are not my friends....eh...I have other friends.. she has her friends, then...

Officer Chavez: but..... but why didn't your... don't leave.... I'll leave?and....why didn't you leave?

Martinez: Because everything, everything that..... I have paid for.... everything I have paid for....and it don't....

Officer Chavez: Illegible

Martinez: yes.....if she would have told me... I would have left. Ah...but... I believe that ... I am almost sure that she has another man.....that's why I did what I did... I took her in front of him.... In front of him so that he can see that I am not a coward like him..... taking my things when my back is turned....ah...

Officer Chavez: When you back is turned...and.. what happened now?

Martinez: Only, I only waited for him to leave and so that she would ask me for a ride to work in my car, now, then I got her in the car since.....since.... she says that I am not her husband, boyfriend....no, but.... to both of us, yes we are, in our hearts...we are....to the world no, but since to us we are... that is why...

Officer Chavez: So.... You waited for her, waited this morning....

Martinez: Yes.... I waited until they came out....both of them....

Officer Chavez: Out of his house.....

Martinez: Yes, his... because they never , they never told me where they live or anything.... by chance I saw where she went inI never followed her or nothing.....nothing...nothing...

Officer Chavez: Aha

Martinez: If, there's a God in the sky....that never.... never....you understand me.... because I have a clean heart toward her... I was driving on the street, looking for a public telephone, I was going to make a call...and all of a sudden....I saw her.....that she went into that house... I didn't go to knock at her door, or anything like that, because I have respect for her friends...I don't get involved in anything.... I just saw that she was putting a lot of pressure.....she wouldn't appear at the house.....and I said to my self, well,

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wow

Officer Chavez: Yes

Martinez: What's going on there....there's got to be something going on t
here

Officer Chavez: Something...

Martinez: Something.... and then I tried to.... investigate it.... and three days
ago I got a ticket.....he was driving my car..... and.....then I
followed in the other car...to stop them.....because I had signaled
them and they stopped in front of my house...he... driving my
car.....then I signaled her.....to get down.....to come in....to
come in the house...I thought that my nephew was driving the
car.....when I saw two people...and....I was going toward them
when I saw this person was driving the car.....and I said how is
this? You want...then I told myself, in my car, with my girl, in my
house, you are going to play it like that...no, it's impossible... then
I followed and I went through..... Pecos and Lake Mead.....no..
Lamb and Lake Mead.....

Officer Chavez: Um hum

Martinez: And there was a police officer and he gave me a ticket....he left in
my car, they let him.... I think... (illegible) he left and did not
come back... my nephew returned with her drivers license, no
him...and from there I started to... then with more resentment....
And wanting to know the truth... what was hidden and there I
made the decision to... not one more day or one les day...I want to
know what is going on...

Officer Chavez: Um hum

Martinez: Is it the nephew... is it the nephew...or is it because...there is
another partner....or is it really because she no longer loves me...
why...I feel it is a lie.....because I ...it's been 16 years that I have
had her like a, something made of crystal so that she would not
break...

Officer Chavez: Umhum

Martinez: Everything for her, everything for her and the
boy....everything....and I don't want them to go suffer with
someone else... because neither will I let another person mistreat
them....

Officer Chavez: Well yes.....and this morning...what happened?... Did you see
her?...leaving, no?

Martinez: Yes...she was coming out a lot of times to check...like...like she
could foresee....she foresaw...because I could foresee
everything... then she came out three times, she came out three
times to check everything in the back and in the front...and then I
told myself...no...there is something here...I said there is
something here...there is a cat.....locked up....then I am going to
wait until she comes out...I said...this is the last time...he comes
back....and.....yes.....I went to her....the apartments, and crossed

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the street...and was on the other side and came out...behind her he came...

Officer Chavez: Umhum

Martinez: then I told her...to get in the car.....and I took the car and her...

Officer Chavez: Umhum

Martinez: In front of him....

Officer Chavez: You (illegible) on the passenger side...no? Passenger

Martinez: Ah hah..

Officer Chavez: and what did you have in your hand?

Martinez: I had a ...unfortunately a small knife.....that is what I had in my hand.....like... small...and in those moments that person started to run... when he saw me...he went to run back...yes...I am not involved with that situation... Why would I get scared and start to run back....

Officer Chavez: He ran.....you had a knife in your hand...

Martinez: yes, it was a small one....like...

Officer Chavez: Yes, yes...a small one...black...

Martinez: Ah huh, yes that one....

Officer Chavez: Umhum

Martinez: And it was there that...she received some scratches ...in her leg....

Officer Chavez: With what?

Martinez: With the knife in her leg, she...

Officer Chavez: With the knife.....

Martinez: When we were in the car, the passenger over here we were struggling in the car..

Officer Chavez: (Illegible) in her legs...

Martinez: No...we were struggling and the gears would get stuck when I changed the gears it would get stuck, they would get stuck, and I wanted to know the truth....

Officer Chavez: (Illegible)

Martinez: I had already started.....I had already started and I could not leave it half done, because if I leave it like that , all the time I have left myself half done...and the police have always half taken me...I never discover the truth...I have wanted to discover it and never...because she always puts a Restraining Order....or something and I never discover this....exactly the truth and I ask her and ask her and she does not give it to me...and then I say...this is the last time, the last time I am going to do.....

Officer Chavez: And you only put the knife in her legs just to scare her?

Martinez: Yes...because I want to know the truth.....

Officer Chavez: Because you want to know the truth...because you put it very, very difficult...and you put the knife on her leg so that she would tell you the truth...but...

Martinez: No, no, no.... in other words...I was in the passenger side...

Martinez: It's because she was in the passenger seat... supposedly that man was going to drive...the car...

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Officer Chavez: No...you got in the passenger side...

Martinez: No...she was sitting waiting for that man to come...he was going to drive the car...and then I told her to move ...to drive and then she moved...and the man stayed there...and that is when we left...and when, when she received the scratches there on her leg....

Officer Chavez: With the knife... (illegible) to go to the other side.....

Martinez: No....I only told her to I told her to go to the other side...to go on to the other side...and no...why? And for what?...well I only want to know what's going on here...I want to know the truth.....and well, she does not tell me anything...she only tells me that she loves her son very much....well...I also love him....they are both my life....yes....but I worry about her health a lot.. her health, because I know her health is delicate.....

Officer Chavez: Tell me something...Freddy...uh....something happened....on Nellis...because you were driving crazy...

Martinez: (Illegible) Nellis...no...

Officer Chavez: Yes...on Nellis, yes, yes a car overturned.....

Martinez: There she was complaining, because I told her that we were leaving, that we were leaving

Officer Chavez: To where?

Martinez: That we were leaving from Vegas, both of us....that we were both leaving from Vegas...and...and that I was going to leave the son in my mother's care and my brother was going to pick up the boy...then that is when she had a nervous attack...to her...and she started to kick and throw everything everywhere... but no...I was going to Mesquite to talk with some...with my co-workers from work...because I had one week with no work...so that they would give me back my employment...that is the only...and that trip was only, to make that man angry....so that he would look for me...and talk to me...if in fact he is really her husband...

Officer Chavez: Clearly...

Martinez: Or if he has any doubt in regards....from me for her...that he also look for me and ask me who am I to her....just for that I did it....to get my job back and for that..

Officer Chavez: Umhummm

Martinez: Who had that car keys....she had them...If i would have had bad intentions I would have thrown them away...I would have never gotten to where there were Hispanic people...where she could scream with a high voice or something...I would have preferred to go to a English town...where they would not understand...but there is no bad intention...in my heart...there is nothing...

Officer Chavez: Because she said that...that you told her...you are going to be mine, you are mine I am going to kill you...I am going to kill you...and when I kill you I am going to kill myself.....

Martinez: Yes...she had the car keys...

Officer Chavez: No...but you were driving for her....

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Martinez: I want to get the truth out...I want to get the truth...but not by hitting, no...by...by words by words but she does not want to tell me...nobody...not even the family where she lives, not nobody....

Officer Chavez: So you only told her.....to scare her?....

Martinez: Yes...so she would tell me what was happening...it's already 16 years...already...of... already...

Officer Chavez: Yes.....

Martinez: I only want to know the truth...what is going on...if there is another person...there is another person...ok...if she feels secure that this other person will defend her...and will support her like I have supported and defended her in these 16 years, Freddy will place himself aside and will leave...calmly, his heart will be clean and he will leave without any pain or remorse that...that if my Bianca is going to be sick the day of tomorrow and I will not be there to be able to help her.. to take her a glass of water or a hot plate food.... All I want is the truth so that I can live calmly... that is the only thing....

Officer Chavez: And why did you hit her in the cheek here on her face?

Martinez: I did not hit her....

Officer Chavez: Yes...it was...you...

Martinez: No, maybe yes....we struggled some...to put her seatbelt on maybe...she received an injury because she did not want to put her seatbelt on, and since she was upset from her nerves, that she was going to throw herself from the car.....maybe at that moment...or something...

Officer Chavez: And who pulled her hair, some three or four times....

Martinez: No...

Officer Chavez: Who pulled....her hair? Who? Because we checked her at the hospital...we took her to the hospital and she has had her hair pulled....

Martinez: I tell you that maybe with the seatbelt, in the struggle....

Officer Chavez: You pulled her hair....

Officer Chavez: Because she said it was you...

Martinez: Who else...who else was there, if we are the only two there...the both of us are at guilty of everything that has happened there in the car, and no one else from the 16 years... only both of us are guilty of that, ah....but maybe not in the pull of the seatbelt that was for here and there because she did not want to put it on....

Officer Chavez: I want you to tell me something Freddy, I want you to tell me the truth because I understand...because, I understand that you have been very kind with me and I also have been kind to you...an I truthfully...I understand what one goes through in these things because I understand.....

Martinez: Yes...(Illegible)

Officer Chavez: Yes, exactly...ah.. and what happened in the Desert...when you were driving before you reached Logandale.... What happened...the you stopped on the way....

Martinez: It was, it was...(silence)

Officer Chavez: It was south.... well on the way from Las Vegas to Mesquite...it was before you got to Logandale....

Martinez: Ok, there, we have a friend... there.. I have a friend there where there are some farmyards of... of cows, through there one goes and well.... The car was already getting to empty and it barely had anymore gasoline... and I wanted to get to his house....to see if he would let me borrow...to get to Mesquite I had...and then I looked at the gage and would not make it there...and then I got on the freeway...and getting on the freeway and went to the store...

Officer Chavez: But before going to the store...you stopped over here in the desert...you stopped the car, you got down from the car and opened the door for her...

Martinez: Oh, that...that was here leaving from Vegas...

Officer Chavez: Yes leaving Vegas...

Martinez: Leaving from Vegas...there were they ride the motorcycles...

Officer Chavez: Ah ha ...there

Martinez: There, it was there...we had and why am I going to lie to you...we had sex...but normal, like we have always had it...without violence or anything...the two of us...whatever it was.....I am a man...illegible

Officer Chavez: And where did that happen?

Martinez: Here leaving Vegas, by the Nellis Base,...there, where they race the motorcycles, it was not there, in Moapa.... Or Logandale...no

Officer Chavez: Before Logandale, Where there are races?...

Martinez: Before passing the races...before there...yes...passing the races

Officer Chavez: Passing.....

Martinez:Yes there where they race the motorcycles, there

Officer Chavez: And where did it happened where...on the floor or in the car?...

Martinez: In the car on the back seat...

Officer Chavez: Back seat... Where you drive or the passenger?...

Martinez: No behind...of...of...

Officer Chavez: Oh, behind...and how did that happened?

Martinez: Well...I told her...I told her that...that, if she wanted to make love with me....

Officer Chavez: Ah ha

Martinez: I got down and opened the rear door and she got down...and she arranged herself in the rear seat...and yes we did it...but that was not...forced...or anything. That was not forced, or with force neither without her consentbecause....

Officer Chavez: And why did you get down upset?.....

Martinez: I pretended to be so upset because I wanted to get the truth out, but never to her....never, never to hurt her....

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Officer Chavez: Why did you get out of the car very upset?
Martinez: Yes, yes....
Officer Chavez: And by closing the door you can see, that you are....
Martinez: Apparently....apparently it looks like I was very upset...but ...she would tell me to go back...for the son that here son here and I would tell her only no...this...I would tell her that, my brother was going to pick up her boy, but no, but never sincerely...with the heart, I tell you officer, I don't have hate towards her...I want the truth so that I can relax my mind, because those two are my life...for them I have given my life here in the United States...already 16 years...I want the truth...since the boy was 2 days born I have him.....I would clean his diapers as a baby, I would do it,
Officer Chavez: And with sadness...why...you
Martinez: To school I would walk him...I would go and pick him up...at the school
Officer Chavez: Let me tell you something...the truth is I talked to Bianca.... And Bianca truthfully loves you a lot...
Martinez: ...I know that she loves me a lot...
Officer Chavez: How can she not....she loves you a lot, but she said that what happened today..... was... not you...
Martinez: Well, yes, man.....
Officer Chavez: that you pulled her by her arm and you pulled her into the car, you opened the door and you wanted to have sex forcing her, but that way no, but that it was the way... that you did it....
Martinez: Officer...it's 16 years....that, I have loved that woman and I continue loving her, like the first day, but lately that family got involved and a lot of lies from her to me, it was like there was someone that wanted to steal her from me.....and she doesn't have the strength to tell me.....
Officer Chavez: I understand, and you have the right to know,....because of the 16 years.....you have the right to know.... and one gets upset and I understand, Freddy...I understand...I don't want you to think that I look at you like a bad person.....ok, I don't want you to think that....because I have seen it on many occasions, and in people that I know...because of thatI am here, giving you time and now is the time to talk, because I know it's a lot better, Freddy....when the doors of love close...I know that you got angry because you didn't want to lose her love...right?
Martinez: No, I accept losing, look Officer, I accept to loose if this person that is there after me, is going to protect them for me and is going to love them like I have protected them....she has looked for me (illegible...illegible) I need to be put aside of the family, for her get out of the way....and not to continue with her lies any more
Officer Chavez: I believe that both of you have problems, you have your own problems...like everyone does....and, Bianca she also, has her

problems. Bianca loves you a lot, Bianca told me. And I am only telling you what she said... but she says that you are becoming very violent... that's why she left the house....

Martinez: Officer, how am I not, going to become violent?... they arrive to take out everything that is....

Officer Chavez: But she said that it was because of the violence before that... that was the reason why she had to leave the house... because before she moved... you were becoming very violent...

Martinez: This last time that I was in jail... (illegible) I spent around 30 days.. the court.... I did what the judge told me... when I got out of there, I was on the street... she was also on the street... and I worked night and day for them... and they throw everything in the trash, no... other families... other people... (illegible) there are noble women, there.... And it's not fair....

Officer Chavez: You love her.... no...

Martinez: Too much.....

Officer Chavez: What she wants to know is.... why..... I believe.... I asked her... what... I told her that I was going to tell her the truth, she wants to know.... yes... she wanted to know the truth... and she wanted to know why you raped her today...

Martinez: No, no it wasn't..... from my heart, maybe..... what I did, but... and it wasn't because of anger towards her... if not maybe, because I feel anger toward that person, toward that man... I don't know who he is... I have not investigated his life yet... I don't know what significance he has in her life... because she doesn't tell me anything... doesn't... why doesn't she introduce him to me?... tells me... this is a friend... like that, like that... why not?

Officer Chavez: Because she says that you are very jealous.....

Martinez: When one loves,... you become jealous,... too much... the one that is not jealous does not love... truthfully, and I... because she wants to be there all the time... before we would spend our time from yard sale to yard sale, the three of us... on the weekend we would go (illegible) and now we don't, now she spends more time with the family than with us.....

Officer Chavez: (Illegible)

Martinez: Ahhh

Officer Chavez: Control was lost... or there isn't almost....

Martinez: Well, I am very patient, I feel a lot of love for her... very patient... she took everything, everything... and I never said anything... because I know that she is sick... her health is very delicate... I... I... want her to speak the truth I love her excessively... but... I want her to speak the truth....

Officer Chavez: Bianca, she told me one thing... she said... I love him a lot... he is my family, but I feel very dirty with what he did... and... (illegible) what got in his mind?... what did he want... (illegible)... (coughing)

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Martinez: In all of this Officer....my only intention was...to get a reaction from the man....if there is something between them.....

Officer Chavez: But the man wasn't there.....

Martinez: Yes, yes.. he was there..... *

Officer Chavez: Not when you had sex....no

Martinez: Ah no, not then, when we were there I was, I was already on my way to Mesquite, (illegible) sex....we have always had sex....in many places, the same way...in the car...

Officer Chavez: But she says that it was never like that, now she says that you raped her..... *

Martinez: Not the same way, maybe she was angry....I was angry....maybe....but the same way that we have done it in other occasions, at other times....I treated her the same way, without, without, without violence or anything.....

Officer Chavez: But you had (illegible)grabbed her in the car.....

Martinez: No.....

Officer Chavez: Yes..

Martinez: Yes, I had grabbed my wife in my arms, it was so that she wouldn't jump from the car, I was not going to let the love of my life kill herself....just like that, because she is much more quick-tempered than I am, her nerves betray her very badly....

Officer Chavez: It was that she was very scared, because what you did to her today, she had never seen you that way...in your life, in her life and well, with the knife, threatening her with the knife, telling her "I am going to kill you"....let's talk, we're leaving Las Vegas.....

Martinez: Everything that would have been said was jokingly...because there's 16 years of proof of what I did for her....proof of 16 years...I believe....

Officer Chavez: Because what you did today is not even to have spent 20 years...illegible....

Martinez: What I did, what I did today....what I want to get is....for her to talk to me.....to be sincere with me, I have looked for her in many ways....I have spoken with her and well....she does not tell me anything...she changes the subject.....

Officer Chavez: (Illegible).....you told her: "You are going to be mine, I am going to kill you, and then I am going to kill myself" you said that, no..... *

Martinez: No...

Officer Chavez: You told me yes, before you said yes....

Martinez: No, how am I going to kill me with a knife like this....

Officer Chavez: No, but you told her this....you said the words.....

Martinez: That we were leaving, that we were going to leave Vegas and that we were not returning to Vegas, again...and that her son was going to be picked up by his.....

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Officer Chavez: Bt you told me, when I asked you that you had told her that you were going to kill her...that they were just words, that you weren't going to do it, and I do believe that.....

Martinez: That could be, yes....that when we were struggling...I had said that, but not from the heart.....

Officer Chavez: Anger.....

Martinez: She could have told me many things too, but I know that they aren't from her heart, also.....it was anger...to reconsider things.....

Officer Chavez: When she said that she wanted to return to her house... constantly, no.....

Martinez: Hum....

Officer Chavez: She told you, take me back with my son.....

Martinez: Yes. But I needed, I needed to get to Mesquite to get my job, when you arrived to arrest me....even.... when you guys arrived, I was talking to my co-workers....to get my job back, if that is my car and everything....why shouldn't I take it...it has cost me, I knew that she didn't get to work until one in the morning...during that time I could go to Mesquite and return....that's why, but no, no.....

Officer Chavez: Bianca was very scared, very, Bianca loves you, but you scared....

Martinez: I...also....I.... also....I am never going to separate her from her son...never...never....never...

Officer Chavez: And, why did you tell her that?

Martinez: So that she would tell me, I want to get the truth out of her, that I...that if she's hiding something... to tell me...the truth, if she has another man, or something, so that she would tell me...I want her to tell me.....if that person is using her....that he is not mistreating her, that he is not asking her to do jobs... that would be....don't you understand, because if it's like that...she's is not going to last more than three years.....

Officer Chavez: Let me tell you something....Freddy....I talked to her...she told me....that she has never had sexual relations with you and that you would always treat herlike her wife, or you would be mine, or you stay with me... but she never loved you...that she always told you, I love you a lot, but only as my family... you are not.....

Martinez: Look, Officer, when this, when all this started, she told me, let's run away and we ran away once...we were as husband and wife....

Officer Chavez: Where?

Martinez: from San Diego to Los Angeles and we had to return, return because the boy was too small....we returned....she told me Freddy, wait for me...wait until my son grows up...so that he can defend himself...so that we can be together...ok, I waited...my word, I waited....the boy is already grown up, now she can tell the truth....to break our deal or the deal that we agreed to.. or something....she should tell me the truth....I.....

17

Officer Chavez: ok, I waited...my word, I waited....the boy is already grown up, now she can tell the truth....to break our deal or the deal that we agreed to.. or something....she should tell me the truth...I....

Officer Chavez: You know that you can't take a person by force.....

Martinez: I wasn't taking her by force.....

Officer Chavez: How can you say no?... you had the car....you wouldn't let her get out of the car.....

Martinez: If I let her get out of the car....look....the car is in her name, if I let her down, so that I can go do that in Mesquite... she was angry, she would call the police for having taken her car... at that moment she was angry... that's how she is...if I let her out of the car angry, she would just call the police and she would tell them that I have stolen the car.....

Officer Chavez: And, what happened?

Martinez: Well, I stole both of them (laughing)

Officer Chavez: You stole both of them....

Martinez: (Laughing), I didn't take one, I took both of them.....

Officer Chavez: Ok, but that's what I am telling you, you cannot take by force, that is what I am telling you.....

Martinez: Officer, it's nothing against her, it's nothing, if she doesn't tell me the truth, and I wanted to find the reaction, ok, yes, like a man, if you are a gentleman, and you are with a woman....when a man has sexual relations with a woman....you have to react when another rooster comes and takes the woman when she is with you...he has to respond...react, has towhat.....what ...what is happening here, and I did it, but he did not react, what he did was run...then, I wasn't doing anything else there....

Officer Chavez: You had a knife in your hands.....

Martinez: I did not have anything.....

Officer Chavez: You had the knife in your hand, you had the knife in your hand.....

Martinez: With the little blade that it had.....

Officer Chavez: And you think that you can't hurt with that blade?...that you can't kill?...

Martinez: He is double my size.....

Officer Chavez: You think that a blade can't kill someone?

Martinez: He had an ice box in his hands....couldn't he use it as a shield?

Officer Chavez: When he left running he thought that you were pointing a gun at him...

Martinez: I will never carry a gun....

Officer Chavez: But how is he going to know? He doesn't even know you.....

Martinez: Then he should investigate a woman's first fall....

Officer Chavez: When a person has a pair of guns and you the little knife, from a distance, what is he going to think? eh....that you have a gun.....

Martinez: I won't, I won't speak anything else, now I am going to pay for that, I don't know....how the case is going to affect me...I don't

18

Martinez: If she would already be open mouthed, dying and she would tell her son, son go find your uncle Freddy...I want to speak to him...would you go? Or you wouldn't go? one...the heart...

Officer Chavez: Well.....
(Silence)

Officer Chavez: Well, is there something that you want me to tell Bianca....Umm?

Martinez: Only...that I love her to death and that I don't have anything against her.....that I don't like that lately.....she has only distanced herself from us.....the family that has taken care of her and protected her for a long time...and has dedicated herself to other families with a short time...I don't know.....

Officer Chavez: And what do you want to say about what happened today?

Martinez: That it wasn't...that it wasn't...that everything that went on today wasn't against her.....that I am sorry and to forgive me....I showed it to her...returning her keys to the car, that she was driving.....It is not harm what I want to do.....but, always with her...first.....

Officer Chavez: (Illegible)...until you passed Logandale...from there to Logandale.....

Martinez: For her to forgive, to forgive... what we did in the back seat, it happened without it being my intention...but...I don't know, I don't know...something in me made me take, forgive me for that...but.....

Officer Chavez: When you finished the sex.....you came in her, did you ejaculate in her?

Martinez: Yes

Officer Chavez: Why did you do it?

Martinez: Because I have always done it....I have done it all my life....in 16 years.....

Officer Chavez: It seems like it upset her....that....

Martinez: Well, I have done it all my life.....I can't do it outside, when I haven't done it....if she gets upset...I am speaking with the truth...I don't lie...I speak with the truth.....if she already got upset...then...it's that there is another person present there.....

Officer Chavez: Um hum...yes...ok.....

Martinez: Then, with what you are telling me...illegible...you're giving me...you're giving me the information that I needed...that tells me that they are a couple.....I am going to tell my brother.....(noise).....that no more money that way...that if he wants to buy something for his son...buy it.....but not a lot of money that way...because it's not fair, ...it has already been, how long.....around three years...that I have been following the trail on this situation.....three years.....and I never loosened my money bags....that 300 and 400 dollars a week to her for....for the bills...because I know that she is....and now, also her jobs or everything that she ever owned.....me...because this person is

know how much jail I am going to get for this, and that's it... I don't know how long... now I could loose the trailer again, I will return to the streets... but it doesn't matter... now without worrying about them... because even if she's been there I have paid her bills... her rent, her insurance payment, her car payment... even when she was living with this person... but they can't continue saying I can't be their clown.....

Officer Chavez: No...they can't.....and you already loved too much...it's too much...it's enough of the anger that you felt....of all anger....

Martinez: It all stops there.....

Officer Chavez: It's enough of anger.....you can't consider what was given.....

Martinez: That's enough... (illegible). I paid for both, that's it... I.... my brother..... my nephew.... we are going forward... we're not going to continue being stuck....that's it, no more....enough with the pride of being a man....that's it no more.....

Officer Chavez: But, look at what you did.....you lost your brother....your brother doesn't want to see you anymore.....

Martinez: My brother?.....until they die.....

Officer Chavez: He does not want to see you.....

Officer Chavez: You lost your nephew...then, you lost Bianca...you lost Bianca's friendship.....everything was lost.....

Martinez: Nothing has been lost.....nothing.....I haven't lost my brother, David, or my nephew Franklin, nor Bianca, have I lost, because what I have cultivated in them all my life, has been pure love...pure...for them, nothing against, if I have done this, they know that I am very intelligent... even though I have thoroughly analyzed to come to this conclusion, to figure out this puzzle...and it hasn't taken me one day....it has taken me many years...and the jail is going to serve me, also.....because I will be there in that cell, that one (laughing) will be analyzing.....or working in the kitchens....analyzing many things....but officerthis, this is the last.....(illegible).

Officer Chavez: I know, because she does not want to see you again, she never wants to see you again.....

Martinez: She does not want to see me...but she's going to see me.....over there, in a hospital...where she's going to end up.....

Officer Chavez: And why do you want to go see her?

Martinez: Because she's sick....she has a very serious illness.....

Officer Chavez: And, why are you going?.....She doesn't love you, Why are you going?....Why are you punishing yourself?..... Why do you drive yourself crazy?.....What do you want to prove?

Martinez: No, no, no,....that is because there is affection.....

Officer Chavez: No. She doesn't want to, love never lies while it's alive.....

Martinez: Ok, ok...but what if she asks me, because she feels guilty, in her conscience, would you go? or wouldn't you go?

Officer Chavez: The truth.....you would be crazy if you do it.....

always there...no...besides...all of the jewelry that she
has...because of me...besides the ones that are in the house...or
the ones that have been pawned, or they are pawned....all because
of me...not because I sell drugs....or illicit, dirty
deals...no...because sweat runs down from my forehead...and
everything that she is....that they would stay with someone that is
a parasite....and this person doesn't even pay their bills...her
car....this is what makes me feel sorry...when I got out of jail,
they had evicted them....and everything, everything I bought for
her...I got her a big screen TV...with a sound system and
everything...and they took everything...everything.....even the
curtains and I said, take it...I am going to investigate the
truth...What I want is to work for me, everything that they took I
will have it back in four or five months.....work in peace,
working very hard....and then know that this person is not going to
appear on Friday and tell me that I have no money for
insurance...or that I don't have money for gas.....or for rent....I
can't work in peace with a person like that....like that, I don't
want that person....she needs to disappear from my...monetary
affairs....she needs to think that I don't exist.....like she should
think that I don't work....like that.....

20

Officer Chavez:

Yes, I understand.....

Martinez:

We finished it.....(Laughter) slowly.....

Officer Chavez:

Ok, I'll only go to the tape....the time right now is
19:38.....19:38....Ahhhhhhh!

Martinez:

Can you take me to the bathroom?.....

Officer Chavez:

Uh mmmmmm, all right.....

END

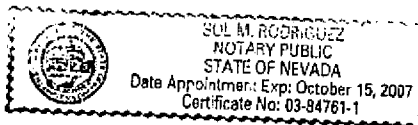
I, Rose Marie Fernandez, duly sworn, depose and say:

1. That I am a citizen of the United States.
2. That I am a resident of Las Vegas, County of Clark, State of Nevada and have been so since 1993.
3. That I am a certified court interpreter with the Eighth Judicial District Court after having passed a written and oral exam with said entity. That I have interpreted in Municipal, Justice, District and Federal Courts as well as State Agencies and private attorneys. Additionally I have experience translating in Depositions, Arbitrations, trials, conventions as well as written documents.
4. That I have translated from Spanish into English the attached Transcription of interview for the MARTINEZ CASE.
5. This translation is true and correct to the best of my knowledge and belief.

Dated at Las Vegas, Nevada this 18th day of January, 2007.


Rose Marie Fernandez
Certified Court Interpreter

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)



Signed and sworn to before me, a Notary Public, this 18th day of January, 2007

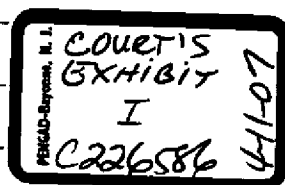
Sgt M. Rodriguez
Notary Public in and for said County and State

WITNESS WAS THE

CAR RELATIVE TO THE

RESTAURANT ?

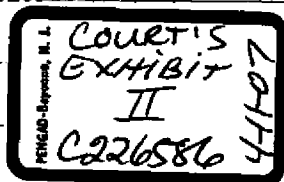
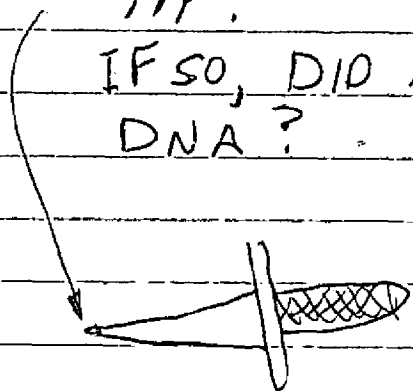
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REQUEST FOR INFORMATION FROM JUROR #6

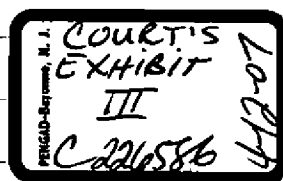
① WAS THERE DNA EVIDENCE
PROVIDE ON THE ALLEGED KNIFE
TIP?

IF SO, DID IT MATCH BIANCA HERNANDEZ
DNA?



REQUEST FOR INFORMATION
JUROR #6

WHAT IS THE NORMAL HEALING
TIME OF A VAGINAL ABRASION?



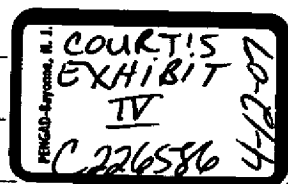
WAS A DRUG TEST

PERFORMED ON THE

ALLEGED VICTIM?

IS THAT NORMAL

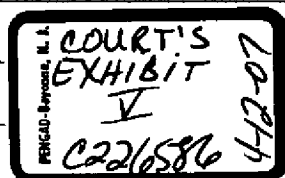
PROCEEDING?



How long into your interview
with Ms. Hernandez was it before
she told you about the penetration?

~~She told me~~

#4

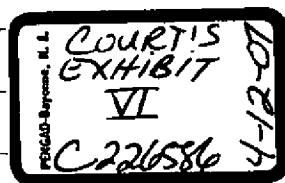
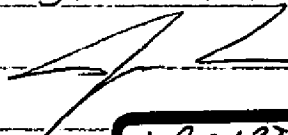


SPANISH TRANSLATION
OF INTERVIEW BETWEEN
DETECTIVE CHAVEZ AND
FREDDIE MARTINEZ

OR

SPANISH ~~W~~ AUDIO RECON ONLY

JIM EAGAN



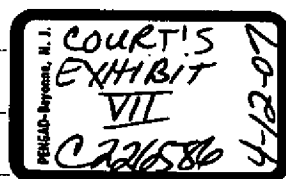
The jury is not allowed
to do its own translation,

Judge Bell

WHAT IS ON
THIS?

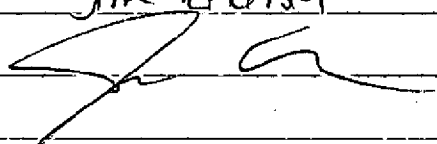
JIM EAGAN

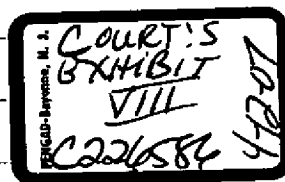
AL





CAN WE FIND THE
DEFENDANT GUILTY OF
1ST DEGREE KIDNAPPING BUT
FIND THE DEFENDANT NOT
GUILTY OF COUNT 4?

Jim EAGAN




Each count has to
be considered separately
of one another.

Judge Bell

**THE SEALED MINUTES
PORTION OF THIS CASE
WILL FOLLOW VIA. U.S.
MAIL WITH THE
CONFIDENTIAL PRE-
SENTENCE
INVESTIGATION
REPORT.**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 09, 2009**

06C226586

The State of Nevada vs Freddy Martinez

November 09, 2009**9:00 AM****Motion**

**DEFT'S PRO PER
MTN TO MAKE
ADDITIONAL
FUNDS Court Clerk:
Linda Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Chen, Alexander G.

Attorney

Frierson, Jason M.

Attorney

Public Defender

Attorney

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present today, that he gives no specifics and the time has passed for a Writ of Habeas Corpus. As the circumstances do not warrant, COURT ORDERED, Pro Per Motion DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 14, 2010**

06C226586

The State of Nevada vs Freddy Martinez

April 14, 2010**9:00 AM****Motion**

**DEFT'S PRO PER
MTN FOR APPT OF
CNSL/023 Relief
Clerk: Roshonda
Mayfield
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT: Carroll, Thomas M. Attorney

JOURNAL ENTRIES

- Court advised, this is a pro per motion where the Deft. is requesting to have counsel appointed. Upon review it appears the writ is time barred and there is no need for appointment of counsel. Therefore, COURT ORDERED, motion DENIED.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 05, 2010**

06C226586

The State of Nevada vs Freddy Martinez

May 05, 2010**9:00 AM****Motion to Vacate****DEFT'S PRO PER
MOTION TO
VACATE A
J.O.C./24 Court
Clerk: Linda Skinner
Reporter/Recorder:
Marcia Leonard
Heard By: Donald
Mosley****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Morton, Carrie A. Attorney**JOURNAL ENTRIES**

- Court noted Defendant is in prison and not present today. He went to trial in front of Judge Bell in 2007 and was found not guilty on Count 4 and incorrectly thinks all the counts should be stricken. Court stated this is the wrong vehicle, that he should have filed a Writ of Habeas Corpus, however, to file one now would be time barred as the Judgment of Conviction was signed in 2007. COURT ORDERED, Pro Per Motion DENIED.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 26, 2010**

06C226586

The State of Nevada vs Freddy Martinez

May 26, 2010**9:00 AM****Motion****DEFT'S PRO PER
MTN FOR AN
EVIDENTIARY
HEARING/26 Court
Clerk: Linda Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Turner, Robert B. Attorney**JOURNAL ENTRIES**

- Court advised Defendant is in prison and not present today, that he is asking for an Evidentiary Hearing to decide the writ, however, this motion is premature. Court advised the Writ is set for 7/14 and on that date it will be decided if an Evidentiary Hearing is necessary and if one is, it will be set and Defendant will be transported for it. COURT ORDERED, matter OFF CALENDAR as it is premature.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 14, 2010

06C226586

The State of Nevada vs Freddy Martinez

July 14, 2010

9:00 AM

Petition for Writ of Habeas
Corpus

PTN FOR WRIT OF
HABEAS CORPUS
Court Clerk: Linda
Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:** Schifalacqua, Barbara Attorney**JOURNAL ENTRIES**

- Court advised Defendant is in prison and not present today, that the Judgment of Conviction was filed on 6/3/08 and this Petition was filed on 4/30/10. Court stated it is extremely untimely with no good cause given. As this Court lacks jurisdiction, COURT ORDERED, DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 09, 2010**

06C226586

The State of Nevada vs Freddy Martinez

August 09, 2010**9:00 AM****Motion for Appointment of
Attorney****Pro Per's Motion for
Appointment of
Counsel****HEARD BY:** Mosley, Donald**COURTROOM:** RJC Courtroom 12B**COURT CLERK:** Linda Skinner; Karina Kennedy**RECORDER:****REPORTER:** Maureen Schorn**PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court NOTED it was not sure what the Deft is asking for and there is no cause therefore, COURT ORDERED, Motion DENIED based on the merits this could be duplicative.

NDC

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



**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**



REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155
(702) 671-4528

Steven D. Grierson
Clerk of the Court

January 25, 2011

Tracie Lindeman
Clerk of the Supreme Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

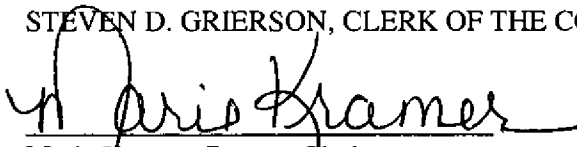
RE: STATE OF NEVADA VS. FREDDY MARTINEZ
S.C. CASE: 57197
D.C. CASE: 06C226586

Dear Ms. Lindeman:

Pursuant to the Supreme Court order dated December 8, 2010, enclosed please find a copy of the sealed Minutes and Pre-Sentence Investigation Report for the above case submitted January 25, 2011 via the Supreme Court submission process.

Sincerely,

STEVEN D. GRIERSON, CLERK OF THE COURT


Marie Kramer, Deputy Clerk

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated December 8, 2010, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises of three volumes with pages numbered 1 through 623.

STATE OF NEVADA

Plaintiff(s),

vs.

FREDDY MARTINEZ


Defendant(s),

)
)
) Case No: 06C226586
) Dept No: XIV
)
)
)
)
)
)
)
)
)

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 25 day of January 2011.

Steven D. Grierson, Clerk of the Court


Marie Kramer, Deputy Clerk

1 but in civil cases, they have one that says -- that the masculine is used in the
2 instructions, and the masculine and feminine are deemed the same. You could
3 put one of those civil instructions in any criminal case, if you want. Okay. I'll
4 do that for you.

5 MS. HAMERS: So that's the extent of my objections to the packet that
6 the Court has submitted.

7 THE COURT: Okay.

8 MS. HAMERS: In addition, I assume the Court has made part of the
9 record the instructions I submitted.

10 THE COURT: Well, you've submitted a number of instructions. The
11 majority of them I've given. There are a couple of them that I haven't given
12 because they were actually already submitted by the State, and you didn't
13 know, or they are within an instruction given by the State.

14 But there are four instructions that you submitted where you
15 want me to -- where I say they have to prove beyond a reasonable doubt
16 kidnapping or they can't convict, and you want me to say, well, by the way, if
17 they didn't prove beyond a reasonable doubt the kidnapping, then you have
18 acquit. I think that's silly. I think it's saying the same thing twice.

19 And if the State failed, if the State failed, if the State failed, if the
20 State failed as to any of -- how many other dozen charges we have -- in this
21 case four -- but I will mark those as Defense proposed exhibits and make them
22 part of the record and note that you think that under *Crawford* that those have
23 to be given. I think that's a misreading of *Crawford*, and you can make
24 anymore record you want.

25 MS. HAMERS: And I just want to make sure that all of them were

1 included.

2 THE COURT: There's four.

3 MS. HAMERS: There were four of them, one with regard to burglary,
4 one with regard to sexual assault, one with regard to kidnapping, and one with
5 regard to --

6 THE COURT: Yeah, I was going to put one in on doing business
7 without a license. I just couldn't find any facts to support it.

8 MS. HAMERS: -- battery. Okay. They're there. Anything else?

9 MS. HAMERS: No, Judge.

10 THE COURT: Okay. These are good to go. Are our jurors here,
11 Vinny?

12 MS. NYICOS: Yes.

13 THE BAILIFF: Yes.

14 THE COURT: Let's bring them in. Okay. The verdict form, it's okay
15 now that we've added false imprisonment?

16 MS. NYICOS: Yes, Judge.

17 MR. BATEMAN: That's right.

18 THE INTERPRETER: If the interpreters could get a copy of the jury
19 instructions, please, Your Honor.

20 THE COURT: Pardon me?

21 MS. GORD: Let me go get one.

22 THE COURT: You bet. Okay. We will have a copy of the instructions
23 for each counsel, the Interpreter. Have the jurors ready in about ten minutes.

24 MS. NYICOS: Judge, just a couple of housekeeping matters based
25 on --

1 THE COURT: Well --

2 THE BAILIFF: They're in the room.

3 THE COURT: Too late.

4 MS. NYICOS: Oh, I thought they said about ten minutes.

5 THE COURT: Do it later or come up here.

6 MS. NYICOS: Okay.

7 THE COURT: Come up here, if you need to.

8 MS. NYICOS: We're fine.

9 THE COURT: Okay.

10 [Jury returns to the courtroom at 9:17 a.m.]

11 THE COURT: Okay. Good morning. Back on the record in Case
12 Number C226586, State of Nevada versus Freddy Martinez. Let the record
13 reflect the presence of the Defendant, his counsel; counsel for the State. All
14 ladies and gentlemen of the jury are back in the box. Are we ready to proceed,
15 Ms. Nyicos?

16 MS. NYICOS: We are, Judge.

17 THE COURT: And we were going to put, first thing, the detective back
18 on the stand, and that isn't going to take too long?

19 MS. NYICOS: I believe Ms. Hamers has him on cross.

20 THE COURT: Okay. Let's call him in, and let's finish up with that.
21 It's my understanding, ladies and gentlemen, that after review of the transcript
22 and comparing it to the tape, which was in Spanish, there appears to be some
23 section that was not transcribed and that -- again, we all collectively work to
24 respect your time. What they have agreed to do is have that section, which is
25 five or six minutes long, played for you with one of the interpreters to interpret

1 it for you. That will -- no?

2 AN INTERPRETER: Your Honor, that's not feasible. We would put
3 ourselves in --

4 THE COURT: Well, not you. I'm just talking about somebody other
5 than you guys that are here.

6 AN INTERPRETER: No --

7 THE COURT: You can't do that?

8 AN INTERPRETER: We can't put ourselves in a position where we --
9 that's something appealable because the tapes are so difficult and to
10 transcribe --

11 THE COURT: How are we going to get that -- how are we going to get
12 that transcribed?

13 AN INTERPRETER: I believe we have somebody who would separate --
14 we always do it beforehand.

15 THE COURT: I know, but -- so here we are now. I respect that. What
16 are we going to do?

17 AN INTERPRETER: Your Honor, we would not provide service in that
18 situation because we could make errors that would fall back on the
19 responsibility of the interpreter and --

20 THE COURT: What do you want me to do?

21 MS. HAMERS: Judge, I have an interpreter from my office. I'd be
22 happy to have her do it.

23 THE COURT: Well, that's not going to work.

24 MR. BATEMAN: Why don't -- why don't you just ask him what the six
25 minutes said.

1 MS. HAMERS: Well, Judge, the problem is, first, what the Court was
2 saying was that we've all agreed that something's missing, and that's not true
3 at this time. I cannot understand the Spanish, and I'm not in agreement that
4 something's missing. However, if the Detective claims that something's
5 missing, I'm certainly happy to play that for the jury so that we -- there's no
6 doubt about what's there.

7 THE COURT: How about this? How about we go with some -- we've
8 got three or four more witnesses. We're going to get this done. How about if
9 you've got an interpreter and he speaks Spanish, they go out together and play
10 it and listen, and if they can agree on what was said, then I don't care whether
11 he says it or she says it. Let's see if we can do that. If they can't agree, I
12 don't know what we're going to do, but if they can agree, then that's a simple
13 way to do it. Fair enough?

14 MS. HAMERS: If we can agree. I don't find that to be --

15 THE COURT: Well, I mean --

16 MS. HAMERS: -- feasible, but we can -- yeah, I'd certainly give it a try,
17 Judge.

18 THE COURT: Listen. I don't know much Spanish, but I know *dinero*
19 means money, and nobody's going to disagree with that.

20 MS. HAMERS: That's true.

21 THE COURT: So if they're both -- all right. Let's take a try at that.

22 MS. HAMERS: Okay.

23 THE COURT: You guys go do your work while we're doing something
24 else, so we're not wasting the jury's time, and let's see if we can come up with
25 a conclusion. Or if we can agree on 98 percent of it and they can both say,

1 We disagree on this, then we can tell them what we disagree on. This
2 should've been done two weeks ago. Okay.

3 MS. HAMERS: Well --

4 THE COURT: That's all right. I'm not faulting anybody. I'm just saying
5 it should've been done two weeks ago. Call your next witness.

6 MS. NYICOS: Okay. Your Honor, the State would call Debbie Young.

7 THE COURT: Okay. Come up here, ma'am. Come on up here.

8 ***DEBORAH B. YOUNG,***

9 having been first duly sworn, testified as follows:

10 THE CLERK: Thank you. You may be seated.

11 THE COURT: State your name, and spell your name for the court
12 reporter, please, ma'am.

13 THE WITNESS: Deborah Young, B. Young.

14 THE COURT: Spell it.

15 THE WITNESS: D-e-b-o-r-a-h, B. Young, Y-o-u-n-g.

16 THE COURT: Thank you. Go ahead, Ms. Nyicos.

17 ***DIRECT EXAMINATION***

18 ***BY MS. NYICOS:***

19 Q Ms. Young, how are you employed?

20 A I am currently employed as a SANE nurse, sexual assault nurse
21 examiner with SW SANE.

22 Q And how long have you been so employed?

23 A I have been doing sexual assault exams for five years. I'm a
24 co-owner also of the SW SANE, and we incorporated in 2005.

25 Q And in order to be a sex assault nurse examiner, do you have to

1 be a nurse first?

2 A I do, yeah. I'm a registered nurse, yeah, also.

3 Q And how long have you been a nurse?

4 A I have been a registered nurse -- I've had my RN since 1991.

5 Q Okay. And what type of training did you have to go through to
6 get your nursing license -- or just your nursing license?

7 A Just my nursing license? I had to go to an accredited nursing
8 school after completing prerequisites for the nursing program, and I graduated
9 with an associate degree in nursing and -- to practice as a RN, and I've since
10 then received my bachelor's degree in nursing.

11 Q And when did you receive your bachelor's degree in nursing?

12 A 2005.

13 Q Now, as a sex assault nurse examiner, are there additional
14 requirements you have to undergo?

15 A They are. I have to go through a 40-hour, one-week course,
16 classroom course, and also 40 hours of clinical orientation time.

17 Q Okay. What I'm going to ask you -- I'm having a little bit of
18 trouble with what's going on in the courtroom. Can you just pull that
19 microphone a little bit closer to you.

20 A Yeah. There you go.

21 Q And talk a little bit louder. Okay. And is there a separate
22 certification process for sex assault nurse examiners?

23 A There is. I have acquired the national certification. It was a
24 national test, a 300-question, and I received that in 2004.

25 Q Okay. And approximately since you became certified, how

1 many sex assault examines have you performed?

2 A I've done approximately 60.

3 Q 60?

4 A Uh-huh.

5 Q And have you previously testified in a court of law --

6 A I have, uh-huh.

7 Q -- reporting your findings?

8 A Once, I have, yeah.

9 Q And were you certified as an expert when you testified?

10 A Yes.

11 MS. NYICOS: Okay. Judge, I understand we don't certify here, but
12 may I proceed with the questioning as regards to this case?

13 THE COURT: Yeah, sure.

14 MS. NYICOS: Okay.

15 BY MS. NYICOS:

16 Q Now, Debbie, you said that you're a co-owner of SW SANE?

17 A Uh-huh.

18 Q Is that a business that you run specifically for sex assault nurse
19 exams?

20 A Yes. We have a total of seven nurses, including myself, and the
21 co-owner -- the other co-owner, and we all do sexual assault exams.

22 Q Now, where is your business located?

23 A We are located out of St. George, Utah. I cover Mesquite,
24 Nevada. Nevada requires that you have to have the national certification to do
25 sexual assault exams in Nevada, and right now I'm the only one who's able to

1 do that.

2 Q So your coverage would include Mesa View Hospital, which is
3 located in Mesquite, Nevada, here in Clark County?

4 A Yes.

5 Q Okay. Now, directing your attention specifically to August 16th
6 of 2006, do you recall performing an exam on a person by the name of Bianca
7 Hernandez?

8 A Yes.

9 Q Now, let's talk about overview of what a sex assault exam
10 contains. Are there two portions, if I understand right, a medical and a forensic
11 type portion?

12 A Yes.

13 Q Let's start with the medical.

14 A Okay. .

15 Q What is that exam?

16 A Okay. That entails -- the whole process of exam takes about
17 two to three hours to get done. The first part -- part of it is the medical, and
18 we go over, you know, general appearance of the victim, review vital signs, ask
19 for a medical history, are they allergic to anything, immunization status, that
20 kind of thing.

21 Q And then you also have your forensic portion?

22 A Yes.

23 Q And what does that entail?

24 A That entails collecting more information about the assault.
25 Collecting evidence -- trace evidence samples, swabbings, hair samples, things

1 like that.

2 Q Now, with regard to the medical, is the -- what's the sole
3 purpose of that?

4 A The medical is to make sure that the victim is stable --

5 MR. PAULSON: I'm sorry. I'm going to object to the term "victim" for
6 the same reasons that we've always objected to that, Judge.

7 THE COURT: Yeah, that's fine, but --

8 MR. PAULSON: It's an -- it's an allegation.

9 THE COURT: We'll try to use word "alleged victim," but if we don't,
10 it's kind of natural, so it's --

11 THE WITNESS: Okay.

12 THE COURT: Okay. Go ahead.

13 BY MS. NYICOS:

14 Q Okay.

15 A It's to make sure that the alleged victim is stable enough to have
16 a forensic exam at that time, so -- and also it helps to --- not only reviewing
17 vital signs and things like that, but immunization status, medications that
18 you're going to give afterwards, you know, if you need to give different
19 medications, if they have allergies, that kind of thing, so --

20 Q Now, when you're performing this medical portion, is this when
21 you would determine any external injuries?

22 A Yes. I mean, I look at the general appearance. Is this person
23 pale? Diaphoretic? Do they have any obvious bleeding injuries that I can see?
24 Yes.

25 Q Okay.

1 A And I also do a head-to-toe assessment on a patient.

2 Q And the forensic, obviously, is the internal examination?

3 A The swabbings? It includes a vaginal exam, general exam. Also,
4 I take hair samples and swabbings, you know, in the mouth, look for bruising,
5 that kind of thing. Take photography of injuries that I see.

6 Q And you said the vaginal exam. Does this consist of your normal
7 everyday girl exam?

8 A It involves a speculum exam, yes. So the alleged victim is in the
9 stirrups, and we are looking at the genitals, external genitalia, for any signs of
10 bruising, injury, bleeding, that kind of thing.

11 Q Now, with regard to Bianca Hernandez specifically, did you
12 perform both the medical portion and forensic portion of that exam?

13 A Yes.

14 Q Okay. And while you're performing the medical portion, did you
15 note any injuries externally?

16 A Yes. She had, starting with her head, some mild bruising and
17 tenderness -- oh, excuse me. Mild swelling and tenderness on her right
18 cheekbone. She had some light abrasion marks on her -- her forearms. On her
19 right outer thigh, she had some scratch marks. There was three scratch marks.

20 Q Now, part of your examination also includes an interview --

21 A Yes.

22 Q -- with the alleged victim? Now, without telling me what she
23 said, were the injuries that you observed consistent with what was being told
24 to you in the interview?

25 A Yes.

1 Q Okay. While that's warming up, I'm going to show you these.
2 Showing you what's been marked for identification as State's Proposed
3 Exhibits 26 through 32. If you could just flip through those briefly and tell me
4 if you recognize those.

5 A Yes.

6 Q And what are those that I'm showing you?

7 A These are pictures of Bianca at the time of her medical and
8 forensic rape exam, and these are the photographs that I took during those.

9 Q And do those pictures fairly and accurately depict how she
10 presented to you on the day of the exam?

11 A Yes.

12 MS. NYICOS: Okay. Move for admission.

13 THE COURT: Any objection?

14 MR. PAULSON: No objection.

15 THE COURT: Admitted.

16 MS. NYICOS: Thank you.

17 [State's 26 through 32 admitted.]

18 BY MS. NYICOS:

19 Q Let me just -- you've got a screen in front of you.

20 A Okay.

21 THE CLERK: Which photographs are those?

22 MS. NYICOS: 26 through 32.

23 THE CLERK: All of them?

24 MS. NYICOS: Yeah.

25 BY MS. NYICOS:

1 Q Okay. I'm showing you what's now been admitted as 26. Let
2 me zoom out a bit. Now, do you normally just take a full-on headshot --
3 A I do.
4 Q -- just for identification?
5 A Uh-huh.
6 Q Okay. And this is Bianca?
7 A Yes.
8 Q Okay. Now 27. And actually on the screen in front of you, it
9 works kind of like Don Madden football. You can actually draw a circle.
10 A Oh, okay.
11 Q What are we looking at here?
12 A These are the scratch-like marks on her right outer thigh right
13 there [indicating].
14 Q Okay.
15 THE COURT: And you push the button and the --
16 MS. NYICOS: And Mr. Bateman can help me out here.
17 BY MS. NYICOS:
18 Q Okay. Now, also showing you 28, is that a --
19 A This is a close-up --
20 Q Let me pull the other one out because that came out really, really
21 bright. Okay. Got it.
22 A This is a close-up of those scratch marks that I observed on her
23 right outer thigh.
24 Q And, again, this is consistent with her version of --
25 A Yeah. She -- her -- she said that these were caused by a knife

1 being poked at her, and those are consistent with that.

2 Q You keep calling them scratch marks. Could they also -- I mean,
3 did you note in your report puncture marks?

4 A This one right here [indicating] looks like a puncture mark and a
5 cut, and this one looks more like an abrasion type cut.

6 Q Okay. Now, I'm also showing you 29.

7 A Okay.

8 Q And what are we looking at here?

9 A This one -- this is her right forearm. The next photo you'll -- you
10 should be able to see some very light red marks.

11 Q And that's here on 30?

12 A Uh-huh. Those are right there [indicating]. There's two of them.

13 Q And, again, is this an injury that she reported to you?

14 A Yes. She had told me that she had been grabbed by her arm,
15 and so --

16 Q Okay. And also showing you 31.

17 A This is a picture of her right cheekbone where she was
18 complaining that it was tender. She just had some very mild swelling.

19 Q You say "mild swelling." Was it noticeable to you?

20 A Yeah.

21 Q Okay. And, again --

22 A This is a close-up.

23 Q -- this is another shot of that?

24 A Uh-huh.

25 Q Okay. And, once again, with the swelling to the right

1 cheekbone, did she indicate some type of force being used on her at that point?

2 A Yes, she had told me that she had been hit in the face.

3 Q Okay. Now, you move on to a genital exam?

4 A Uh-huh.

5 Q Okay. And you performed that on her as well; correct?

6 A Yes.

7 Q What are you looking for when you're performing the genital
8 exam because this is now the forensic part of it; correct?

9 A Well, it's part of the forensic part. The forensic is collecting
10 trace evidence samples, and that's definitely part of the forensic exam.

11 Q Okay.

12 A So I'm looking for tears, lacerations, redness, abrasions, swelling,
13 tenderness.

14 Q Now, let's start with trace evidence.

15 A Uh-huh.

16 Q What are you looking for? When you talk about trace evidence,
17 what kinds of things are you trying to find?

18 A I'm looking for foreign hairs. I'm looking for any foreign matter
19 that might be present. Maybe dirt. I'm taking swabbings of the vaginal vault
20 and the perilabial -- external genitalia area. I'm taking swabbings of that to be
21 sent to be processed at the crime lab for evidence of sperm, DNA, that kind of
22 thing.

23 Q Now, all of this trace evidence you collect, do you put that
24 together in some sort of kit?

25 A I do, yeah.

1 Q Okay. And showing you what's already been admitted as
2 State's 21, is this the sex assault kit to the best of your knowledge that you
3 were able to collect from Bianca Hernandez at Mesa View Hospital on the 16th?

4 A It was in a big manila envelope.

5 Q It would probably be inside there?

6 A It would probably be inside.

7 Q Okay. Well, we won't open it.

8 A Okay.

9 Q But you did collect all these, put them all together --

10 A Yes.

11 Q -- in a manila envelope --

12 A And sealed it.

13 Q -- and marked it for identification?

14 A Uh-huh, uh-huh.

15 Q And those are later collected by the police department?

16 A Yes, I give those to the police department.

17 Q Okay. And when you're looking for trace evidence, what types
18 -- do you use any instruments to do that?

19 A I use Q-tips to swab the areas for any -- look for DNA. I use a
20 speculum to exam the cervix and the vagina. I use -- we can take clippings of
21 the hair, pubic hair and head hairs. We swab the cheeks for cheek cells.

22 Q And that's called a bucal swab?

23 A Right.

24 Q Do you use some type of light source also to know what to look
25 for?

1 A Yes, a Woods lamp. I use that on -- in her exam. And in the
2 genital part, I did observe some speckled areas around the labia, which I --
3 which I swabbed and sent in the kit.

4 Q Now, a Woods lamp, is this like what we see on CS/ where it's
5 almost like a fluorescent light?

6 A Right.

7 Q And it's something that glows?

8 A Right.

9 Q Okay. All right. Now, after collecting all the swabbings, you
10 also were looking for abrasions, tearing and things like that?

11 A Yes.

12 Q Did you find any on Bianca Hernandez?

13 A She in her -- in her fossa vanicularis, which is right before you
14 enter into the -- by the hymen and go into the vagina, she did have a small
15 abrasion at 6:00 o'clock. We describe --

16 Q When you talk about 6:00 o'clock --

17 A Yeah, we describe that on a clock. So if you're looking at it
18 straight on, it would be right at the bottom.

19 Q And this would be the bottom to the -- just to the inside of the
20 vagina?

21 A Yes.

22 Q Okay. And what causes an abrasion?

23 A An abrasion is when there's been friction between tissues, and
24 there's some rubbing of the top layer, that comes off of the top layer of skin,
25 and so it's from friction.

1 Q And are there certain things that can counteract the friction that
2 would cause an abrasion?

3 A Lack of lubrication, lack of the normal sexual response. You
4 know, usually a woman in that situation -- you know, in a sexual situation
5 where it's consensual would be relaxed, and there would be a pelvic tilt, and
6 there would be lubrication. So if those things are absent, it definitely can
7 contribute to an abrasion or any kind of injury down there.

8 Q So when you see an abrasion type injury, would that be in your
9 training and experience consistent with a sexual assault?

10 A Yes.

11 Q And, again, why is that?

12 A Because of the lack of lubrication, lack of the pelvic tilt and the
13 relaxed muscles.

14 MS. NYICOS: Okay. I have nothing further.

15 THE COURT: Mr. Paulson?

16 MR. PAULSON: Thank you, Judge.

17 **CROSS-EXAMINATION**

18 **BY MR. PAULSON:**

19 Q Good morning, ma'am.

20 A Morning.

21 Q Just a couple of questions. First of all, just to clarify, your role
22 as a sex assault nurse examiner is basically to do the exam and collect
23 evidence; correct?

24 A Yes.

25 Q Okay. And that evidence is given to the police?

1 A Yes.

2 Q And submitted for prosecution?

3 A Uh-huh.

4 Q So basically your role is to collect evidence to eventually get
5 down the line for possible prosecution and your testimony as you're testifying
6 today; correct?

7 A Yes.

8 Q Your particular role isn't to offer an opinion; you just provide a
9 summary, and a doctor reviews your report; correct?

10 A I offer what I find, yeah. I state in my documentation what I
11 have found in the exam.

12 Q In your report you don't actually give an opinion; you give a
13 summary of findings; correct?

14 A Yes, uh-huh.

15 Q Okay. Now, I am going to refer to things that are in the report.
16 I'm sure you've reviewed it prior to your testimony today?

17 A Yes.

18 Q If there's things that you're not sure about, I'll have you look at
19 it, but --

20 A Okay.

21 Q As far as when you did your initial physical exam, you noted the
22 general physical appearance of the clothing. Do you remember that?

23 A Yes.

24 Q And the clothing in this part, do you remember if it had any
25 tearing or anything of that nature?

1 A I didn't observe any tears that she -- it was generally a little bit
2 dirty, but I didn't notice any obvious tearing.

3 Q Okay. And going on to the physical exam part, you earlier
4 testified about a few scratches and abrasions and those types of injuries that
5 you noted in your report?

6 A Uh-huh.

7 Q The first one I'm going to refer to is the scratch marks that you
8 noted on the right anterior thigh?

9 A Uh-huh.

10 Q Now, earlier your testimony --

11 THE COURT: Did you say "interior" or "anterior"?

12 THE WITNESS: Anterior.

13 MR. PAULSON: Anterior.

14 THE COURT: Okay.

15 BY MR. PAULSON:

16 Q You noted, if you recall in your report, that those were superficial
17 scratch marks. Do you recall --

18 A Yes.

19 Q -- that was your findings? Now, if these -- if your wording is
20 "superficial," we're talking about injuries located near the surface, you didn't
21 note anything about puncture wounds? You said superficial scratch marks;
22 correct?

23 A They were -- they were not that deep, no.

24 Q They weren't penetrating?

25 A There -- if -- the one picture of -- there was one that was a little

1 bit deeper than the other one, if -- I don't know if you want to put that one
2 back on the screen, but there was one that was -- was slightly deeper than the
3 other two.

4 Q Okay. But they were not penetrating, deep injuries? They were
5 superficial as you report in your report?

6 A They didn't need sutures or anything like that.

7 Q Very little bleeding?

8 A They -- I didn't --

9 Q Actually, there was none?

10 A When I saw them, they were scabbing over, so --

11 Q Okay. Now, in regards to those particular injuries, if Ms.
12 Hernandez earlier had testified that during a struggle, she was poked in the
13 thigh with a knife, that this didn't occur anytime during the alleged sexual
14 assault, would that be consistent with those types of injuries?

15 A Can you repeat that again?

16 Q If she had testified that those marks came from an earlier
17 struggle when she was inside the vehicle --

18 A Uh-huh.

19 Q -- but not during any sexual activity, would that be consistent
20 with those findings?

21 A Yes.

22 Q Going on to the second injury that you note, is the abrasions on
23 the wrist.

24 A Uh-huh.

25 Q These abrasions, you noted in your report that there are light

1 pink, red abrasions on the right wrist. Again, if Ms. Hernandez had testified
2 that earlier in the day she had been grabbed on the wrist and pulled, would that
3 be consistent with the type of abrasion you might see on the wrist?

4 A Yes.

5 Q And then regarding the tenderness, mild swelling on her right
6 cheek, again, if she had testified that prior to the sexual activity in that car that
7 she was struck in the face, would that be consistent with your findings?

8 A Yes.

9 Q Let's move on to the actual pelvic exam and the findings of that.
10 You noted in your report that the only finding or at least significant finding that
11 you noted was this small -- you noted a small abrasion at 6:00 o'clock?

12 A Yes.

13 Q And earlier you testified that an abrasion is from -- can come
14 from rubbing. It's just a small abraded area of the skin, or in this case,
15 membrane? It's just from rubbing?

16 A Yes.

17 Q Correct. And I believe you also testified that that would be
18 consistent with sexual assault?

19 A Yes.

20 Q But, in fact, that could be consistent with consensual sex? My
21 question is, it is consistent with recent sexual contact; correct?

22 A The abrasion?

23 Q Yes.

24 A It's -- well, it depends -- if there was lubrication there or not --

25 Q Okay.

1 A -- and cooperation, the relaxation of the muscles that you
2 would --

3 Q Well, let me -- so is it your testimony that you would never see
4 something like that during consensual sex?

5 A You could see something like that in consensual.

6 Q You could see something like that --

7 A Uh-huh.

8 Q -- during consensual sex? So that type of finding, in and of itself,
9 is not absolutely indicative of sexual assault?

10 A It's consistent with her history.

11 Q Let me ask the question again.

12 A Okay.

13 Q That finding, in and of itself alone, is not absolutely indicative of
14 sexual assault; it could be consent; correct?

15 A It could be.

16 Q Also, in your particular -- in your pelvic exam, I notice that
17 there's no other abnormal findings noted; is that correct?

18 A Yes.

19 Q There was no tears?

20 A Yes.

21 Q There was no lacerations?

22 A Right.

23 Q There was no multiple injuries? No bruising?

24 A In the genital area you mean?

25 Q Correct.

1 A Yes.

2 Q Yes, there was bruising or no, there wasn't bruising?

3 A You're correct. There was only that one finding in the genital

4 area.

5 Q So no other -- no other trauma was found during your exam?

6 A In the -- well, there was --

7 Q In the genital area.

8 A -- but not in the genital area. There was only that one --

9 Q Separate from the stuff we talked about, the wrist and --

10 A Yes.

11 Q -- the knife marks? We're talking about the pelvic exam itself?

12 A Yes.

13 Q No other -- no other findings. Okay. And just to clarify, when

14 you're looking with the Woods lamp, those speckled areas, those speckled

15 areas don't indicate trauma; correct?

16 A Right. They can be sperm. Semen can fluorescent. That's the

17 purpose of why we use an alternative type light source, to be able to swab that

18 area.

19 Q Right. Normally when you use the stain, that's to bring out some

20 type of liquid --

21 A Right.

22 Q -- that you would see, just so you can --

23 A Right.

24 Q -- visualize it for collection purposes?

25 A Right.

1 Q It has nothing to do with bruising or trauma or anything along
2 those lines?

3 A Right.

4 Q Okay. And then just to -- during your exam you get a -- I guess
5 a summary of the events, and there's a long summary here that, I assume, you
6 wrote?

7 A Yes.

8 Q Now, during this particular exam, you had the aid of an
9 interpreter; correct?

10 A Yes, from the Rape Crisis Center.

11 Q Okay.

12 A Uh-huh.

13 Q So you don't speak Spanish yourself?

14 A No.

15 Q Okay. Now, do you recall in the summary that Bianca told or
16 stated to you, and it's in your summary, that when she was initially taken out
17 of the car, she was -- she was laying on the ground?

18 A She was --

19 MS. NYICOS: I'm going to object. It's hearsay.

20 MR. PAULSON: Well, it's -- what I'm getting at is an inconsistent
21 statement based on her prior testimony.

22 THE COURT: You're saying Bianca said to the interpreter who told her
23 this is what she understands Bianca had said?

24 MR. PAULSON: Yes.

25 THE COURT: Let me think. Inconsistent statement.

1 MS. NYICOS: Yes.

2 THE COURT: All right. Overruled. Go ahead, Mr. Paulson. I don't
3 know that is or isn't, but I think he has the right to ask.

4 BY MR. PAULSON:

5 Q Specifically, if she -- you wrote down everything that she told
6 you; correct?

7 A That -- as it was interpreted to me, yes.

8 Q Okay. As it was interpreted. And during your documentation of
9 the events surrounding, do you recall her telling you that when she was pulled
10 out of the car, she was on the ground and that Freddy had stood over her for
11 about five minutes?

12 A Yeah. I -- that's what I wrote down. I then -- after I had finished
13 that part of the interview, I asked her about -- specific questions about the
14 assault. Was there penetration of his penis to your vagina? And she said yes.
15 So I backed up and I said -- because she hadn't told me that in the initial event
16 surrounding when I was going over that part. So I asked her then, What --
17 when did this happen? And if you turn to that page, you'll see my comments.
18 It was -- and I probably have to refresh my memory by looking at them, but --

19 Q You need to look at your report?

20 A Yeah.

21 MR. PAULSON: May I approach, Judge?

22 THE COURT: Sure.

23 BY MR. PAULSON:

24 Q Would it be one of these two pages?

25 A No.

1 Q Let me see your entire report. I'm sorry.

2 A This one right here. That's okay. It's this page, page four.

3 Q Just read -- just read it to yourself first, and then I'll --

4 A Oh, okay. [Reading document]. And that was the question I
5 was asking.

6 THE COURT: Well, she can explain this a little. Go ahead.

7 THE WITNESS: Can I?

8 BY MR. PAULSON:

9 Q Yes, do that. Sure.

10 A Okay. So I had asked her to tell me what had had happened
11 first, and that's -- that was these two pages right here on pages two and the
12 addendum. And then I went to page four, and that's when I asked specific
13 questions about the assault such as was there actual penetration of his -- of the
14 suspect's penis to your vagina? Those kind of questions. And she answered
15 yes. And she -- I said, Well, you know, tell me about that more because she
16 had not told me about that when I -- when I was writing my narrative.

17 Q Okay.

18 A And she said when they were stopped and she had -- her pants
19 were pulled down, she was on the ground and underwear were pulled down,
20 and it was before -- he sexually assaulted her -- there was penetration from his
21 penis to her vagina at this time, and then he stood over her for the five minutes
22 with his knife -- with the knife in his hand.

23 Q And then as I kind of alluded to earlier, after you do your exam,
24 you basically have a summary of your findings; correct?

25 A Yes.

1 Q And in your summary you note the superficial scratch marks on
2 the thigh, scratch marks on -- or the right wrist, the mild swelling and
3 tenderness, the abrasion at 6:00 o'clock, and your finding is reported sexual
4 assault; correct?

5 A Right.

6 Q And this report gets reviewed by a physician; correct?

7 A This report gets -- I make copies to go with the crime lab, and I
8 give a copy to the detective, and I consult with the medical doctor that was on
9 -- there at the facility that day, Dr. Fuller.

10 Q Okay. And so does Dr. Fuller ultimately make the, I guess,
11 diagnosis or the opinion?

12 A No.

13 Q Who does that?

14 A I do.

15 Q Okay.

16 A Dr. Fuller was there as a medical consult. He was not there in
17 the -- in the exam itself.

18 Q But as a nurse --

19 A Uh-huh.

20 Q -- you're required to have a physician supervisor; correct?

21 A Right. And we do have a medical director for our nurses.

22 Q Okay.

23 A Uh-huh.

24 MR. PAULSON: I have no further questions.

25 THE COURT: Anything else?

1 MS. NYICOS: Just very briefly.

2 ***REDIRECT EXAMINATION***

3 BY MS. NYICOS:

4 Q When Bianca was giving you her recollection of the events, what
5 was her demeanor?

6 A She was teary at times. She was controlled at times, meaning
7 that she was able to tell me the story, maintain eye contact, but there were
8 parts when she was telling me what happened that she did get tearful.

9 Q And Mr. Paulson had -- keeps alluding to whether or not a
10 medical doctor has to sign off on your findings in any way, shape or form. Is
11 the doctor there in case there's some additional medical attention --

12 A Right.

13 Q that is necessary?

14 A The exam is done in the emergency room, and so they're there to
15 do a type of medical screening exam to make sure there's not an emergency
16 condition that exists.

17 Q Okay. So these findings that you give are your opinions, your
18 and yours alone?

19 A Right.

20 Q And that's your responsibility?

21 A Right. And I did -- I do discuss with the emergency room doctor
22 my findings, but they are not in the room during the exam.

23 Q Okay. Again to rephrase, your finding of that abrasion at 6:00
24 o'clock, in your opinion is consistent with a sexual assault?

25 A With her -- with what she told me, yes, I believe it was -- is

1 consistent with a sexual assault.

2 MS. NYICOS: Thank you. Nothing further.

3 THE COURT: Okay.

4 MR. PAULSON: Very briefly, Judge.

5 **RECROSS-EXAMINATION**

6 **BY MR. PAULSON:**

7 Q Your opinion is based on two things then, if I'm hearing you
8 right, your findings from your exam and what she tells you? You put those
9 things together?

10 A Uh-huh.

11 Q In this particular case, your only finding was an abrasion at 6:00
12 o'clock, correct, other than the other marks that we talked about? I mean the
13 pelvic exam.

14 A Yes.

15 Q So your opinion has to be based on her honesty; correct?

16 A Yes. With what she's told me, uh-huh.

17 Q So if she's telling you something that is not true, your opinion as
18 far as whether it's a sexual assault or not would be affected; correct?

19 A If she told me something else, yes, but -- yes.

20 Q And as I alluded to before, an abrasion at 6:00 o'clock with no
21 other significant findings could be consistent with consensual sex; correct?

22 A Yes.

23 MR. PAULSON: No other questions, Judge.

24 THE COURT: Okay. Thanks. You're excused. Have a nice day.
25 Okay. Yes, sir.

1 THE WITNESS: Am I excused or do I need to wait?

2 THE COURT: No, we've got a couple questions for you.

3 THE WITNESS: Okay. Okay.

4 THE COURT: What would be the normal healing time for a vaginal

5 abrasion of the type and severity that you noticed on Ms. Hernandez?

6 THE WITNESS: What I saw appeared acute, that it had recently

7 happened. So I would say within -- within a day.

8 THE COURT: Okay. It happened within a day?

9 THE WITNESS: Uh-huh.

10 THE COURT: That afternoon?

11 THE WITNESS: Within a few, yeah, hours to a day.

12 THE COURT: Do you take any blood for alcohol or drug testing of the

13 person reporting?

14 THE WITNESS: We do sometimes. I -- I don't believe I did with

15 Bianca. I'd have to refresh my memory with the notes, but --

16 THE COURT: Did you have any visual observations that would give you

17 as a nurse reason to believe that there was impairment?

18 THE WITNESS: No. She was awake, alert, oriented. I didn't smell any

19 alcohol.

20 THE COURT: Okay. How long did it take before she kind of got into

21 telling you about the penetration?

22 THE WITNESS: I had gone through my whole narrative, and it's when I

23 was asking the specific questions about the assault, but --

24 THE COURT: Is that -- is that common or uncommon?

25 THE WITNESS: Yeah, that's common, and that's why I said -- I needed

1 to back up and say, you know, You didn't tell me this before, but I'm clarifying
2 this did happen, and she said yes.

3 THE COURT: That wouldn't be out of the ordinary?

4 THE WITNESS: That would not be out of the ordinary.

5 THE COURT: Okay. You're excused. Call your next witness.

6 MS. NYICOS: Judge, I believe we're just waiting for the detective.

7 That was --

8 THE COURT: Okay. That's fine. Then you're ready to rest?

9 MS. NYICOS: Yeah. If I can just take a moment to confer with the
10 Clerk.

11 THE COURT: Okay. Mr. Paulson, do you want to double check the
12 evidence with her or are you okay with it?

13 MR. PAULSON: I better make sure.

14 [Attorneys conferring with the Clerk.]

15 MS. NYICOS: Judge, I believe we have a stipulation as to 33 and 34,
16 which are the transcript and the DVD of the statement that's being reviewing
17 right now, if I'm correct.

18 THE COURT: I believe that's right, Mr. Paulson, isn't it?

19 MR. PAULSON: That's correct.

20 THE COURT: Okay. 33 and 34 will be admitted.

21 [State's 33 and 34 admitted.]

22 MS. NYICOS: And with that, Judge --

23 THE COURT: That is the DVD of the interview with the Defendant that
24 is in Spanish, and a transcript that is either whole or partial --

25 MS. NYICOS: And the English translation transcription, yes.

1 THE COURT: -- but is transcribed. Okay.

2 MS. NYICOS: Yes. And with that, subject to the fact that we're still
3 waiting for the detective at this time, we will rest.

4 THE COURT: Correct. We'll do that last. We need to give him some
5 time to work. Mr. Paulson.

6 MR. PAULSON: Judge, we actually have a witness, I believe, because
7 Ms. Hamers is tied up right now. That's her witness. If you could just give me
8 a couple minutes.

9 THE COURT: A couple. Go get her and tell her to get in here, and let's
10 go.

11 THE BAILIFF: Judge?

12 THE COURT: By the way, obviously Lisa isn't here today. Lisa is off
13 today. This is Vinny, and he'll be doing all the same things that Lisa did
14 yesterday. So if you have anything you need to do, you just work through
15 Vinny. Yeah.

16 THE BAILIFF: This witness has an infant and a two -- three-year-old
17 with her.

18 THE COURT: Well, they have to stay outside.

19 THE COURT: Mr. Silverstein, I understand the witness has an infant,
20 and they can't bring them in, so maybe you could do a little babysitting for us.
21 I can tell you're a natural just looking at you.

22 MR. SILVERSTEIN: Where is the infant?

23 THE COURT: I don't know. Right out there.

24 MR. SILVERSTEIN: All right.

25 [Court at ease.]

1 THE COURT: Call your first witness.

2 MS. HAMERS: Judge, I believe we're ready to go on the Detective. If
3 we could approach briefly beforehand.

4 THE COURT: Sure. That would be fine, if everybody's ready.

5 [Bench conference.]

6 THE COURT: Do you want the officer or detective -- okay. Come on
7 up, Detective. You're still under oath. I guess we've got the issues resolved
8 between the transcript that you had and the tape.

9 **ARTURO CHAVEZ,**

10 having been previously sworn, testified as follows:

11 THE COURT: Go ahead, Ms. Hamers.

12 MS. HAMERS: Thank you.

13 **RECROSS-EXAMINATION [CONTINUED]**

14 **BY MS. HAMERS:**

15 Q We spoke, and originally you had thought that maybe there was
16 a missing portion, about six minutes that didn't get transcribed at all; is that
17 correct?

18 A That is correct.

19 Q But now that we've both looked these things over, it was just a
20 matter of pages you didn't have, and there isn't an entire segment of time
21 that was missing from that transcript; right?

22 A That is correct.

23 Q Okay. And --

24 THE COURT: Am I to understand that the transcript that has been
25 admitted by stipulation is complete and wasn't missing the pages the

1 Detective's was missing?

2 MS. HAMERS: That's correct.

3 THE COURT: Right? Okay.

4 BY MS. HAMERS:

5 Q Okay. So I'm going to kind of back us up to where we were all
6 the way yesterday for the jury. We were talking about -- you made some --
7 you testified on direct examination yesterday that Freddy had repeatedly
8 stated that he forced sex because the woman was his; right?

9 A That he was angry, and he -- and I asked him if he raped her,
10 correct.

11 Q Yesterday you testified on direct that he repeatedly told you
12 that he forced the sex because she was his; right?

13 A Correct.

14 Q Okay.

15 A I believe so.

16 Q And I had asked you to point out in the transcript where that
17 had happened; is that correct?

18 A Correct.

19 Q And you weren't able to find anywhere in the transcript where
20 that -- those actual words were exchanged?

21 A Not to the exact words, but the meaning of the transcription or
22 the way of the communication.

23 Q Okay. So can you tell me where the meaning of the
24 translation, where that's conveyed.

25 A Sure. We looked on -- now we're looking at new pages

1 because I have the old pages.

2 Q Right. We're both on the same page now, which is perfect.

3 A Correct. We are looking on page now, I believe is -- on 11. I
4 asked him if she was -- why he rape her. Was it 11? Was that page 11 that
5 we discussed that, ma'am?

6 Q Well, I think your position --

7 THE COURT: She wants you go in there and find it and tell us where
8 it is and tell us what it said. That's what she wants you to do.

9 MS. HAMERS: Thank you, Judge.

10 THE WITNESS: I understand. We have two copies here, and it was
11 on page 11.

12 BY MS. HAMERS:

13 Q Let's just go off the same copy that we're both looking at, that
14 we both went through it, that we both agree on, so we're -- no further
15 confusion.

16 A It's going to be -- probably it's a little difficult on the way -- of
17 the way things are actually said, however, on page -- it's going to be page 12
18 of the new form. It's going to talking --

19 THE WITNESS: Excuse me one second, Your Honor. [Reading
20 documents]. Okay. Here we go. We start talking about -- there we start
21 talking -- page 12.

22 BY MS. HAMERS:

23 Q Yes, sir.

24 A Okay. We slowly start going into, you know, where did you
25 guys have sex? And he starts saying, Well, we had sex, you know, just

1 leaving Las Vegas before Logandale in the backseat of the car. And then we
2 go further down, you know, You're telling her, you know, why you're angry. I
3 just pretended to be upset because I wanted to -- at the bottom of the page.
4 Because I wanted to, you know, get the truth out of her, but never to hurt --
5 never, never, never to hurt her. Okay.

6 Why did you get out of the car very upset? I'm on page 13
7 now. Why did you get out of the car very upset? Yes, yes. Then I told her --
8 he continued, You are, well, apparently, apparently, it looks like, I was very
9 upset. And then if you continue going down the page, he's talking about
10 being angry with her, of why those actions were done, of having sex with
11 Bianca because, you know, Bianca truly loves you. Yes, yes.

12 And then we continue to page 14. In the middle of page 14,
13 once again, I asked him, you know, that she wants to know, that she wants
14 to know the truth, and she wants to know why you rape her today. And he
15 goes, No, no, it wasn't -- it wasn't from the heart maybe. Maybe what I did,
16 but it wasn't because of any anger towards her. It's maybe because I feel
17 angry towards that person, towards the man that I don't know. He's like this,
18 no, no, no. Just to clarify, it's more like minimizing something where you
19 start Spanish --

20 Q Okay. Wait, wait. Let's back up because I just want to be
21 really clear when you get off the transcript and you're actually saying --

22 A Okay. I'm sorry.

23 Q Now you have some clarification because what's actually said
24 there, and I'm just going to read your question and his answer: What she
25 wants to know, why I believe I ask her, but I told her that I was going to tell

1 the truth. She wants to know, yes, she wanted to know the truth, and she
2 wanted to know why you raped her today.

3 And Mr. Martinez answers, No, no, it wasn't from my heart
4 maybe what I did, but -- and it wasn't because of anger towards her. If not,
5 maybe because I feel anger towards that person, toward that man. I don't
6 know who he is. I have not investigated his life yet. I don't know what
7 significance he has in her life because she doesn't tell me anything. Why
8 doesn't she introduce him to me? Tells me he is a friend, like that. Why not?

9 That's what we're referring to, that section right there?

10 A That is correct.

11 Q Okay. And so what you're saying is, your own interpretation
12 of that or the way that should be interpreted is, he's saying that he raped her
13 because he was angry?

14 A Correct.

15 Q Okay. So there's no point in this interview where you ask him
16 flat out, Why did you rape her, and he says, Because I was mad; right?

17 A Well, I mean, the bottom of page 14, that's what we agreed on.
18 It states, you know, Why did you rape her? You go to the top of 15 --

19 Q Right. What you stated, and I think we can agree on this, you
20 and I both listened to this tape --

21 A Uh-huh.

22 Q -- and the jury will have this to see because they're going to
23 have their own transcript, and at the bottom of page 14, it says, Illegible
24 coughing; right?

25 A Correct.

1 Q And you're saying that there was missing from that a question
2 where you asked, Why did you rape her, and you can't hear it because he's
3 coughing; is that right?

4 A You could hear it because we were all -- we all heard it. Are we
5 in agreements with that?

6 Q Well, I wouldn't know. I don't speak Spanish. But I am in
7 agreement that we're sticking with one question right there you say is
8 missing, Why did you rape her; right?

9 A Correct.

10 Q Okay. So that question would read, and this is you speaking,
11 Bianca, she told me one thing. She said, I love him a lot. He is my family, but
12 I feel very dirty with what he did and what got in his mind. What did he
13 want? And then it says, Illegible coughing. And you're saying what is there
14 is, Why did you rape her?

15 A Correct.

16 Q And then the answer that he gives you is, In all of this, Officer,
17 my only intention was to get a reaction from the man, if there was something
18 between them. Right?

19 A Correct.

20 Q So that, again, is where you're saying that you asked him why
21 did he rape her and that he's telling you that he raped her; right?

22 A Correct.

23 Q So it's not a matter of what's quoted in the police report where
24 it says, Because I was mad?

25 A Correct. But at the bottom of the page -- in the middle of page

1 15, though --

2 Q Yeah, I know page 15.

3 A When he answers, when Martinez answers, The action what I
4 did was just -- I did jokingly.

5 Q Where are you referring to?

6 A In the middle of the page.

7 Q On page 15? Okay. So -- but that -- let's be real clear because
8 that's in response to a different question; right? It was this, She was very
9 scared because of what you did to her today. She had never seen you in that
10 way in your life, in her life, and, well, with the knife, threatening her with the
11 knife, telling her, I'm going to kill you. Let's talk. We're leaving Las Vegas.

12 So that wasn't a question particularly to rape. That was a
13 different question, and what he says is, Everything that would have been said
14 was jokingly because there's 16 years of proof of what I did for her, proof of
15 16 years, I believe. Right?

16 A Well, two pages approximately. We're all talking about sex, and
17 here it says, What you did to her today, which is referring to the rape.

18 Q Okay. And so the jury will have their own transcript to look at,
19 and they can draw their own conclusions. It's just a matter of your taking
20 these words, and you're saying that that's an admission to raping her because
21 he was mad? It's not a matter of those words actually being said?

22 A He did -- he said jokingly in the particular answer, correct.

23 Q Okay.

24 THE COURT: Okay. I think we've got that -- everybody's point, and
25 the jury is going to decide. Let's move on. Anything else with him?

1 MS. HAMERS: No, Judge.
2 THE COURT: Anything else?
3 MS. NYICOS: No, Judge.
4 THE COURT: Thanks, Detective. Appreciate your time, and I know
5 you worked overtime last night. Thank you very much. Any Defense
6 witnesses?
7 MS. HAMERS: Yes, Judge. The Defense -- Court's indulgence.
8 THE COURT: Old what's-her-face is waiting out in the hall?
9 MS. HAMERS: That's correct, Judge.
10 THE COURT: Well, go out and get her.
11 MS. HAMERS: Maria.
12 THE COURT: Maria. Can we have Maria, Vinny, please.
13 MS. HAMERS: And, Judge, Maria needs the use of an interpreter.
14 That's why we had to -- it looks like one's disappeared.
15 THE COURT: Maybe the interpreter is out there with her.
16 MS. HAMERS: And it's Miss Maria Diaz.
17 MR. BATEMAN: We have to call for another interpreter.
18 THE COURT: Okay. Call somebody else, and we'll get Ms. Diaz --
19 Ms. Diaz, just wait outside a second because -- oh, we have an interpreter?
20 MS. HAMERS: Well, she's our interpreter, Judge.
21 THE COURT: No? Oh, okay. Martin is getting us an interpreter.
22 Have Ms. Diaz wait outside. Call somebody else, and we'll call Ms. Diaz on as
23 soon as we get an interpreter. Go ahead.
24 MS. HAMERS: Judge, that's our last witness.
25 THE COURT: You've only got one? Okay. Then we'll just be at ease

1 for a second.

2 MS. HAMERS: And, Judge, I don't know if it was clear, we admitted
3 by stipulation the statement.

4 MS. NYICOS: Mr. Paulson and I did that.

5 THE COURT: That's correct. While you were out talking to your
6 witness, we cleared up the record on that with your co-counsel.

7 MS. HAMERS: Thank you, Judge.

8 [Court at ease.]

9 THE COURT: Ms. Nyicos, Ms. Hamers, come up here a second. I just
10 want to touch bases on scheduling.

11 [Bench conference.]

12 THE COURT: Okay. Well, all we're doing, ladies and gentlemen, is
13 trying to figure out the time schedules, and it looks like we're actually well
14 ahead of schedule, and we're going to be able to have this witness, take a
15 quick break. In fact, we'll take a quick break now so that we can have the
16 witness and do the rest of our business.

17 The instructions are all done. We'll go right through that. We
18 think we'll finish -- they'll argue the case and get it to the jury between 11:45
19 and 12:30. So we're going to take a little restroom break, and then we're
20 going to come back and plow through till then.

21 The good new is, that if you are deliberating over a meal, the
22 County has to buy you your meal. So we'll get you that. I'm going to have --
23 I'm going to have -- I'm going to have Chermaine and Vinny get together with
24 you and kind of figure out what you'd like, and we'll -- what we'll do is order
25 lunch and get it ready in the jury room so you can eat and work at the same

1 time, and you don't have to waste an hour doing that, and that will expedite
2 things. Yes, sir, what's your question?

3 JUROR NUMBER 10: I have a question of procedure. When we
4 deliberate, do we get these reports?

5 THE COURT: Yes.

6 JUROR NUMBER 10: Like the report that Franklin made?

7 THE COURT: You will get everything that has been admitted into
8 evidence, and anything that is not admitted into evidence, you can't get even
9 if you ask.

10 JUROR NUMBER 10: Okay.

11 THE COURT: Okay. So --

12 JUROR NUMBER 10: Thank you.

13 THE COURT: So everything that's been admitted. What happens is,
14 Vinny brings it in. They'll bring the instructions. They'll bring the verdict
15 form. He'll take care of you. Okay. Let's take a ten-minute restroom break,
16 and then we'll just go.

17 Don't talk about the case. Don't read, watch or listen to any
18 report on the case. Don't think about the case. Don't form any opinion on
19 the case. See you in ten minutes, and we'll be ready to go.

20 After you get to the restroom, kind of hang out there, and I'll
21 have Vinny and Chermaine talk to you and get a flavor for what you want to
22 eat, and we'll have it ready for you.

23 [Jury exits courtroom.]

24 [A short break was taken.]

25 THE COURT: Okay. Bring them in. Let's go.

1 [Jury enters courtroom.]

2 THE COURT: Okay. Back on the record in Case Number C226586,
3 State of Nevada versus Freddy Martinez. Let the record reflect the presence
4 of the Defendant, his counsel; counsel for the State. All ladies and gentlemen
5 of the jury are back in the box. Ms. Hamers, call your next witness.

6 MS. HAMERS: Thank you, Judge. The Defense calls Ms. Maria Diaz.

7 THE COURT: Come on up here, ma'am.

8 **MARIA DIAZ,**

9 having been first duly sworn, testified through an interpreter, as follows:

10 THE CLERK: Thank you. You may be seated.

11 THE INTERPRETER: Thank you.

12 THE COURT: Do me a favor, why don't the two of you switch so that
13 she's not blocking you when you tell the jury --

14 THE INTERPRETER: Your Honor, normally the jury might -- might want
15 to see the witness. That's why sometimes --

16 THE COURT: Okay. State your name, and spell your name for the
17 court reporter.

18 THE WITNESS: [Through the Interpreter] Maria Diaz.

19 THE COURT: Spell it.

20 THE WITNESS: M-a-r-i-a.

21 THE COURT: Diaz.

22 THE WITNESS: D-i-a-z.

23 THE COURT: Ms. Diaz, do you speak some English?

24 THE WITNESS: No.

25 THE COURT: No English at all?

1 THE WITNESS: No.

2 THE COURT: Okay. Go ahead.

3 MS. HAMERS: Thank you, Judge.

4 ***DIRECT EXAMINATION***

5 ***BY MS. HAMERS:***

6 Q Ms. Diaz, where do you live?

7 A [Through the Interpreter] Las Vegas, Nevada.

8 Q At what address?

9 A 4615 Lake Mead, Las Vegas Boulevard. ZIP code, 89115.

10 Q Is that a mobile home park?

11 A Uh-huh. Yes, trailers.

12 Q How long have you lived there?

13 A Two years.

14 Q And do you know Bianca Hernandez?

15 A Yes.

16 Q How do you know her?

17 A Because she was my neighbor before.

18 Q When was she your neighbor?

19 A About -- I don't remember when she left.

20 Q Okay. Did she live in the same trailer park as you?

21 A Yes, she was my neighbor.

22 Q And do you know Freddy Martinez?

23 A Yes.

24 Q Did he also live in the same trailer park?

25 A Yes.

1 Q Who did he live with?
2 A With Bianca.
3 Q How long did he live with her there?
4 A About a year or more.
5 Q And were you at the trailer park first or were they at the trailer
6 park first?
7 A We were there first.
8 Q And did they move in separately or did they move in together?
9 A They came together.
10 Q And after they came together, were they both living inside the
11 trailer?
12 A Yes.
13 Q Was anyone else living there with them?
14 A Her son.
15 MS. HAMERS: I don't have any other questions, Judge.
16 THE COURT: Mr. Bateman?
17 MR. BATEMAN: No, Your Honor.
18 THE COURT: Okay. Thank you.
19 THE WITNESS: [Through the Interpreter] Can I leave?
20 THE COURT: You may. Any other witnesses? Ms. Hamers, any
21 other witnesses?
22 MS. HAMERS: No, Judge. The Defense would rest at this time.
23 THE COURT: Any rebuttal?
24 MR. BATEMAN: No, Your Honor.
25 MS. NYICOS: No, Your Honor.

1 THE COURT: The evidence is in?

2 MS. NYICOS: It is, Judge.

3 THE COURT: Okay. Vinny, will you give each of these to one of the
4 jurors, please.

5 Okay. That's the evidence, ladies and gentlemen. Now, as I
6 told you, is I give you the instructions on the law. As I say, we worked pretty
7 hard simultaneously with you to just update these and have them ready so we
8 don't waste your time at this juncture.

9 What the law says is I have to read these to you. What I found
10 after decades of doing this, the best way to do it is to give each a set. It
11 makes a lot more sense when you're reading along with me. You don't have
12 to try and take notes of what I see. When you get to the jury room, you don't
13 have to pass a set around. You can each have your own set to kind of
14 expedite things and --

15 MR. BATEMAN: Judge, may we approach just very briefly?

16 THE COURT: Yeah.

17 MR. BATEMAN: Thank you.

18 THE COURT: Also, when the lawyers are arguing, sometimes they'll
19 talk about Instruction 12 or 28. It's easy for you to turn to it. That said,
20 because -- oh, we've got a mistake?

21 MR. BATEMAN: No. May we approach?

22 THE COURT: Yeah.

23 [Bench conference.]

24 THE COURT: Okay. What I'm saying is, even though I know that
25 you can all read, and what I'd like to do is say, Read it and raise your hand,

1 that's not the way it works. So bear with me. It'll take about 15 minutes.

2 [The Court reads the instructions to the jury; not transcribed.]

3 THE COURT: Okay. Here's the verdict form. There are four charges
4 as you already know, and each of them have several choices. For example,
5 the first charge is burglary with a weapon, burglary without a deadly weapon
6 or not guilty. The way to approach this is, you take each charge, start from
7 the top and work down. The top obviously is the most serious, and the
8 bottom, the default position, is not guilty, and ask yourself, has the State
9 proved all the elements of this beyond a reasonable doubt? If the answer is
10 yes, you check that box, and you don't have to go on. If the answer is no,
11 you go to the next level, the next level, the next level. And ultimately, as I
12 say, not guilty is always the default position if the State hasn't proven beyond
13 a reasonable doubt the elements of any of the possibilities.

14 So when you have the verdict form completed, you'll have one
15 box checked in each of the four counts, and the other boxes will all be blank.
16 It needs to be dated and signed by the foreperson. When that is done, you
17 will be completed. Mr. Bateman.

18 MR. BATEMAN: Thank you, Your Honor.

19 **STATE CLOSING ARGUMENT**

20 MR. BATEMAN: Ladies and gentlemen, on August 16th of last year,
21 Freddy Martinez was a man with a mission. He woke, obviously, quite early in
22 the morning. Indeed, this began at 5:30 a.m. Waited outside the residence
23 that he had been able to determine Bianca and her new boyfriend Jose' were
24 living in. When Bianca came out to warm up her car, he laid in wait, came
25 from a tree, jumped a fence, had a knife, got in her car, pointed it to her, told

1 her to drive. He did this quite frankly or quite likely for a number of reasons.
2 He was insanely jealous. He was obsessed. Perhaps he loved; perhaps he
3 lusted after Bianca Hernandez.

4 You've heard a lot of evidence about what the relationship was
5 like for the 16 years the Defendant had come from Honduras. You heard
6 evidence that, in fact, Bianca was married to Freddy Martinez's brother David.
7 Had a son with his brother David, not with Freddy Martinez. When the
8 relationship between Bianca and David ended, Bianca was kind enough to
9 continue to allow Freddy Martinez to live with her and help her raise her son
10 Franklin as an uncle and as a brother.

11 But, in any event, regardless of what actually had taken place
12 the prior 16 years between Bianca and Freddy Martinez, what we do know is
13 what happened basically from about a few months prior to August 16th and
14 then what happened on August 16th.

15 Ultimately, your job in this case boils down to whether you
16 believe Bianca Hernandez and what she told you about the current condition
17 of the relationship between herself and Freddy Martinez and what happened
18 on August 16th of 2006. This case turns on Bianca Hernandez and whether
19 you believe her or not.

20 I want to direct your attention to a couple of instructions of law
21 that the Court provided you. First is Instruction Number 16. There is no
22 requirement that the testimony of a victim of sexual assault be corroborated,
23 and her testimony standing alone, if believed beyond a reasonable doubt, is
24 sufficient to sustain a verdict of guilty.

25 Ladies and gentlemen, what that instruction means is, if the

1 State had presented to you Bianca Hernandez and no other evidence and she
2 testified and you believed her rendition of the facts of October -- excuse me.
3 August 16th of 2006, you could convict Freddy Martinez of the charges that
4 we have alleged.

5 Instruction Number 29, ladies and gentlemen, talks a little bit
6 about what you should look for in a witness' testimony. In deciding what the
7 facts are, you may have to decide what testimony you believe and what
8 testimony you do not believe. You may believe all of what a witness said or
9 only part of it or none of it. In deciding what testimony to believe, consider
10 the witness' intelligence, the opportunity the witness has to see -- had to have
11 seen or heard the things testified about, the witness' memory, any motives
12 that the witness may have for testifying in a certain way, the manner of the
13 witness while testifying, whether that witness said something different at an
14 earlier time. The general reasonableness of the testimony. And importantly to
15 this case, ladies and gentlemen, the extent to which the testimony is
16 consistent with any other evidence that you believe.

17 In this case the State isn't asking you to believe Bianca
18 Hernandez all by itself. The State didn't put up Bianca Hernandez and then
19 rest. The State put on a number of witnesses and provided you with exhibits
20 that you'll have to take back with you that were admitted into evidence, and
21 all this evidence corroborates; in other words, it supports what Bianca
22 Hernandez said. That's what I'm asking you to do when you go back and
23 deliberate, to take a look at all this evidence, see if it corroborates what
24 Bianca Hernandez said.

25 Obviously, between the time that the vehicle left Jose's sight

1 and ended up in Mesquite when Bianca Hernandez was able to escape, the
2 majority of that period of time, the only two people that were there were
3 Bianca and Freddy Martinez. But when you're looking at determining what
4 happened in this case and whether Bianca Hernandez is telling the truth, what
5 else in this case do you have to look for?

6 You have an ability to look at evidence about what happened
7 right before this took place, you have an opportunity to some extent to look at
8 what happened during the course of the kidnapping from Las Vegas to
9 Mesquite, and you have evidence of what happened after. This is all evidence
10 that you need to take into account in determining whether Bianca Hernandez
11 was telling the truth.

12 What happened before October 16th -- excuse me. August 16th,
13 2006? It's quite clear from the evidence that, in fact, Bianca Hernandez had
14 moved out of the trailer that she was living in with Freddy and Franklin and
15 had moved in with her current boyfriend of some period of time, Jose', at the
16 Lamont address. It appears clear that Bianca Hernandez did not or was not
17 entirely interested in telling Freddy Martinez her every movement, where she
18 was going, what was going on with Jose'. She believed that was her
19 business.

20 But what is absolutely clear, regardless of what is alleged to
21 have occurred over the previous 16 years, Bianca Hernandez was not living
22 with Freddy Martinez and was, in fact, living with Jose'. There was not any
23 sort of a relationship this period of time right up to August 16th between
24 Bianca and Freddy Martinez.

25 Why is that important? It's important when you take into

1 account the fact of the morning of August 16 when Freddy Martinez is
2 waiting for Bianca outside of Jose's house. He managed to find out where
3 Jose' lives -- obviously it's in a similar area -- and is waiting outside at 5:30 in
4 the morning. Isn't that important? 5:30 in the morning when Bianca and
5 Jose' would be going to work. Why would Freddy Martinez be getting up at
6 5:30 in the morning to go confront anybody at this point? Because he had a
7 criminal intent in mind that morning.

8 He was outside. When he saw Bianca come out of the house,
9 he jumped the wall, charged her car, her car that she says she owns, it's
10 registered to her, and she was in the driver's seat. How do we know that this
11 is the case? Well, Jose' saw it. In addition to what Bianca Hernandez told
12 you that Freddy Martinez got into the passenger side with a knife and
13 threatened her with a knife, Jose' saw it.

14 Jose' comes out of his house, sees Freddy Martinez charging
15 the car, sees Freddy Martinez point whatever it is he had in his hand at him
16 and then get in the passenger seat of the vehicle. He sees Freddy Martinez
17 point the knife towards Bianca, and he said within seconds the two of them
18 took off in the vehicle. Bianca said she didn't want to go.

19 They leave the area, and Jose' has Franklin call 9-1-1. If Jose'
20 is not telling the truth, why would he have Franklin call 9-1-1? Ultimately,
21 this kidnapping began at that particular moment. The burglary of her vehicle
22 began at that particular moment, and the car drives off. It heads towards
23 Nellis to Las Vegas Boulevard, gets on the 15 heading northbound.

24 Bianca tells you that Freddy had a number of opportunities to
25 stop the car. In fact, he did. He pulled her into the backseat. He pulled her

1 into the front seat. She made attempts to get police officers to see what was
2 going on and was unsuccessful. It was at this period of time that Freddy
3 Martinez decided to be physical again with Bianca Hernandez. He hits her.
4 He pulls her hair, and this is in addition to what Bianca tells you, is Freddy
5 Martinez, when he initially gets in the car, stabs her with the knife that he had
6 in his hand.

7 Jumping ahead to the testimony of the nurse in this case,
8 perhaps if Bianca Hernandez's testimony standing alone that Freddy Martinez
9 stabbed her in the leg was all you had, maybe you would, maybe you
10 wouldn't believe her. But she goes into this -- this SANE examination, this
11 sexual assault examination, what does she have on her leg? Exhibit Number
12 28, three wounds, fresh and frequent -- or excuse me. Immediate from the
13 wounds that were inflicted, consistent with her testimony on the stand.

14 She tells you that the car goes towards Mesquite. They end up
15 in Mesquite, but along the way, it's very important to note testimony that was
16 consistent with what she was saying. They pulled off when they ran out of
17 gas. They pulled off at a gas station that Mr. McPheeters came in and
18 testified existed up near Glendale off of the 15.

19 He says that this individual, a Hispanic male, caught his eye with
20 a gas can, had gone up to multiple individuals to get gas to put in the car, that
21 it was unusual that the car parked down the ways a little bit -- and I believe
22 that the juror's question was, was this someplace like out in the open or was
23 it a blocked off wall? Turns out it was a blocked off wall. Why would he park
24 the vehicle there? So that Bianca Hernandez can't get out and go in and try
25 to escape or to try to alert someone of what was going on.

1 What she tells you is this happened. We went to the gas
2 station. Freddy Martinez was trying to get gas. Another witness, a lay
3 witness with no motive to lie, comes in and says, Yeah, I kind of saw
4 something, and it sure seemed a whole lot similar to what Bianca Hernandez
5 said.

6 The bruise -- excuse me. Bianca Hernandez tells you that during
7 the course of this trip from Las Vegas to Mesquite that she was sexually
8 assaulted, and that's ultimately what we're here about in this case, is that a
9 sexual assault took place on the side of the road on the 15 northbound
10 between here and Mesquite.

11 Besides her testimony confirms what took place on the side of
12 the road in Mesquite -- well, first, there's no dispute that there was sexual
13 intercourse that took place. DNA was found in her vagina, that of Freddy
14 Martinez. Freddy Martinez admits that it took place. What's consistent with
15 her claims that this was not something she wanted to do, it was something
16 that was against her will, well, number one, there was a knife.

17 You've seen the knife. She said the knife was with her the
18 whole time -- or excuse me. Freddy Martinez had the knife the entire trip.
19 Indeed, the evidence shows that scratch marks consistent with a knife, Jose'
20 saw the knife, Freddy Martinez, if you'll look at his transcripts, said he had a
21 knife. That's not consistent with consensual sex, but it's certainly consistent
22 with her story that Freddy Martinez had a knife.

23 The knife was found on Freddy Martinez by the police officers,
24 and, ultimately, when Bianca has the sexual assault examination, what's
25 found? It just so happens, an abrasion that's consistent with forcible sex,

1 nonconsensual sex.

2 MS. HAMERS: Judge, I'm going to object. That misstates the
3 evidence. It's also consistent with consensual sex.

4 THE COURT: It doesn't misstate the evidence. You can argue that
5 same thing, but it is a fair statement of the evidence from his point of view.

6 MR. BATEMAN: This is all evidence that you can take into account
7 when judging the credibility of what Bianca Hernandez told you. When they
8 finally arrive in Mesquite, what is consistent again? She gets to Mesquite, is
9 able to escape from the vehicle, finds a woman who directs her to an
10 apartment. Immediately 9-1-1 is called. Immediately police come out. This is
11 an immediate reporting of what basically took place.

12 Also consistent with someone who has just had these crimes
13 committed against her. She didn't wait. She didn't call Jose' and say, Come
14 up and give me a ride. She didn't, you know, report these crimes a week later
15 when maybe she was angry. She did it right then.

16 What did the police officer -- the Mesquite police officers who
17 came in and testified tell you about the demeanor of Bianca Hernandez when
18 they finally came into contact with her? "Hysterical" was the word that one
19 of the Mesquite Police Department officers used. Is her hysterical behavior
20 afterwards, crying -- she was crying during the SANE examination, is that not
21 consistent with her story about what took place, her story that these crimes
22 that were committed against her were proven?

23 All of these facts are independent of what Bianca Hernandez
24 told you, but they all go towards her credibility. They all help you as a jury to
25 determine what actually took place in this particular case, and I hope you look

1 at all of these things in total and make -- when you're making your
2 determination.

3 Now, in this case we've charged the Defendant with four
4 crimes. I'm not necessarily going to go entirely in order. One criminal charge
5 is burglary with use of a deadly weapon. Now, burglary as it's defined in
6 Nevada, is if someone brought in that -- any defendant that enters some sort
7 of an establishment, a building, a structure, a vehicle with the intent to do a
8 particular crime when they get that structure, whether they actually,
9 ultimately commit that crime that they intend to do is guilty of burglary.

10 Now, all these crimes are alleged to have been committed with
11 a deadly weapon. I don't think there's any question in this particular case that
12 the entire time that this all was going on Freddy Martinez had a knife with
13 him. Indeed, the knife was found on him afterward and evidence of use of
14 that knife were found, unfortunately, on Bianca Hernandez.

15 In this particular case what are the facts that surround the
16 burglary charge? The burglary charge is when Freddy Martinez with a knife
17 enters the vehicle, Bianca's vehicle, with the intent to kidnap her. What are
18 some of the facts? The running from -- well, I think the first fact would be at
19 5:30 in the morning. That's kind of an unusual time for this to all be taking
20 place. But in addition to that, you have Freddy Martinez jumping a wall,
21 coming out of a tree, pointing this knife towards Jose', getting in the
22 passenger seat, directing the knife towards Bianca, whether it was at her
23 head, ultimately stabbing her in the leg and telling her to drive.

24 The way you determine someone's intent, ladies and gentlemen,
25 is spelled out for you in Instruction Number 7. The intention with which entry

1 was made is a question of fact, which may be inferred from the Defendant's
2 conduct and all other circumstances disclosed by the evidence. We can't get
3 up here and tell you exactly what was in Freddy Martinez's mind. Only he can
4 say that, but we can certainly look at his actions to determine what it was he
5 was thinking when he entered that vehicle that morning.

6 And isn't the fact that he basically made at knifepoint,
7 demanded, forced Bianca Hernandez to leave that particular area after he
8 stabbed her in the leg, after he pointed the knife at her neck and head towards
9 Nellis, isn't that evidence of his intent to kidnap her?

10 She certainly wasn't allowed to leave. He certainly entered the
11 vehicle. That can easily be inferred with that intent because that's
12 immediately what happened, according to Jose', within seconds they take off.
13 The burglary was committed because he had possession of that knife, he
14 entered the vehicle, and he kidnapped initially right from the get-go Bianca
15 Hernandez.

16 It's important to note that with regard to the burglary charge
17 whether Bianca would have given him consent at the time to enter the vehicle
18 is of absolutely no consequence. It's what's going on in Freddy Martinez's
19 head when he enters that vehicle that's important and his intent when he
20 enters that vehicle. Whether he had the consent of Bianca Hernandez or not,
21 if his intent is to commit a felony kidnap when he enters that vehicle, that
22 crime is committed.

23 Mr. Martinez is also charged with kidnapping with use of a
24 deadly weapon. There are two types of kidnaps. There is a first degree
25 kidnap and a second degree kidnap, and those are explained to you in

1 Instructions 10, 11, 13 and 14. We've charged Freddy Martinez with first
2 degree kidnap, ladies and gentlemen, and Instruction Number 10 tells you
3 what first degree kidnap is.

4 Essentially, every person who abducts, conceals, carries away a
5 person against their will, essentially, by any means whatsoever with the intent
6 to hold or detain the person, in this particular case, for the purpose of
7 committing sexual assault. Second degree kidnapping is essentially the same
8 thing, but without the intent to commit sexual assault.

9 So if Freddy Martinez when he held a knife to Bianca
10 Hernandez, made her drive off, made her eventually get into the passenger
11 seat of the vehicle while he got in the driver's seat, wouldn't let her leave the
12 vehicle, from the entire point that he left Las Vegas to the point where he
13 finally got up to Mesquite, during that period of time he didn't have the intent
14 to commit sexual assault find him guilty of second -- second degree
15 kidnapping.

16 But, ladies and gentlemen, I go back to that instruction that I
17 just told you. The intention -- the intentions of Freddy Martinez can be
18 determined by what he does. That kidnapping was effectuated, essentially
19 was committed the moment that that car drove off that morning, and it
20 continued all the way to Mesquite. But if you took a snapshot, if you took a
21 picture as that car was pulling off down the street, the crime is committed at
22 that point. What at that point was Freddy Martinez's intent to do with Bianca
23 Hernandez?

24 Well, his intent had to be what he ultimately decided to do on
25 the side of the road, on the side of the freeway halfway between Las Vegas

1 and Mesquite. He pulled over in an area where nobody could see him. He
2 waited a little while. I think if you remember the testimony, he got outside
3 and probably saw that person walking the dog right there. He may have
4 waited a little bit of time for that person walking the dog to get far enough
5 way. He had the knife in his hand. He demanded that Bianca Hernandez get
6 into the backseat.

7 If this was simply a plan to make Jose' upset such that he -- or
8 in demonstrating that he could take Jose's girlfriend, why ultimately go on the
9 side of the road on 15 and sexually assault Bianca Hernandez? Unless that
10 was his intent right from the get-go, why would you do that? What I would
11 also suggest, ladies and gentlemen, is, some evidence at the end of the
12 kidnapping also demonstrates that that was his intent.

13 Much of the testimony developed talked about what had
14 happened immediately upon being kidnapped, what happened in Las Vegas,
15 getting in and out of the front seat, the backseat, changing the driver's,
16 getting on the 15, and ultimately culminated in the sexual assault that
17 occurred halfway between here and there.

18 What's interesting is, when they finally get up to Mesquite, it
19 sure seems like Freddy Martinez gets off appearance. He gets up to Mesquite
20 and says, I'm going to meet some friends about a job. Stay in the car.
21 Doesn't seem to be too worried about the fact that she's now in an extremely
22 -- or advantageous position to get away from him.

23 Could it be that at that point when he finally got up to Mesquite,
24 Freddy Martinez had done what he had gone there to do that morning? That
25 he had taken what he came there to take that morning and was at this point

1 far less concerned about having Bianca Hernandez with him for the long term.

2 This wasn't a second degree kidnapping, ladies and gentlemen.
3 It certainly wasn't a false imprisonment. If you look at actually taking
4 somebody at knifepoint from Las Vegas to Mesquite, sexually assaulting them
5 along the way, punching them, stabbing them, it amounts to a little bit more.

6 There's some additional instructions that I'll go over briefly with
7 regard to kidnap, ladies and gentlemen. If you'll look at Instruction Number
8 14. In order for you to find the Defendant guilty of kidnapping -- this could be
9 a first or a second -- and an associated offense of sexual assault, you must
10 find the following -- one of the following: That any movement of the victim
11 was not incidental to a sexual assault; that any incidental movement of the
12 victim substantially increased the risk of harm to the victim over and above
13 that necessarily present in a sexual assault. There's a few more there.

14 What this instruction is essentially talking about, ladies and
15 gentlemen, is -- and this would be the same applicability, for instance, if a
16 defendant was charged with first degree kidnap or robbery. If someone goes
17 into a convenience store with a gun with the intent to rob the cashier and
18 makes them, you know, Go get in the backroom so that I can take whatever's
19 in the cash register, there has to be something in addition, some additional
20 movement, some additional risk that you're putting the victim in in that
21 particular case. Some independent significance for moving them from one
22 place to another to effectuate your robbery for you to be convicted of both
23 the robbery and the kidnap.

24 You can't -- if you point a gun, for instance, at somebody that
25 you're robbing, a clerk, essentially that clerk isn't allowed to move. They're

1 not allowed to go anywhere. In a sense they're kidnapped, but you're doing it
2 to effectuate the robbery. You can't be convicted of both.

3 In a case like this when you're talking about the kidnap and a
4 sexual assault and whether you can be convicted of both, there has to be one
5 of these one through five on Instruction Number 14, some evidence to
6 demonstrate that the movement, the taking Bianca Hernandez from Las Vegas
7 to Mesquite, to -- concealing her in the vehicle --

8 MS. HAMERS: Judge, I'm going to object. I think that misstates the
9 law. There has to be more than some evidence. The jury actually has to find
10 that beyond a reasonable doubt.

11 MR. BATEMAN: That's fine.

12 THE COURT: Okay. Sustained.

13 MR. BATEMAN: You do have to find that beyond a reasonable doubt.
14 Did the movement of Bianca Hernandez in this particular case substantially
15 increase the risk of harm to her over and above what was necessary to
16 commit the sexual assault? Technically, technically Freddy Martinez could
17 have sexually assaulted Bianca Hernandez right there in front of the apartment
18 on Lamont. He had the present ability. He had a knife on him.

19 But to effectuate it, he ultimately had to move her a significant
20 distance in order to get alone with her, to make sure that nobody was around
21 to aid her. He, in fact, went so far as basically the middle of nowhere out in
22 the desert. It's certainly sufficient evidence beyond a reasonable doubt to
23 convict of both sexual assault and kidnapping in this case, Your Honor -- or
24 ladies and gentlemen.

25 Briefly, battery. We've charged Mr. Martinez with battery with

1 a deadly weapon. I think that the evidence provided to you from the nurse in
2 this case, State's Exhibit 28, demonstrates quite clearly a battery with a
3 deadly weapon. She said that he specifically -- Bianca Hernandez downplayed
4 it somewhat -- touched her, put pressure on her leg with a weapon.

5 You'll notice in the instruction that battery is the willful and
6 unlawful use of force or violence upon the person by another person -- of
7 another. It doesn't have to actually cut them. Technically, if he simply put
8 the weapon to her leg without producing any injury at all, that's a battery with
9 use of a deadly weapon. He went a little further. He decided to cut her three
10 times.

11 Finally, ladies and gentlemen, sexual assault. Sexual assault
12 boiled down is sex without consent. Your instructions in this particular case
13 include 15, 17 and 18. A person who subjects another person to sexual
14 penetration against the victim's will or under conditions in which the
15 perpetrator knows or should know that the victim is mentally or physically
16 incapable of resisting or understanding the nature of his conduct is guilty of
17 sexual assault.

18 In this particular case, Bianca Hernandez told you that, in fact,
19 she did not want to have sex with Freddy Martinez. That, in fact, he pulled
20 her out of the car at knifepoint, put her in the backseat at knifepoint, had the
21 knife in his hand the entire time and sexually penetrated her with his penis in
22 her vagina.

23 There was a question about whether she had the temerity at
24 that time to say no when she had the temerity to say no when he asked her
25 for money later. There is an instruction, ladies and gentlemen, that I think is

1 important to answer that question. It's Instruction Number 17, physical force.
2 Physical force is not necessary in the commission of sexual assault. The
3 crucial question is not whether a person was physically forced to engage in
4 sexual assault, but whether the act is committed without his or her consent or
5 under conditions in which the Defendant knew or should have known the
6 person was incapable of giving his or her consent.

7 There is no consent where a person is induced to submit to the
8 sexual act through fear of death or serious bodily injury, and the person is not
9 required to do more than his or her age, strength, surrounding facts and
10 attending circumstances make it unreasonable for him or her to manifest
11 opposition to a sexual assault.

12 Bianca Hernandez didn't have to struggle. She didn't have to
13 put up a fight. She didn't have to say "no" ten times for this to be a sexual
14 assault. She had just been kidnapped at knifepoint from Las Vegas, hit,
15 stabbed, her hair pulled, told various things along the way. She wasn't going
16 to see her son again, she wasn't going back to Las Vegas and was pulled off
17 in the desert and sexually assaulted.

18 She immediately reports this sexual assault. She doesn't think
19 about whether it's a sexual assault for some period of time. She immediately
20 reports it when she escapes Freddy Martinez's clutches. She goes to a SANE
21 exam where a nurse conducts -- I believe the nurse said a two- to three-hour
22 examination, an evasive examination that includes taking photographs of her
23 vaginal area. She then comes in, actually this courtroom, in front of this
24 judge, counsel and 13 strangers and tells you that it happened, and she has
25 the injuries to prove it, according to the nurse.

1 And it really doesn't make a whole heck of a lot of sense, ladies
2 and gentlemen, why someone who had just been kidnapped would have been
3 taken all this way at knifepoint would suddenly feel aroused enough at this
4 point, Well, I think I'm going to have sex. Let's pull over on the side of the
5 freeway. If you believe that, if you believe that's the case, find Freddy
6 Martinez not guilty. Mark that box. That makes absolutely no sense, and it's
7 offensive.

8 MS. HAMERS: Judge, I'm going to object to that comment. It's
9 disparaging to the Defense to say that that's offensive.

10 MR. BATEMAN: That's not -- I didn't say anything --

11 THE COURT: It's not disparaging to the Defense, but I'm going to
12 strike the words "it's offensive." They're here to do their job, and they're
13 going to do it the best way they know how. Whatever they decide, we're
14 going to respect. Go ahead.

15 MR. BATEMAN: Thank you.

16 There's one last instruction with regard to sexual assault, ladies
17 and gentlemen. It's Number 18. It is a defense to the charge of sexual
18 assault that the Defendant entertained a reasonable and good faith belief that
19 the alleged victim consented to engage in sexual intercourse. If you find such
20 reasonable, good faith belief, even if mistaken, you can give a defendant the
21 benefit of the doubt and find him not guilty of sexual assault.

22 Importantly in this case, a belief that is based on ambiguous
23 conduct by the alleged victim, it is the product of force, violence, duress,
24 menace or fear of immediate or unlawful bodily injury on that person of
25 another is not reasonable and not in good faith.

1 The entire facts surrounding what took place where the
2 Defendant to say that, I was confused, she gave me mixed signals, is not
3 reasonable. It's not a defense. Sexual assault was committed in this case
4 with use of a deadly weapon because the Defendant had that knife with him
5 the whole time.

6 Ladies and gentlemen, you've heard the evidence in this case.
7 You'll have the evidence to take back with you. I'd ask that you look at the
8 evidence in total as a whole to determine whether the State has proved
9 beyond a reasonable doubt all four charges. It's quite clear that all the
10 evidence is consistent, entirely consistent and supports Bianca Hernandez,
11 Bianca Hernandez's account of what took place.

12 Her account of what took place consists of four crimes, the four
13 crimes we have alleged. We've proven those counts, all four of them, beyond
14 a reasonable doubt. I'd ask you to make a verdict of guilty on all four counts
15 when you come back from the deliberation room. Thank you.

16 THE COURT: Thanks. Ms. Hamers.

17 MS. HAMERS: Thank you, Judge.

18 **DEFENSE CLOSING ARGUMENT**

19 MS. HAMERS: Mr. Paulson talked to you-all yesterday about getting to
20 the truth. I think he even mentioned to you, The truth will set you free.
21 Right? In this case the truth ends with you guys. You're the fact finders.
22 You decide what's true. You decide what's believable, and you decide what's
23 credible. And what you're left with in this case is the testimony of a woman
24 who's being deceitful.

25 Don't get me wrong. This is not okay. Freddy's actions in this

1 case are not okay. There's no question about that, but you cannot believe
2 Bianca Hernandez's story. She told you that she had this relationship with
3 Freddy where she had at least lived with him. She had at least told us that
4 when she was in here on the stand. Jose' told you, No, Bianca told me that
5 he just lived in a storage and used the shower at my house. Bianca, on the
6 same note, tells Freddy, Nothing's going on with me and Jose'.

7 You know what she's doing here. She's playing both sides.
8 She doesn't want both of these guys to know what's going on. But if she's
9 got nothing going on with Freddy, why is she lying to Jose'?

10 They had a relationship here, and you know that. You know
11 that by the testimony. You also know she's willing to be untruthful about
12 that. When she talked to the police, she called Jose', Oh, the man I live with.
13 I went to rent a room from a family. She's willing to lie about these
14 relationships to make herself look better.

15 Does that mean a sexual assault can't occur? Absolutely not.
16 I'm not for one moment saying that because she had a prior sexual
17 relationship with that man that she couldn't be sexually assaulted. That's not
18 the point. The point is whether or not she's credible and whether or not you
19 can believe her testimony beyond a reasonable doubt when you've seen her
20 tell Jose' lies, Freddy lies, the police lies and then come in here and still deny
21 that relationship. If she's willing to do that, if she's willing to tell all those
22 stories, how can we believe what she says beyond a reasonable doubt?

23 There was no sexual assault in this case. There was sex. We
24 know there was sex. Everybody admits there was sex. DNA backs that up,
25 Freddy admits to that, but there was no sexual assault. Our DNA expert told

1 us, we can't have proof of sexual assault by DNA. The nurse came and
2 testified, Yeah, there's an abrasion. An abrasion can happen with sex assault;
3 an abrasion can happen with consensual sex. We don't have any torn
4 clothing. We don't have any injuries to support a sexual assault. Do not lose
5 sight of that.

6 There are injuries. She was hurt. Bianca's own testimony.
7 That has nothing to do with the sexual assault. These things didn't happen
8 during sex. He poked me with the knife or he stabbed me with the knife. He
9 grabbed my arm. These were things that happened during the sex. These are
10 things that happened in the car. Don't lose sight of that. Don't let this
11 Prosecutor tell you that this picture supports a sexual assault because it
12 doesn't. It supports a knife to her leg. That's what that corroborates. It does
13 not corroborate a sexual assault.

14 The State put her up here and wants you to believe what she
15 says about this sex beyond a reasonable doubt despite the fact that she's
16 being untruthful, untruthful with the police, untruthful with Freddy, untruthful
17 with Jose'. You can't do that. You can't believe her beyond a reasonable
18 doubt, and those are the circumstances we have. It is important to hold
19 someone accountable for what they have done, and clearly that man is in the
20 wrong in this case.

21 So let's talk about what he did. He showed up at their house
22 with a knife. He threatens Jose' with the knife. He gets in the car with
23 Bianca. This isn't okay. This isn't the way you deal with something. He
24 wanted to confront this woman, this woman that he obviously has strong
25 feelings for. Obviously isn't doing what he should. He is obsessed. He is

1 jealous. He is acting crazy. This is not the way you go about things.

2 He gets in the car with Bianca. He scares her. He threatens
3 Jose'. He has a knife with him, and she gets scratches from the knife. None
4 of these things are okay, and the evidence absolutely supports those things.
5 And if you believe that he got in that car, immediately put a knife to her and
6 took off with her, convict him of a kidnapping. If you believe she let him in
7 that car, sat there and talked to him, but at some point wanted to leave and
8 he didn't let her, convict him of a false imprisonment.

9 And Mr. Bateman is right. There's no doubt there was a
10 weapon here, but you cannot convict him of a first degree kidnapping. That
11 difference does revolve completely around Mr. Martinez's intent, and he is the
12 only person that can you tell his intent. You have his statement. You have
13 his words. I know listening to this detective, you can't tell what's in that
14 statement, and I don't blame you, but you'll have it. You'll have it right in
15 front of you, and you can read that, and you can read his words where he
16 over and over repeatedly says, I loved her. I wanted to know what's going
17 on. I wanted to scare that man because if he was a real man and another
18 rooster came around, he'd do something.

19 Yeah, none of this is good stuff, but it's also not having the
20 intent to commit a sexual assault. His intent was to get to the bottom of
21 what was going on, and he cannot be convicted of a first degree kidnapping
22 with the intent to be crazy, to be jealous, to question Bianca, to scare Jose'.
23 That doesn't make a first degree kidnapping.

24 Freddy didn't testify in this case. We talked about that in *voir*
25 *dire*. He didn't get up and testify, but you have the benefit of his story

1 because you have his statement. There's nothing he can add to that. He
2 doesn't have a signed consent-to-sex form. He doesn't have a videotape of
3 what went on. He can't prove to you consent, and he's not supposed to.
4 They're supposed to prove to you that there was no consent. There's nothing
5 more he can give you. You have his statement. Read it. Read his words.
6 They'll tell you exactly what he was thinking. And it's not normal, and it's
7 not okay because he's jealous over this woman, and he's trying to confront
8 her and her new boyfriend with a knife, but it's also not a sex assault, and it's
9 also not a first degree kidnapping.

10 Don't get confused on what the evidence shows here, and don't
11 decide that he's a bad guy and want to convict him of everything that the
12 State charged for that reason. Look at what actually happened, what you
13 actually have evidence of and look at the difference.

14 Do you have evidence of a battery? Do you have proof beyond
15 a reasonable doubt? It looks like it. Do you have that same thing for a sex
16 assault? You don't. So convict him of what they've proved beyond a
17 reasonable doubt, but don't go further than that.

18 Hold Freddy Martinez accountable. Convict him of what he did,
19 but you can't convict him of a sex assault. You can't convict him of first
20 degree kidnapping. You just haven't seen evidence of that. Think about what
21 evidence you have and what that actually proves. Don't decide because
22 there's a photograph and there's a nurse and there's an exam and there's a
23 DNA, so everything they charged must be true. Match that up to what you
24 have and convict him of what he did. Hold him accountable for what he did
25 and nothing more.

1 THE COURT: Thank you. Ms. Nyicos.

2 MS. NYICOS: Thank you, Judge.

3 **REBUTTAL CLOSING ARGUMENT**

4 MS. NYICOS: I'll make it pretty brief. I don't believe anyone is
5 disputing this is a deadly weapon. It's a knife capable of committing
6 substantial bodily harm or death. Deadly weapon. So on your verdict form,
7 anything that doesn't say deadly weapon, that's not the right choice. I don't
8 believe anyone is disputing battery with use of a deadly weapon. That's the
9 charge. Go ahead and convict on that one, too.

10 So let's talk about what is in dispute, and we'll start with the
11 kidnapping. Ms. Hamers just said to you that if you believe that Bianca let
12 Freddy Martinez into that car and they had a conversation and then she
13 decided to leave, then he's guilty --

14 MS. HAMERS: Judge, I'd just object. That misstates the argument.

15 THE COURT: I think she said "let" and not "led," but I'm not sure. I
16 heard "let."

17 MS. HAMERS: That would make more sense. That I believe.

18 THE COURT: Well, you were the speaker, Ms. Nyicos.

19 MS. NYICOS: I don't remember it word for word, but I know I didn't
20 say she led him anywhere.

21 THE COURT: I think -- I wrote down "let."

22 MS. NYICOS: Thank you, Judge.

23 We don't have any evidence she let him in the car.

24 MS. HAMERS: Judge, I'm going to object. It's burden shifting. It's
25 their burden to prove that the charges happened.

1 MS. NYICOS: Okay. I'll rephrase.

2 THE COURT: You could be wrong on that. I mean, you've argued
3 that arguably she let him in the car, and she's saying there's no evidence
4 which you could conclude that was the case. She's entitled to say that. You
5 don't have to put on any evidence. She's saying the evidence we put on, that
6 isn't a reasonable conclusion. Objection overruled. Go ahead.

7 MS. NYICOS: Okay. In fact, the Defendant doesn't even claim that
8 she let him in the car --

9 MS. HAMERS: Judge, same objection.

10 MS. NYICOS: Let me finish. -- in his statement that he gave to the
11 police.

12 MS. HAMERS: She's promising on the Defendant's --

13 THE COURT: I think the Defendant does claim that, so objection
14 sustained.

15 MS. NYICOS: Okay. Anyway, we'll move on.

16 He gets in the car in front of Jose', points this to her neck area
17 and then within seconds they drive off. That's not a false imprisonment. It's
18 a kidnapping. It's a kidnapping. So now we're in between first degree and
19 second degree, and that's for you to decide whether the purpose of pointing
20 this to her neck and making her drive off was to commit that sex assault.
21 And as Mr. Bateman argued, we don't know. We honestly don't know.

22 He tells the police that he wants to confront Bianca, that he
23 wants to scare Jose'. But if that's really what he wanted, he had Jose'.
24 Stopped him right at the door. He had this pointed at Bianca. Why not have
25 that confrontation right then and there? Why do you have to drive away?

1 MS. HAMERS: Judge, I'm going to object to the Prosecutor waving a
2 knife around in her entire rebuttal.

3 THE COURT: She can show it if she wants. Overruled. Just let her
4 finish her argument.

5 MS. NYICOS: Thank you. I'll put it away.

6 And, also, think about that drive in the car. She's driving at
7 first. When he stops the car the first time, if all he really wanted to do was
8 scare Jose' and confront her, why don't confront her then? What does he
9 do? He pulls her hair, puts her in the backseat, and then he drives off, and
10 then he stops again. Why not confront her then? He pulls her hair again and
11 puts her in the front seat and drives even further.

12 And then she tells you at some point she sees that there's a cop
13 car two cars ahead, and she's trying to grab the steering wheel and swerve
14 the car, and he pulls into a mobile home park. Why not confront her then?
15 He doesn't. What does he do? He hits her, tells her to shut up and then
16 keeps driving. And he drives halfway to Mesquite, pulls off on the side of the
17 road, puts her in the backseat, pulls down her pants and penetrates her
18 sexually.

19 And now let's talk about the argument that there was no sex
20 assault. Let's talk about how we get to this point because Defendant is
21 asking you to believe that after having a knife pointed at her neck, that after
22 being --

23 MS. HAMERS: Judge, I'm going to object. The Defendant isn't asking
24 them to believe anything. It's the State's case. It's the State's charges. It's
25 the State's burden to prove the charges.

1 THE COURT: No, you got up -- it is the State's burden, and they
2 understand that. But you got up and made this argument, and what she's
3 saying, you're asking them to believe this. That's what she's saying, and
4 that's what you're arguing.

5 MS. HAMERS: That's shifting the burden.

6 THE COURT: No, it's not. Overruled. Go ahead.

7 MS. NYICOS: Okay.

8 Being stabbed, cut, scraped, however you want to word it, not
9 once, but three times in the leg. And then after having your hair pulled and
10 dragged into the backseat of a car and having her hair pulled and then dragged
11 into the front seat of the car, that after being struck in the face and being
12 told, Forget about Las Vegas, you're never going to see your son again, she
13 suddenly felt amorous. If no sex assault occurred, if this is consensual, why
14 did he still have that [indicating knife] in his hand?

15 Now, let's talk about after the sex assault -- after the alleged
16 sex assault. If that's what she wanted, if that was consensual, why would
17 she go through a SANE exam? I know we have some men on the jury, but I
18 know we have enough women to know that a vaginal exam, not something
19 you look forward to. I wouldn't exactly call that the highlight of Bianca's day.
20 And if it wasn't a sex assault and if they were running off together to have a
21 rendezvous, why not book a room at one of the resorts in Mesquite?

22 It's a sex assault, folks. Use your common sense. And that
23 was his intent. His intent when he entered the car was to take her. His intent
24 to take her from Jose' was to take her. She's his. And it doesn't matter
25 whether there was some relationship they were having in the past, and it

1 doesn't matter if she was lying to him about where she lived, about her
2 relationship with Jose'. It doesn't matter. What matters is what he did on
3 that day. So let's hold him accountable for what he did on that day.

4 Burglary with a deadly weapon. He entered that car to commit a
5 kidnapping, and he had that knife with him. First degree kidnapping. He took
6 her because he wanted her. Sex assault and battery with use of a deadly
7 weapon, which no one's disputing. I agree with Ms. Hamers. Let's hold him
8 accountable for what he did. Find him guilty as charged. Thank you.

9 THE COURT: Thanks. Ms. Clerk, will you swear the officer to take
10 charge of the jury, please, and pick the alternate at random.

11 [The Clerk administers the oath to the Bailiff.]

12 THE CLERK: Juror Number 11, Ms. Rodriguez.

13 THE COURT: Okay. You guys go -- that means that you're going to
14 be the alternate pending whether we need one or not. If these people reach a
15 verdict, then that's the way it goes. I'm telling you, I've had situations where
16 somebody gets ill in the middle of deliberation, and you go in, so you're sort
17 of the backup quarterback. You're kind of Vinny's date for the afternoon, as
18 it were.

19 You guys go with Vinny. He'll take you to the jury deliberation
20 room. Lunch is supposed to be here in about 30, 40 minutes. She'll bring in
21 all the exhibits, the verdict form. All you need to do is tell him when you're
22 done. If you need a cigarette break or a restroom break, you just tell Vinny,
23 and he'll take care of it. You cannot deliberate while anybody is gone, so if
24 somebody needs to go to the restroom, kind of everybody goes or everybody
25 stops. All 12 people have to be together when anything about the case is

1 discussed. Just follow Vinny, and he'll take you.

2 [Jury exits the courtroom to start deliberation at 11:49 a.m.]

3 THE COURT: Okay. The record should reflect the jury has exited.
4 Anything else?

5 MS. HAMERS: No, Judge.

6 MS. NYICOS: No.

7 THE COURT: Tina will be back in a second. She's making sure
8 they're situated right. Leave her your numbers, and we'll call you.

9 [Court at ease.]

10 [Out of the presence of the jury at 5:05 p.m.]

11 THE COURT: We've got a couple of notes that I'm making part of the
12 record. They were not much of anything, but one was -- they wanted the
13 Spanish translation of the interview between Detective Chavez and Freddy
14 apparently because one of them speaks Spanish and decided they were going
15 to do it themselves. I answered, The jury is not allowed to do its own
16 translation, Love, Judge Bell. And I'm making that a part of the record.

17 MS. NYICOS: Love, Judge Bell?

18 THE COURT: And it -- it doesn't say that. Then they asked this: Can
19 we find the Defendant guilty of first degree kidnapping, but not guilty of
20 Count 4? And I wrote back, Each count has to be considered separately.
21 That's all I was going to tell them. Not what to do or what to not, but that's
22 the law. And so who knows what they're going to do, but we'll make those
23 part of the record.

24 [Court at ease.]

25 [Jury returns to courtroom after deliberation at 5:38 p.m.]

1 THE COURT: Okay. Back on the record in Case Number C226586,
2 State of Nevada versus Freddy Martinez. Let the record reflect the presence
3 of Mr. Martinez, his counsel; Mr. Bateman for the State. All ladies and
4 gentlemen of the jury are back in the box, including the alternate.

5 Ladies and gentlemen, I am very sorry you had to wait. I can't
6 tell you how angry I am that that is the case. That should never happen, and I
7 can't take care of it tonight; I'm going to take care of it tomorrow.

8 But that neither here nor there, who would be the foreperson?

9 JUROR NUMBER 10: I am.

10 THE COURT: Sir, have you reached a verdict?

11 JUROR NUMBER 10: Yes, sir, we have.

12 THE COURT: Would you give it to the Bailiff, please. Okay. Ms.
13 Clerk, will you read the verdict into the record, please.

14 THE CLERK: District Court, Clark County, Nevada. The State of
15 Nevada, Plaintiff, versus Freddy Martinez, Defendant. Case Number
16 C226586, Department Number VII.

17 Verdict: We, the jury, in the above-entitled case find the
18 Defendant Freddy Martinez as follows: Count 1, Guilty of burglary while in
19 possession of a weapon.

20 We, the jury, in the above-entitled case, find the Defendant
21 Freddy Martinez as follows: Count 2, guilty of battery with use of a deadly
22 weapon.

23 We, the jury, in the above-entitled case, find the Defendant
24 Freddy Martinez as follows: Count 3, guilty of first degree kidnapping with
25 use of a deadly weapon.

1 We, the jury, in the above-entitled case, find the Defendant
2 Freddy Martinez as follows: Count 4, not guilty.

3 Dated this 12th day of April 2007, Jim Egan, Foreperson.

4 Ladies and gentlemen of the jury, are those your verdicts as
5 read so say you one, so say you all?

6 THE COURT: Is that your verdict?

7 THE JURY: [en masse] Yes.

8 THE COURT: Okay. Does either side desire to have the jury polled?

9 MR. BATEMAN: No, Your Honor.

10 MS. HAMERS: No, Judge.

11 THE COURT: Okay. It's late. I'm not going to give you a speech
12 about what a nice job you did, which I usually do. You've got to get home
13 and get to dinner, and I've got a meeting to go to. But, you know, it's a hard
14 job sitting in judgment of other people, and it's very important. It's the
15 greatest system in the history of the world because we take citizens sitting in
16 judgment of each other, and you can be proud of the fact that you took your
17 turn and did it. We've held the paymaster. Are you going to take them
18 down?

19 MS. GORD: I'll go down with them.

20 THE COURT: Okay. If you'll go with Chermaine, she'll take you
21 down. We've held the paymaster so you can get paid tonight and get out of
22 here. I know it was a long, long day. It was 45 minutes longer than it should
23 have been. Thanks.

24 MR. BATEMAN: Thanks, Judge.

25 MS. HAMERS: Thank you.

1 THE COURT: By the way, you can talk about the case if you want.
2 You don't have to talk about if you want. That includes your lawyers and
3 your spouses. If you're sick of it, you don't have to.

4 [Jury exits the courtroom at 5:41 p.m.]

5 THE COURT: Okay. Mr. Martinez, you'll be remanded and held
6 without bail pending sentencing. Give us a sentencing date.

7 THE CLERK: May 24, 8:30.

8 THE COURT: May 24, 8:30. See you then.

9 [Proceedings concluded at 5:42 p.m.]

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

18 *Renee Vincent*

19 RENE VINCENT, Transcriber

20 District Court, Dept. VII

21 (702) 671-4339

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DISTRICT COURT

CLARK COUNTY, NEVADA

[Signature]
CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff,

vs.

FREDDY A. MARTINEZ,

Defendant.

CASE NO. C226586

DEPT. VII

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

THURSDAY, MAY 24, 2007

RECORDER'S TRANSCRIPT OF SENTENCING

APPEARANCES:

For the State:

DAVID J. RICKERT, ESQ.
Deputy District Attorney

For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender
RONALD S. PAULSON, ESQ.
Deputy Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

RECEIVED
AUG 10 2007
CLERK OF THE COURT

1 Thursday, May 24, 2007 - 8:22 a.m.

2
3 THE COURT: State of Nevada versus Freddy Martinez, Case Number
4 C226586. Martinez present in custody. Court-appointed interpreter.
5 Kathleen Hamers. And David Rickert for the State. Ron Paulson. This is the
6 time set for entry of judgment, imposition of sentence. Any reason that
7 judgment should not be imposed?

8 MS. HAMERS: No, Judge.

9 THE COURT: You know, there's a slight mistake in the PSI that
10 doesn't have anything to do with anything, but we probably ought to have it
11 on the record, and, that is, he was not charged with substantial bodily harm,
12 so you can't consider this under the substantial bodily harm statute, and I
13 didn't. I mean, it's just a five to life, and there's a weapon, so it's always
14 times two. That's the way it is. It isn't 15 to anything.

15 MS. HAMERS: Thank you for clearing that up.

16 THE COURT: Okay. You know, I heard the trial, and I'm ready. If
17 there's something you want to say, say it.

18 MS. HAMERS: Well, Judge, the only thing that I would ask, I would
19 ask that the other counts run concurrent to the --

20 THE COURT: I intend to do that.

21 MS. HAMERS: -- kidnapping --

22 THE COURT: I'm giving him, you know, 60 to life, 60 to life on the
23 kidnapping and run the other stuff concurrent. I think that's a fair sentence
24 for what happened.

25 MS. HAMERS: And we'll submit it on that.

1 MR. RICKERT: We'd submit it, Judge.

2 THE COURT: Anything you want to say, Mr. Martinez? I will say this,
3 had he been convicted of the sexual assault, I might have run that consecutive
4 because I think -- but this -- I mean, all this is really part and parcel to the
5 same thing, and I think under sentencing theory, they're entitled to be run
6 consecutive.

7 MS. HAMERS: Thank you.

8 THE COURT: And he wasn't convicted of that, and so we can't
9 consider that.

10 MS. HAMERS: Thank you, Judge.

11 THE COURT: Anything you want to say, Mr. Martinez?

12 THE DEFENDANT: [Through an interpreter] I do apologize for what
13 happened that day, and I promise I won't -- I will not do it again in the name
14 of Jesus Christ.

15 THE COURT: \$25 AA; \$150 DNA fee, plus testing. Count 1, 60 to
16 180; Count 2, 48 to 120; Count 3, 60 to life, plus an equal and consecutive
17 60 to life for use of a weapon. Counts 1 and 2 and 3 will run concurrent to
18 one another. Credit for time served, 281 days.

19 MS. HAMERS: Thank you.

20 THE COURT: Okay. Okay. That's all.

21 [Proceeding concluded at 8:24 a.m.]

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

Renee Vincent
RENEE VINCENT, Transcriber
District Court, Dept. VII
(702) 671-4339

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3 DISTRICT COURT

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4 CLARK COUNTY, NEVADA

CLERK OF THE COURT

6 STATE OF NEVADA,

7 Plaintiff,

CASE NO. C226586

8 vs.

DEPT. VII

9 FREDDY A. MARTINEZ,

10 Defendant.

13 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

14 THURSDAY, NOVEMBER 30, 2006

15 RECORDER'S TRANSCRIPT OF DEFENDANT'S
16 MOTION TO COMPEL DISCLOSURE
17 AND CALENDAR CALL

18 APPEARANCES:

19 For the State:

NOREEN C. NYICOS, ESQ.
Deputy District Attorney

21 For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender

25 RECORDED BY: RENEE VINCENT, COURT RECORDER

CLERK OF THE COURT

RECEIVED
AUG 10 2007

1 Thursday, November 30, 2006 - 8:42 a.m.

2
3 THE COURT: State of Nevada versus Freddy Martinez. Is Freddy
4 here?

5 MS. HAMERS: He is. He's present in custody. He has the assistance
6 of an interpreter.

7 THE COURT: Freddy Martinez present in custody, Case Number
8 C226586. With Ms. Hamers; Ms. Nyicos for the State. This is, first of all,
9 Defendant's motion to compel and a calendar call. Let's deal with the motion
10 to compel.

11 Issue number one, compensation. That's granted. The State
12 says there isn't any, but if they've made any promises or any kind of
13 compensation, they have to tell the Defense forthwith. Number two, record
14 Scope is denied. The Defense has Scope.

15 NCIC. If the State has run one and has the advantage of that
16 knowledge, they got to give it to the Defense. If the State has not run one
17 just because the State has access, they don't have to give that to the
18 Defense. If they did that, NCIC would be out the window.

19 Number three, inconsistent statements by any witnesses.
20 That's, of course, granted. The State says the Defense has it, but right.

21 Number four, scientific reports, that's granted.

22 MS. HAMERS: Judge, just to make a record on a couple of things.
23 First, the State had said that, with regard to any compensation, that any
24 counseling or assistance given by Victim Witness Assistance Center wouldn't
25 be part of compensation --

1 THE COURT: Well, that isn't compensation.

2 MS. HAMERS: Well --

3 THE COURT: I'm talking about if they give a guy a break on a case, if
4 they give a guy money, that I wouldn't allow you to ask any questions about
5 what Victim Witness Center did anyway, so that isn't compensation.

6 MS. HAMERS: Well, Judge, are you saying no matter what Victim
7 Witness Center gives this person? That's not something I can go into? That's
8 something that would cause bias or a reason for her to testify for the State?

9 THE COURT: Yeah, probably. I mean, they take victims. They get
10 them into counseling. There is a certain statutory fund that people get. That
11 isn't what we're talking about here. What we're talking about is, if a witness
12 gets a break on a case in exchange for testimony, that's sort of bargained for.
13 Or if the witness gets compensation in exchange for testimony, that could be
14 bias. But everybody is entitled to the services of Victim Witness Center.
15 That's what they're there for.

16 MS. HAMERS: Well, what I'm asking is to know exactly what is being
17 provided by Victim Witness, and then I'd know whether I have an issue about
18 something to request this Court that I'd be allowed to ask about.

19 THE COURT: I don't think you're entitled to that, so you can't have
20 that.

21 MS. HAMERS: And as far as --

22 THE COURT: And a lot of times the actual prosecutor didn't have any
23 idea that that's going on.

24 MS. NYICOS: Yeah.

25 MS. HAMERS: Well, it's certainly information available to them.

1 THE COURT: But they -- it's not compensation if they don't have any
2 idea what's happening. Victim Witness is almost the -- an entity unto itself
3 from the D.A.'s Office from the prosecution's stuff. It could be an entity unto
4 itself. I agree with the State on that.

5 MS. HAMERS: Okay. I mean, my position is that it's a State agency,
6 whether or not it's the District Attorney's Office.

7 THE COURT: Okay.

8 MS. HAMERS: But separate and aside from that entire issue, Judge,
9 we requested a statement by the Defendant. We've been requesting it for
10 months. Last month what I got -- I mean, last week what I got was a DVD.
11 It's a Spanish on Spanish interview of the Defendant that I just got -- received
12 last week. The Metropolitan Police force apparently at this time says,
13 Inaudible, cannot be transcribed. Cannot be translated. We can't hear this
14 well enough to do that. So that's what's actually been turned over at this
15 point.

16 THE COURT: Okay.

17 MS. HAMERS: So aside from the motion as far as calendar call goes,
18 I'm not ready because of that. I feel I have an obligation based on what my
19 client is telling me to independently see if I can have that cleaned up in a way
20 that we can hear it, and we can --

21 THE COURT: Okay. I don't have any problem with that theoretically
22 in concept except this: If it is self-serving and helps the Defendant, it's not
23 admissible anyway by you, and if it hurts the Defendant, it -- you know, how
24 can you win this?

25 MS. HAMERS: Judge, this is the issue: There's a police report, an

1 officer that says, I spoke to Defendant, and Defendant admitted this,
2 Defendant admitted that, Defendant admitted this.

3 THE COURT: And is this --

4 MS. HAMERS: If this officer gets up and testifies to that and I have a
5 recording of the interview that says that's not what he said --

6 THE COURT: And that's this interview with this officer?

7 MS. HAMERS: Yes.

8 THE COURT: Is that what the interview is?

9 MS. HAMERS: Yes.

10 THE COURT: Okay. I think you're right. I think you would be
11 entitled to get into evidence anything that impeaches what the officer would
12 say.

13 MS. HAMERS: Or what's put in that report.

14 THE COURT: Right. Well, the officer can testify to what's in the
15 report, I think.

16 MS. HAMERS: I have him.

17 THE COURT: So if he does that and it is impeached by what's on the
18 tape, that's admissible. If the officer doesn't say anything, you can't just put
19 on the tape that your client -- put into evidence that your client said, I didn't
20 do it. That's not admissible.

21 MS. HAMERS: No, that's not admissible.

22 THE COURT: All right. Mr. Martinez, do you wish to have this matter
23 continued a little bit so that they can --

24 THE DEFENDANT: [Through an interpreter] Yes. Yes, sir.

25 THE COURT: Any objection?

1 MS. NYICOS: No, Judge.

2 THE COURT: All right. How long is it going to take you, Ms. Hamers?

3 MS. HAMERS: I'm asking for 30 days. My investigator is looking
4 through it right now. I don't know how long it's going to take.

5 THE COURT: Sounds reasonable.

6 MS. NYICOS: Judge, if we could -- 30 days, I believe, puts us at the
7 January 8th date. I know I have a trial with Vickie Monroe that's a murder trial
8 that week.

9 THE COURT: How about the 22nd?

10 MS. NYICOS: That would be perfect, Judge.

11 THE COURT: January 22nd; calendar call, January 18th. Okay.

12 THE CLERK: Interpreter?

13 THE COURT: Mr. Interpreter, your name?

14 THE INTERPRETER: Diego Trujillo, T-r-u-j-i-l-l-o.

15 THE COURT: I would suggest, Ms. Hamers, that you actually go to
16 the court interpreter's office and ask them to do it because if you do it on
17 your own, you know, you don't want anybody to know, it's okay strategically,
18 except it's probably not going to be admissible if you don't have somebody
19 independent actually doing it.

20 MS. HAMERS: Right. And actually what would seem to be more
21 feasible is getting into the audible rather than getting it translated. If we can
22 get the DVD to be something that can be heard, then we could definitely have
23 the court interpreter's office.

24 THE COURT: Okay.

25 MS. NYICOS: Thank you.

[Proceeding concluded at 8:48 a.m.]

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

Renee Vincent

RENEE VINCENT, Transcriber
District Court, Dept. VII
(702) 671-4339

63
1 TRAN

2 ORIGINAL

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3 AUG 13 9 45 AM '07

4 IN THE EIGHTH JUDICIAL DISTRICT COURT

5 CLARK COUNTY, NEVADA

CLERK OF THE COURT

6
7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

Case No. C226586

Dept. No. 24

10 FREDDY MARTINEZ,)

11 Defendant.)

12 HEARING

13
14 Before the Honorable James M. Bixler

15 Thursday, February 8, 2007, 8:30 a.m.

16 Reporter's Transcript of Proceedings

17
18
19 APPEARANCES:

20 For the State of Nevada: Noreen Nyikos, Esq.
21 Deputy District Attorney
22 Las Vegas, Nevada

23 For the Defendant: Kathleen Hamers, Esq.
24 Deputy Public Defender
25 Las Vegas, Nevada

26 REPORTED BY: BILL NELSON, RMR, CCR No. 191

27 NELSON & NELSON, CERTIFIED COURT REPORTERS
28 Office: 702.360.4677 Fax: 702.360.2844

1 Las Vegas, Nevada, Thursday, February 8, 2007

2
3 * * * * *

4 THE COURT: Freddy Martinez.

5 The Defendant is present in custody,
6 represented by the PDs office.

7 This is on for entry of plea, is that
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9 MS. HAMERS: That was the intent, Judge.

10 This was almost negotiated, and that's what
11 we are here for.

12 However, in speaking with him, he wants a
13 trial, so we will need to reset the trial date today.

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15 The offer is revoked.

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17 on the record whatever the offer was that you made to
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22 He's facing charges of burglary and
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24 What does that carry?

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2 the two to ten, and then first degree kidnapping with
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5 and sexual assault with use, which is ten to life,
6 plus equal and consecutive ten to life.

7 I offered just the one ten to life.

8 THE COURT: Mr. Martinez, before we pass
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15 THE COURT: It is one count of ten years to
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17 Before we -- or before the State revokes
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20 are not going to go back and do this all over again.

21 Have you thoroughly discussed this with
22 your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: And you are absolutely certain
25 that you want to go to trial instead of taking

1 advantage of the offer the State made?

2 THE DEFENDANT: Yes.

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7 I think we prefer the next stack.

8 MS. NYIKOS: Yes, because family members
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7 THE CLERK: April 9th at 10 a.m. for jury
8 trial.

9 Calendar call Thursday, April 5th, at 8:30.
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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. James Bixler, District
Court Judge, presiding.

Dated at Las Vegas, Nevada this 7th day of
August, 2007.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

ORIGINAL

FILED

Nov 30 9 14 AM '07

Chaf
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT JUDGE, PRESIDING

THE STATE OF NEVADA,
Plaintiff,

v.
FREDDY A. MARTINEZ,
Defendant.

Case No. C-226586-X
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Calendar Call

COURTHOUSE

April 5, 2007

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

NOV 30 2007

CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-243-3386

1 APPEARANCES:

2
3 For the State:

NOREEN C. NYICOS, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155

4
5
6
7 Defendant present in court.

8 For the Defendant:

CASEY LANDIS, ESQ.
Deputy Public Defender
309 South Third Street
Suite 226
Las Vegas, NV. 89101

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18 No other appearances.

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TRANSCRIPT OF PROCEEDINGS

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9 MR. LANDIS: No, it is actually Ms. Hamers for
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11 MS. NYOKOS: I am, and Kathleen Hamers.

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13 MS. NYOKOS: Kathleen Hamers from the P. D.'s office.
14 I have Sam Bateman with me.

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16 THE COURT: Three days.

17 MS. NYIKOS: Two in Bell's.

18 THE COURT: Two days.

19 THE CLERK: Okay.

20 MS. NYIKOS: Two and a half in here, two in
21 Judge Bell's.

22 THE COURT: I haven't had enough practice yet.

23 MS. NYIKOS: You will get there, Judge.

24 MR. LANDIS: It's not necessarily a good measure
25 though.

1 THE CLERK: So you need to go tomorrow morning
2 at nine a.m., April 6, at nine a.m., before Judge Bell.

3 MS. NYIKOS: Thank you. That does it for me.
4 Thank you, Judge.

5 MR. LANDIS: Thank you, Judge.

6 THE COURT: Thank you.

7 *****

8 (End of proceedings.)

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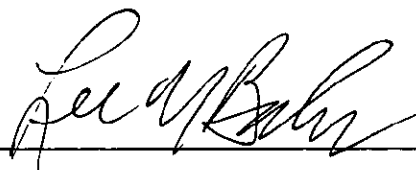
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CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, do hereby certify
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is true and correct as reflected by my original machine
shorthand notes taken at said time and place before the
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
21st day of September, 2007.



LEE M. BAHR, CP, CCR 173

1 TRAN

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3 JAN 11 4 03 PM '07

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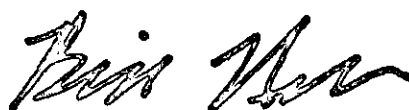
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CLARK COUNTY)

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Dated at Las Vegas, Nevada this 7th day of
August, 2007.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

1	C	F	MARTINEZ [1] - 1:10 Martinez [3] - 2:4, 2:16, 3:8 members [1] - 4:8 move [1] - 4:24 MS [13] - 2:9, 2:14, 2:19, 2:25, 3:14, 4:6, 4:8, 4:12, 4:14, 4:19, 4:21, 4:22, 5:1
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2		H	need [2] - 2:13, 4:9 negotiated [1] - 2:10 Nelson [2] - 6:9, 6:19 NELSON [1] - 1:25 NEVADA [3] - 1:4, 1:7, 6:4 Nevada [6] - 1:20, 1:21, 1:23, 2:1, 6:15, 6:20 next [3] - 4:7, 4:14, 4:22 nine [1] - 4:20 Noreen [1] - 1:20 notes [1] - 6:12 nurse [1] - 5:4 NYIKOS [8] - 2:14, 2:25, 3:14, 4:8, 4:12, 4:14, 4:21, 5:1 Nyikos [1] - 1:20
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5th [1] - 5:9	D	IN [1] - 1:3 instead [1] - 3:25 intent [1] - 2:9	OF [2] - 1:7, 6:4 offer [6] - 2:15, 2:17, 2:19, 3:18, 4:1, 4:4 offered [3] - 3:7, 3:12, 3:14 office [1] - 2:6 one [6] - 2:19, 3:7, 3:13, 3:15, 4:20, 5:3 One [1] - 2:21 original [1] - 6:12 out-of-stater [1] - 5:3
7		J	P
7th [1] - 6:15	date [1] - 2:13 Dated [1] - 6:15 days [1] - 4:18 deadly [1] - 2:23 deal [1] - 4:9 Defendant [3] - 1:11, 1:22, 2:5 DEFENDANT [2] - 3:23, 4:2 Defender [1] - 1:23 degree [1] - 3:2 Dept [1] - 1:9 Deputy [2] - 1:20, 1:23 discussed [1] - 3:21 DISTRICT [1] - 1:3 District [2] - 1:20, 6:13	James [2] - 1:14, 6:13 Judge [4] - 2:9, 2:14, 4:16, 6:14 JUDICIAL [1] - 1:3 jury [1] - 5:7	part [1] - 4:19 pass [1] - 3:8 PDs [1] - 2:6 pending [1] - 3:10 place [1] - 6:13 Plaintiff [1] - 1:8 plea [1] - 2:7 plus [3] - 3:1, 3:4, 3:6 possession [2] - 2:23, 3:1 possibility [1] - 3:11 possible [1] - 3:3 prefer [1] - 4:7 present [1] - 2:5 presiding [1] - 6:14 pretty [1] - 5:1
8	E	L	
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9		M	
9th [4] - 4:12, 4:24, 5:6, 5:7		machine [1] - 6:12 mandatory [1] - 3:10	
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a.m [2] - 1:15, 5:7 able [1] - 4:13 absolutely [1] - 3:24 advantage [1] - 4:1 ago [1] - 4:6 almost [1] - 2:10 APPEARANCES [1] - 1:19 April [4] - 4:12, 4:21, 5:7, 5:9 assault [2] - 2:20, 3:5 assumed [1] - 4:9 Attorney [1] - 1:20 attorney [1] - 3:22 August [1] - 6:16			
B			
Bell [1] - 4:16 BILL [1] - 1:25 Bill [2] - 6:9, 6:19 Bixler [2] - 1:14, 6:13 bottom [1] - 3:4 burg [1] - 3:1 burglary [1] - 2:22 BY [1] - 1:25			

NELSON & NELSON, CERTIFIED COURT REPORTERS
Office: 702.360.4677 Fax: 702.360.2844

prison [2] - 3:10, 3:11 Proceedings [1] - 1:16 proceedings [1] - 6:10 Public [1] - 1:23 put [1] - 2:16	true [1] - 6:11 try [2] - 4:5, 4:14 two [5] - 2:25, 3:1, 3:2, 4:15, 4:18
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realize [1] - 3:9 record [1] - 2:17 reduce [1] - 3:12 reflected [1] - 6:11 REPORTED [1] - 1:25 reported [1] - 6:10 Reporter [1] - 6:20 Reporter's [1] - 1:16 represented [1] - 2:6 reset [1] - 2:13 resolve [1] - 2:18 revoked [1] - 2:15 revokes [1] - 3:17 revoking [1] - 4:4 RMR [3] - 1:25, 6:9, 6:19	up [1] - 3:9 Utah [1] - 5:4 V Vegas [5] - 1:21, 1:23, 2:1, 6:15, 6:20 vs [1] - 1:9
S	W
see [1] - 5:6 sentence [1] - 3:3 set [3] - 4:20, 4:24, 5:5 sexual [2] - 2:20, 3:5 shorthand [1] - 6:12 sometime [1] - 4:6 speaking [1] - 2:12 ss [1] - 6:5 stack [2] - 4:5, 4:7 STATE [2] - 1:7, 6:4 State [4] - 1:20, 3:12, 3:17, 4:1 State's [1] - 4:4 stater [1] - 5:3 still [1] - 4:16	waived [1] - 4:6 wants [1] - 2:12 weapon [1] - 2:23 week [1] - 5:5 weeks [3] - 4:15, 4:20, 4:22 witnesses [2] - 4:24, 5:1
T	Y
ten [8] - 2:25, 3:1, 3:2, 3:5, 3:6, 3:7, 3:14, 3:15 THE [14] - 1:3, 2:4, 2:16, 2:21, 3:8, 3:15, 3:23, 3:24, 4:2, 4:3, 4:11, 4:23, 5:5, 5:7 thoroughly [1] - 3:21 Thursday [3] - 1:15, 2:1, 5:9 today [1] - 2:13 toyou [1] - 3:18 TRAN [1] - 1:1 Transcript [1] - 1:16 trial [4] - 2:13, 3:25, 5:8	years [1] - 3:15

NELSON & NELSON, CERTIFIED COURT REPORTERS
 Office: 702.360.4677 Fax: 702.360.2844

ORIGINAL

FILED

JAN 23 10 57 AM '08

CR
CLERK OF THE COURT

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TRANSCRIPT OF PROCEEDINGS

Calendar Call

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April 5, 2007

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Reported by:

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RECEIVED

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CLERK OF THE COURT

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702-243-3386

S3

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24 MR. LANDIS: It's not necessarily a good measure
25 though.

1 THE CLERK: So you need to go tomorrow morning
2 at nine a.m., April 6, at nine a.m., before Judge Bell.

3 MS. NYIKOS: Thank you. That does it for me.
4 Thank you, Judge.

5 MR. LANDIS: Thank you, Judge.

6 THE COURT: Thank you.

7 *****

8 (End of proceedings.)


9 *****

CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, 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. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
21st day of September, 2007.


LEE M. BAHR, CP, CCR 173

CERTIFICATE OF ACKNOWLEDGEMENT

ORIGINAL

FILED

JAN 23 10 57 AM '08

Chief Clerk
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

FREDDYS A. MARTINEZ, aka
FREDDY MARTINEZ,
Appellant,

v.
THE STATE OF NEVADA,
Respondent.

C 226586
Case No. ~~49608~~
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Calendar Call

COURTHOUSE

January 18, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

JAN 23 2008

CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-243-3386

S20

1 APPEARANCES:

2
3 For the Appellant: CASEY LANDIS, ESQ.
4 Deputy P. D.
5 309 South Third Street
Suite 226
Las Vegas, NV. 89101

6 Appellant present in court.

7
8 For the Respondent: NOREEN C. NYICOS, ESQ.
9 Deputy D. A. Defender
200 Lewis Ave.
Las Vegas, NV. 89155

10 Also a cc will be supplied
11 to: CATHERINE CORTEZ, ESQ.
Deputy A. G.

12
13
14
15
16 No other appearances.

17
18 *****
19
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TRANSCRIPT OF PROCEEDINGS

State of Nevada)
) ss.
County of Clark)

I hereby acknowledge that I am Mr. Lee Bahr, not Ms. Lee Bahr; that on September 21, 2007, I filed a certified transcript of proceedings in the matter of the above-entitled case, Case No. C-226586-X; Sup. Ct. No. 49608, and that the original of said transcript of proceedings was filed with the Clerk of Court of Clark County as of on or about the 21st day of September, 2007; that copies were mailed to counsel for appellant and respondent on or about the 21st of September, 2007, and that a duplicate original (copy), file stamped duplicate original, will be filed again with the Clerk of the Supreme Court on January 23, 2008.

I also acknowledge that I am refiling the original and two copies of said six page transcript so that everyone will again have a copy of this six page transcript.

Dated this ____ day of _____, 2004.

Lee M. Bahr, CCR 173

Attachment: 4/5/07 duplicate copy of transcript previously filed on or about 9/21/07.

1
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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF CLARK

8 THE HON. JAMES M. BIXLER, DISTRICT JUDGE, PRESIDING

9
10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

Case No. C-226586-X

13 FREDDY A. MARTINEZ,

Dept. 24

14 Defendant.
15 _____/

16 TRANSCRIPT OF PROCEEDINGS

17 Calendar Call

18 COURTHOUSE

19 April 5, 2007

20 Las Vegas, Nevada

21
22
23
24 Reported by:

Lee M. Bahr, CP, CCR 173

1 APPEARANCES:

2
3 For the State:

NOREEN C. NYICOS, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155

4
5
6
7 Defendant present in court.

8 For the Defendant:

CASEY LANDIS, ESQ.
Deputy Public Defender
309 South Third Street
Suite 226
Las Vegas, NV. 89101

9
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18 No other appearances.

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20 *****
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TRANSCRIPT OF PROCEEDINGS

1
2
3 THE COURT: The State of Nevada v. Freddy Martinez,
4 and that is where on the calendar?

5 MS. NYIKOS: I think page four at the bottom.

6 THE COURT: Where is it?

7 THE CLERK: Bottom of seven?

8 MS. NYIKOS: Bottom of seven? Bottom of four.

9 THE COURT: Okay, what page is it?

10 THE CLERK: Bottom of four.

11 THE COURT: The State of Nevada v. Freddy Martinez,
12 bottom of page four, calendar call.

13 What we are going to do is if he qualifies for
14 overflow, we are already in a jam so --

15 THE CLERK: (Interposing) And they can't go to
16 overflow because they have one out-of-state witness.

17 MS. NYIKOS: Well, I talked to Judge Bell in the
18 past, and I did clarify with Charmaine. They are fine with
19 overflow with out-of-state witnesses.

20 The only thing they are picky about is whether or
21 not we can get them there in the time frame.

22 So what my suggestion would be is to go ahead
23 and send us to overflow.

24 I will talk to Charmaine and let them know what
25 my problem is that I have to put this witness on Thursday,

1 and if they can't accommodate us, they will just kick us
2 back.

3 THE COURT: All right, okay.

4 THE CLERK: Got to go tomorrow morning at nine
5 a.m. with Judge Bell.

6 MR. LANDIS: That is what we want as well.

7 THE COURT: You've got it.

8 THE CLERK: So both of you are trying this case?

9 MR. LANDIS: No, it is actually Ms. Hamers for
10 our office.

11 MS. NYOKOS: I am, and Kathleen Hamers.

12 THE CLERK: And you are and Bill?

13 MS. NYOKOS: Kathleen Hamers from the P. D.'s office.
14 I have Sam Bateman with me.

15 THE CLERK: Okay. How many days?

16 THE COURT: Three days.

17 MS. NYIKOS: Two in Bell's.

18 THE COURT: Two days.

19 THE CLERK: Okay.

20 MS. NYIKOS: Two and a half in here, two in
21 Judge Bell's.

22 THE COURT: I haven't had enough practice yet.

23 MS. NYIKOS: You will get there, Judge.

24 MR. LANDIS: It's not necessarily a good measure
25 though.

1 THE CLERK: So you need to go tomorrow morning
2 at nine a.m., April 6, at nine a.m., before Judge Bell.

3 MS. NYIKOS: Thank you. That does it for me.
4 Thank you, Judge.

5 MR. LANDIS: Thank you, Judge.

6 THE COURT: Thank you.

7 *****

8 (End of proceedings.)

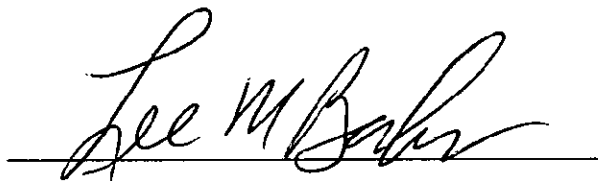
9 *****

CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, 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. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
21st day of September, 2007.

A handwritten signature in cursive script, reading "Lee M. Bahr", is written over a horizontal line.

LEE M. BAHR, CP, CCR 173

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

FREDYS A. MARTINEZ A/K/A FREDDY MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49608
2008 JUN -6 A 7:51

District Court Case No. C226586

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

Judgment, as quoted above, entered this 7th day of May, 2008.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 3rd day of June, 2008.

Tracie Lindeman, Supreme Court Clerk

By:

A. Ingersoll
Deputy Clerk

JUDGMENT ENTERED

JUN 9 2008

CE-04

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JUN 05 2008

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49608

FILED

MAY 07 2008

TRACEE K. LINDEMAN
CLERK OF THE SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a weapon, one count of battery with the use of a deadly weapon, and one count of first-degree kidnapping with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On May 31, 2007, the district court sentenced appellant Fredys A. Martinez to serve concurrent prison terms of 5 to 15 years for burglary, 4 to 10 years for battery, and 5 years to life for first-degree kidnapping plus an equal and consecutive term for the deadly weapon enhancement.

Martinez raises three issues on appeal. First, he argues that the convictions for battery and kidnapping are redundant and impermissible under the Double Jeopardy Clause of the U.S. Constitution. This court has repeatedly affirmed that it will apply the test set forth in Blockburger v. United States¹ to determine whether multiple convictions

¹284 U.S. 299 (1932).

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JUN 05 2008

08-11-13
CLERK OF THE COURT

for the same act or transaction are permissible.² Under the Blockburger test, "if the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense and the Double Jeopardy Clause prohibits a conviction for both offenses."³ If two convictions are found to be separate offenses under the Blockburger test, this court has stated that it will reverse "redundant convictions that do not comport with legislative intent."⁴ However, when a defendant is convicted of numerous charges arising from a single act, redundancy does not necessarily arise.⁵ The issue to be considered by this court in such cases "is whether the gravamen of the charged offenses is the same such that it can be said that the legislature did not intend multiple convictions."⁶ "[A]n examination of whether multiple convictions are improperly redundant begins with an examination of the statute."⁷

Applying the Blockburger test in this case indicates that battery and kidnapping are separate offenses with elements unique to each, and therefore battery is not a lesser included offense of first-degree

²Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003); see Williams v. State, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002); Barton v. State, 117 Nev. 686, 694, 30 P.3d 1103, 1108 (2001).

³Barton, 117 Nev. at 692, 30 P.3d at 1107.

⁴Salazar, 119 Nev. at 227, 70 P.3d at 751 (citing State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 838 (1997)).

⁵Skiba v. State, 114 Nev. 612, 616 n.4, 959 P.2d 959, 961, n.4 (1998).

⁶Salazar, 119 Nev. at 227, 70 P.3d at 751 (citing State v. Dist. Court, 116 Nev. 127, 136, 994 P.2d 692, 698 (2000)).

⁷Wilson v. State, 121 Nev. 345, 356, 114 P.3d 285, 293 (2005).

kidnapping.⁸ Accordingly, this court must next consider whether the gravamen of the crimes of battery and kidnapping are such that it can be said that the legislature did not intend multiple convictions. The text of the respective statutes makes it clear that the two are intended to punish different behavior.⁹ The battery statute is intended to protect a victim's bodily integrity interest, punishing the use of force or violence upon a person, while the kidnapping statute punishes a defendant for depriving a victim of his or her liberty interest. We conclude that Martinez's convictions for first-degree kidnapping with the use of a deadly weapon and battery with the use of a deadly weapon are not redundant.

Next, Martinez asserts that the prosecutor committed misconduct by disparaging the defense when the following underlined statement was made during closing argument:

MR. BATEMAN: . . . And it doesn't make a whole heck of a lot of sense, ladies and gentleman why someone who has been kidnapped would have been taken all this way at knifepoint would suddenly feel aroused enough at this point, well, I think I'm going to have sex. Let's pull over on the side of the freeway. If you believe that, if you believe that's the case, find Freddy Martinez not guilty. Mark that box. That makes absolutely no sense, and it's offensive."

⁸See NRS 200.481(1)(a) (defining battery as "any willful and unlawful use of force or violence upon the person of another"); NRS 200.310(1) (stating that first-degree kidnapping occurs when a person "willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person" for various statutorily enumerated purposes).

⁹See id.

Defense counsel objected, and the district court, while finding that the statement was not meant to be disparaging to the defense, struck the words "it's offensive."

It is improper to ridicule or denigrate a defense theory.¹⁰ However, "[an] appellant must have been prejudiced in respect to a substantial right before this court will reverse the judgment of the lower court."¹¹ On several occasions, this Court has declined to reverse a conviction despite prosecutorial misconduct far in excess of the comment quoted above.¹² In the present case, there was only one allegedly disparaging remark, and the district court immediately struck the challenged comment from the record. Nor can the prosecutor's comment be said to have been prejudicial, as the jury found Martinez not guilty of sexual assault. We conclude that if there was error in this case, it was harmless.¹³

Finally, Martinez complains that there was insufficient evidence to support a conviction for first-degree kidnapping. The standard

¹⁰U.S. v. Sanchez, 176 F.3d 1214, 1225 (9th Cir. 1999).

¹¹Polito v. State, 71 Nev. 135, 140, 282 P.2d 802, 803 (1955).

¹²See Barron v. State, 105 Nev. 767, 779-80, 783 P.2d 444, 451-53 (1989) (several instances of misconduct by the prosecutor did not warrant reversal); Pickworth v. State, 95 Nev. 547, 550, 598 P.2d 626, 627-28 (1979) (prosecutor's remark in closing that defendant's drug intoxication defense to homicide was a "red herring" was highly improper, but defendant was not prejudiced).

¹³See Yates v. State, 103 Nev. 200, 206, 734 P.2d 1252, 1256 (1987) ("When a guilty verdict is free from doubt, even aggravated prosecutorial remarks will not justify reversal.").

of review when analyzing the sufficiency of evidence in a criminal case is whether, after viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹⁴ Martinez was charged with first-degree kidnapping, rather than second-degree, because he had allegedly kidnapped the victim "for the purpose of committing sexual assault."¹⁵ Martinez argues that because he was acquitted of sexual assault, the first-degree kidnapping conviction cannot stand. Martinez's argument is without merit.

"When a defendant is charged with committing two criminal offenses that involve different elements, a jury may find him guilty of one crime and not guilty of the other."¹⁶ The elements of first-degree kidnapping¹⁷ differ from the elements of sexual assault.¹⁸ Therefore, the jury's verdict acquitting Martinez of sexual assault, but convicting him of first-degree kidnapping, is not inconsistent. Even if the verdicts were inconsistent, we have held that inconsistent verdicts are permissible in Nevada.¹⁹

¹⁴McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

¹⁵See NRS 200.310.

¹⁶Burks v. State, 92 Nev. 670, 672, 557 P.2d 711, 712 (1976) (citing State v. Amerson, 518 S.W.2d 29 (Mo. 1975)).

¹⁷See NRS 200.310(1).

¹⁸See NRS 200.366(1).

¹⁹See Bollinger v. State, 111 Nev. 1110, 1116-17, 901 P.2d 671, 675 (1995).

Furthermore, review of the record finds sufficient evidence to support a conviction for first-degree kidnapping. In particular, testimony was given that on the morning of April 16, 2006, Martinez was waiting outside Bianca Hernandez's home. Martinez was the brother of Hernandez's ex-husband. As Hernandez was warming up the car, Martinez jumped out of a tree in the yard, got into the passenger seat of Hernandez's car, poked her in the leg with a knife, and told her to drive off. Shortly thereafter Martinez threw Hernandez in the back seat of the car by her hair, and drove the car himself. He later pulled her back into the front seat by her hair. Hernandez testified that during the trip she tried to get the attention of a nearby police car and Martinez struck her in the face. Martinez then drove the car onto the freeway and headed north. During the trip, Martinez told Hernandez to forget about her son and her boyfriend because she was not going to be returning to Las Vegas.

Hernandez testified that at some point Martinez turned off the freeway, threw Hernandez in the back seat of the car, took off Hernandez's clothes, and, with the knife still in his hand, had sexual intercourse with her. Hernandez testified that she did not want to have sex with Martinez, but that she was afraid to say anything. DNA evidence proved that sex had occurred, but Martinez claimed it was consensual. Martinez stopped and got out of the car in Mesquite, Nevada, and Hernandez was able to ask someone to contact police.

The officer who subsequently interviewed Martinez testified that Martinez told the police that he was not acting out of anger toward Hernandez, but toward Hernandez's boyfriend, Jose Quiroz-Castillo. Martinez expressed his frustration that Hernandez had not told him about Quiroz and his anger about the fact that he did not know anything about Quiroz. Martinez admitted the purpose of his actions was to get a reaction

from Quiroz. Specifically, Martinez stated, "[w]hen a man has sexual relations with a woman, you have to react when another rooster comes and takes a woman when she is with you. He has to respond, react . . . [a]nd I did it, but he did not react." We conclude that based on the evidence presented at trial, a rational trier of fact could have found the essential elements of first-degree kidnapping beyond a reasonable doubt.

Having considered Martinez's arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Maupin J.

Maupin

Cherry J.

Cherry

Saitta J.

Saitta

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: June 3, 2008
Supreme Court Clerk, State of Nevada

By A. Ingersoll Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49608

District Court Case No. C226586

REMITTITUR

TO: Charles J. Short, Clark District Court Clerk

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

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

DATE: June 3, 2008

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc (without enclosures):

Hon. Stewart L. Bell, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Public Defender Philip J. Kohn

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 05 2008.

BRANDI J. WENDEL

BRANDI J. WENDEL
District Court Clerk

08-120160

76 District Court
Clark County, Nevada

FILED

OCT 23 2009

56

State of Nevada

Plaintiff

Vs.

Fredys. A. Martinez

Defendant

CLERK OF COURT 226586

Dept No: ~~VIT~~ XIV

Docket No: 1003276

Dated: 10.18.2009

11/9/09 msh/29

Motion to make additional funds available for
NDOC inmate's legal account

Now comes the defendant Fredys. A. Martinez,
And moves that this honorable court to immediately grant the
defendants request of allotting additional funds for his
NDOC inmate legal account. The current availability of funds for
indigent NDOC inmates to send out legal documents
and make legal copies, is capped by this facility
at \$100.00. Although the defendant has already reached
this limit, the defendant urgently requests that
additional funds to his legal account be made
available immediately, so that he can continue sending
out legal documents, and making legal copies that could prove
to be vital to the defendants case. The defendants case
is still open, current, and pending, and these funds will
greatly assist the defendant in completing his legal process.

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CLERK OF THE COURT

p.1

The courts denial of this request would serverly hinder the defendants ability to properly obtain legal research materials, legal copies, and the mailing of important legal documents. A delay of this nature, could have serious rammifications in the outcome of the defendants case. Such outcomes may include, but are not limited to; the defendant becoming "time barred", "proceedurally barred" due to the inability to properly utilize court procedure and law, or to have this court render judgements against him for failure to respond to this court, due to the inability of having postage available to mail out the proper legal documents. In the interest of justice in this great state of Nevada, this honorable must grant this motion, and make additional funds immediately available to the defendants NDOC inmate legal account, for ~~the~~ reason stated in this motion.

Dated on the 18th day of October 2009

Respectfully Submitted,

~~Fredy A. Martinez~~

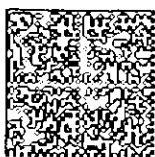
Fredy A. Martinez #1003276

p.2

Fredy's. A. Martinez #1003276
LOVELOCK. CORR. CTR.
1200 PRISON. Road
LOVELOCK, NV 89419

INMATE LEGAL
MAIL CONFIDENTIAL

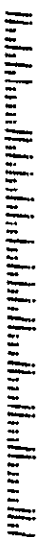
EDWARD A. FRIEDLAND, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
Las Vegas, NV 89155-1160



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Lowelock Correctional Centre

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDDY MARTINEZ,
Appellant(s),
vs.

STATE OF NEVADA,
Respondent(s),

} Case No: 06C226586
} SC No: 57197

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
FREDDY MARTINEZ # 1003276
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT
DAVID ROGER, ESQ.
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

06C226586

STATE OF NEVADA VS.
FREDDY MARTINEZ

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PAGE NUMBER:

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1 A He was talking many things. He told me forget about my son, to
2 forget about Jose', to forget about David, that I was not going to come back to
3 Las Vegas.

4 Q How did that make you feel?

5 A Well, bad. I didn't know what to do in a situation like this. I
6 would have jumped from the car. I didn't do it because my son doesn't have
7 family here. He doesn't have anybody.

8 Q When you say jump from the car, what do you mean?

9 A Like open the door and -- and leave, come out.

10 Q Now, Bianca, while you were on the freeway, did Freddy stop at
11 some point?

12 A Yes.

13 Q Can you describe the area where he stopped?

14 A It was a desert area.

15 Q Was there a town nearby or anything?

16 A No, where he went it was like a street, just an old -- just a street.

17 Q And what happened when he stopped there?

18 A He went inside -- he went towards the desert. He looked
19 everywhere, and then he grabbed my hand and put me in the backseat.

20 Q What hand did he grab?

21 A The right one.

22 Q Now, did he grab your hand or some other place on your arm?

23 A Just my hand.

24 Q You said he put you in the backseat?

25 A Yes.

1 Q Did Freddy still have the knife?
2 A Yes.
3 Q What happened when he put you in the backseat?
4 A He took my clothes off, my shorts, my underwear, panties.
5 Q And this was summertime; right?
6 A Yes.
7 Q So you were wearing shorts?
8 A Yes, I had shorts on.
9 Q After he took off your shorts and panties, what did he do?
10 A He penetrated me sexually.
11 Q Now, Bianca, I have to ask. You say he penetrated you sexually.
12 What do you mean by that?
13 A He abused me sexually.
14 Q Did part of his body touch part of your body?
15 A Yes.
16 Q Okay. What part of his body?
17 A His penis inside of mine.
18 Q And what part of your body?
19 A My body, my breasts, the vagina.
20 THE COURT: Go ahead. Just ask her a leading question.
21 MS. NYICOS: Okay.
22 BY MS. NYICOS:
23 Q Did his penis go inside your vagina?
24 A Yes.
25 Q About how long was he inside of you?

1 A About 15 minutes.

2 Q Did you say anything to Freddy?

3 A No.

4 Q Did you want Freddy to do this to you?

5 A No.

6 Q Why didn't you say anything to Freddy?

7 A I was afraid.

8 Q Okay. Now, after Freddy did this to you, what happened next?

9 A He got up; I put my clothes on.

10 Q Bianca, did Freddy ejaculate?

11 A I believe so. I was told that the DNA was positive.

12 Q Now, you got dressed again. Bianca, do you remember what

13 you were wearing on your feet that day?

14 A I don't remember that. I don't know if I was wearing some

15 white sandals.

16 Q Do you know what happened to you sandals?

17 A No.

18 Q Okay. Now, after you guys put your clothes back on, what did

19 Freddy do next?

20 A He kept going, and it seemed to me that he went to a gas

21 station.

22 Q Do you remember where this gas station was?

23 A No.

24 Q What happened when you got to the gas station?

25 A He went out from the car to get some gas. He asked me if I

1 had money, and I told him no.

2 Q When he went to get gas, did he pull up to a pump?

3 A No, he left the car in one of the parking spaces, and he walked
4 towards the pumps.

5 Q Now, where that parking space was, was there any people
6 around you?

7 A Just the person that was giving him the gas.

8 Q And how did Freddy get the gas?

9 A I believe that he asked someone for it.

10 Q What I mean was, did he actually pump gas in the car or did he
11 put the gas in something?

12 A No. He put it in a gallon container, a gas gallon container.

13 Q Okay. And where did he get the gas can from?

14 A That I really don't -- I don't remember. I don't know.

15 Q Now, I'm showing you on your screen --

16 THE COURT: You might have to show it to her to get it admitted first.

17 MS. NYICOS: It's already in. This is one of the three that --

18 THE COURT: Oh, I'm sorry.

19 MS. NYICOS: That's okay.

20 BY MS. NYICOS:

21 Q State's 18, is the gas can in that picture?

22 A [Through an Interpreter] Yes.

23 Q Okay. Now, Bianca, while you were at the gas station, did you
24 try and get help from anybody?

25 A Yes. Somebody went to the public telephone, and I was trying

1 to get their attention. I really wanted to get out and run towards the gas
2 station, but I was afraid. I was afraid because he was high on drugs, and he
3 had a knife.

4 Q Okay. Now, Bianca, after you got gas, what happened next?

5 THE COURT: There wasn't an objection, but I'm going to at this point
6 order the jury to disregard her opinion as to whether he was high on drugs. I
7 mean, maybe he was, maybe he wasn't, but she's not an expert. Just forget
8 that, but he did have a knife. Go ahead.

9 BY MS. NYICOS:

10 Q Okay. Where did you go next?

11 A [Through an Interpreter] He went to the city of Mesquite to an
12 apartment complex.

13 Q And what happened when you got to the apartment complex?

14 A He came out of the car, and he walked towards a -- one of the
15 apartments.

16 Q When he got out of the car, what did you do?

17 A There was a woman that worked in cleaning, and I ask her if she
18 could help me get out of the car because Freddy was -- kidnapped me. And
19 she called another person to come and help her, and she told that person to --
20 to take me to an apartment upstairs and call the police.

21 Q Do you know this woman's name?

22 A No.

23 Q Now, after the police were called, where did you go?

24 A To the hospital.

25 Q And what happened when you're at the hospital?

1 A They did tests on me, a vaginal test.
2 Q Did you talk to a detective?
3 A Yes, I talked with Detective Chavez.
4 Q And did you tell Detective Chavez everything you're telling us
5 today?
6 A Yes.
7 Q Now, Bianca, did you want to drive with Freddy up to Mesquite?
8 A No.
9 Q Did you want to have sex with Freddy?
10 A No.
11 Q Did you and Freddy ever have a sexual relationship?
12 A No.
13 Q While you were driving up in the car to Mesquite, did you have a
14 conversation with Freddy about what was happening?
15 A I was trying -- I was talking to him to calm -- to calm down, but
16 he was obsessed with me, and he told me to be quiet.
17 Q What do you mean by obsessed?
18 A It was like someone that loves someone by force.
19 Q Do you feel that Freddy loves you?
20 A I don't know, but the way that he behaved that day, I think so.
21 Q Do you love Freddy?
22 A No. I love him as a brother.
23 MS. NYICOS: Nothing further.
24 THE COURT: Defense?
25 MR. PAULSON: Thanks, Judge.

1 **CROSS-EXAMINATION**

2 **BY MR. PAULSON:**

3 Q Good afternoon, Bianca.

4 A [Through an Interpreter] Hi.

5 Q Would you prefer I call you Bianca or Ms. Hernandez?

6 A As your desire.

7 Q Okay. Bianca, I want to talk to you initially a little bit about your
8 relationship with Freddy. You testified and I think we've heard that initially
9 Freddy moved in with you and David; correct?

10 A Correct.

11 Q And this was about 16 years ago?

12 A [Nods head.]

13 Q So would that have been prior to Franklin being born or right
14 about the same time?

15 A Franklin was already born. He was about three months old.

16 Q And so Franklin is the son that you had with David?

17 A Yes.

18 Q You and David weren't actually ever married, though; correct?

19 A No.

20 Q And at some point, I believe you testified that David and yourself
21 separated, and it would've been about three years ago now; is that correct?

22 A No, about four years ago.

23 Q So it was about three years ago when this actually happened?
24 It's more like four years now?

25 A Yes.

1 Q At the time that you and David separated, David left; correct?
2 A Correct.
3 Q At that time were you living in the mobile home on Lake Mead?
4 A Yes.
5 Q When David left, you continued to live in that home with Freddy
6 and your son?
7 A Yes.
8 Q And you lived in that home, yourself, Freddy and Franklin, for
9 almost three years; correct?
10 A Yes.
11 Q And at that time Freddy worked; correct?
12 A Sometimes he worked, and sometimes he did not.
13 Q And you were working off and on, you said?
14 A No. For a while, I didn't -- I didn't work, but I had my work, my
15 job all the time.
16 Q But it was the three of you living together; correct?
17 A Yes.
18 Q At some point you meet Jose'?
19 A Yes.
20 Q And would that have been prior to or after David left?
21 A That was after David left.
22 Q Okay. Just after David left then because you met Jose' about
23 four years ago; correct?
24 A Yes.
25 Q And you began dating Jose' as your boyfriend about three years

1 ago; right?

2 A Yes.

3 Q But during this time, you were living in the mobile home with
4 Freddy and your son?

5 A Yes.

6 Q Did there come a time, actually about two, two and a half years
7 ago, where you left the trailer and briefly moved in with Jose'?

8 A For how long?

9 Q Well, I don't know how long. I'm saying at some point, did you
10 move in with Jose', and it would've been about two years ago or two and a
11 half years ago?

12 A Yes.

13 Q But at some point you moved back into the motor home with
14 Freddy again?

15 A Wait. When I moved, that wasn't the first time. I didn't have
16 my -- my trailer yet.

17 Q So you didn't -- you didn't live in the motor home yet?

18 A No, because I -- at that time I didn't have it. I didn't buy it yet.

19 Q Where were you living at that time?

20 A I was with Jose', and then I bought the trailer, and then I left
21 Jose', and I went to live at the trailer.

22 Q Okay. I guess I want to get one thing straight because I think
23 your testimony, and if I'm misunderstanding you, correct me, when David left,
24 it was Freddy, yourself and Franklin; correct?

25 A Yes.

1 Q And that would've been at least three years ago now?
2 A Yes, but David never lived in the trailer with us. He lived in the
3 apartment.
4 Q He lived in an apartment with yourself, Freddy and Franklin?
5 A Yes.
6 Q Okay. So when he left, then it was you, Freddy and Franklin
7 still in the apartment?
8 A Yes. And then I moved from there with Jose', and then I bought
9 the trailer, and then I went back to live at the trailer.
10 Q Okay. At some point you left the motor home and Freddy, and
11 it would've been about four months before this incident in August; is that
12 correct?
13 A Yes.
14 Q And you went there to live with Jose'?
15 A Yes.
16 Q Now, at that point did Freddy know about Jose'?
17 A No.
18 Q He wasn't aware of your relationship with Jose' at all at that
19 point?
20 A Freddy, no.
21 Q But you had been dating Jose' for at least two to three years at
22 that point?
23 A Yes.
24 Q During this time did you go spend nights, time over at Jose's
25 place?

1 A Yes.

2 Q But Freddy didn't -- you said Freddy didn't know where you were
3 going and obviously didn't know about Jose'?

4 A I don't believe so.

5 Q And when you left, you didn't tell Freddy where you were going?

6 A I didn't have a reason to tell him. He was not my husband.

7 Q In fact, even when you spoke to Detective Chavez, to the police,
8 you told him that you went to live just with a family in an apartment?

9 A When that happened, when I was speaking with Chavez?

10 Q Yes. You remember speaking to Detective Chavez?

11 A Yes.

12 Q You had testified earlier that he spoke to you, and you gave him
13 a statement?

14 A Yes.

15 Q Do you remember, did Detective Chavez tell you that he was
16 going to record that statement?

17 A Yes.

18 Q So you know that you gave that statement to him?

19 A Yes.

20 Q And when you spoke to Detective Chavez, you -- when you were
21 talking about moving into this apartment, you just told him that you were
22 moving in with a family in an apartment?

23 THE INTERPRETER: With a family member you say?

24 MR. PAULSON: With a family.

25 THE INTERPRETER: With a family. With a family, yeah?

1 MR. PAULSON: Yes.

2 THE WITNESS: [Through an Interpreter] Yes, because Jose' has his
3 mother. Sometimes she stays there, and sometimes she goes to Mexico.

4 BY MR. PAULSON:

5 Q Okay. And regarding that statement to police and Jose', on
6 numerous occasions you referred to Jose' when you're talking to the police as
7 a friend?

8 A Yes.

9 Q And you also referred to him as the man that lives there in the
10 apartment that you rent a room out of?

11 A Yes.

12 Q And you also say that you give this guy, this friend, a ride to
13 work?

14 A Yes.

15 Q When you're talking to the police, you know that Jose' is much
16 more than a friend, he's actually your boyfriend; correct?

17 A Yes.

18 Q In fact, at that point he had been your boyfriend for about three
19 years?

20 A Yes.

21 Q Now, I want to go ahead and jump forward to August 16th. That
22 particular morning you testified --

23 THE COURT: Wait for the interpreter.

24 MR. PAULSON: I'm sorry.

25 THE COURT: You just gotta watch her. You paused, and she started

1 to speak. Go ahead, Ms. Interpreter.

2 BY MR. PAULSON:

3 Q Okay. You said you were going to give Jose' a ride to work that
4 morning?

5 A [Through an Interpreter] Yes.

6 Q So you were already seated in the driver's seat; correct?

7 A Yes.

8 Q And you testified that you didn't really see Freddy until he was --
9 basically opened the door and got in the car; correct?

10 A Yes, I was bending down trying to find a radio station.

11 Q And he told you to drive?

12 A Yes.

13 Q And so you drove?

14 A Yes.

15 Q Now, at this point was Freddy acting upset? Was he angry?

16 A He was upset, angry.

17 Q In fact, he wanted to know about your relationship with Jose';
18 right?

19 A I don't know. I don't know. He didn't say anything. At that
20 moment he didn't say anything. Freddy didn't say anything.

21 Q At some point that morning during your conversations with
22 Freddy, he wanted to know about Jose'?

23 A He didn't ask me anything.

24 Q Okay. Now, a few -- I'm going to just back up just a little bit
25 before I move on. You -- at this time you're living at the apartment on Lamont

1 Street; correct?

2 A Yes.

3 Q And the motor home that you used to live in was on Lake Mead
4 Boulevard; right?

5 THE COURT: I get the impression it's not a motor home in the sense
6 you can drive it. It's a trailer?

7 MR. PAULSON: Yeah. It's referred to in the statement as either a
8 mobile home, motor home. We can just say -- call it a trailer, I guess. It's not
9 that important. I'm not trying to say it was mobile.

10 THE COURT: Yeah.

11 THE INTERPRETER: What was -- what was the name of the street? I'm
12 sorry.

13 MR. PAULSON: The motor home was on Lake Mead.

14 BY MR. PAULSON:

15 Q Correct?

16 A [Through an Interpreter] Yes.

17 Q Okay. During the time that you were living on Lamont, you
18 would still go by the motor home and talk to Freddy; correct?

19 A Yes, I always went to visit him. I went with my son. Sometimes
20 he didn't work, and we went to see him.

21 Q And there did actually come an occasion where Jose' questioned
22 you about going over to see Freddy; correct?

23 A Yes.

24 Q And a few days prior to this incident, in the morning, you went
25 by the motor home?

1 A I passed by on the street. Freddy was outside. He run towards
2 the car.
3 Q Okay. What street were you passing by on?
4 A I don't know what is the name of the street that cross behind the
5 trailer.
6 Q You were driving, and Freddy saw you?
7 A Yes.
8 Q So you stopped?
9 A Yes.
10 Q And talked to him?
11 A That was logical. I was not afraid of him. He never shown to
12 me that he was going to harm me.
13 Q But in order for you to go into the motor home park, into the
14 mobile home park, you had to go out of your way to do that? It wasn't a direct
15 route to the apartment on Lamont; correct?
16 A No, I could go different ways to where I was living.
17 Q Okay. But this particular day you did end up stopping?
18 A Yes.
19 Q Freddy actually got in and sat in the car and was talking to you;
20 correct?
21 A Yes.
22 Q And do you recall saying to Detective Chavez that on this
23 particular day, apparently Jose' saw that?
24 A Yes, Jose' told that to the detective.
25 Q And there was something about that Freddy -- that he thought

1 Freddy was touching your leg? Do you remember saying that to Detective
2 Chavez?

3 MS. NYICOS: Just for clarification, could Counsel tell me where he's
4 talking about here?

5 THE WITNESS: [Through an Interpreter] Yes, but that's not true.

6 BY MR. PAULSON:

7 Q But you did -- you told Detective Chavez that, though; correct?

8 A Jose' thought that Freddy was touching my leg.

9 Q Okay. So at this point Jose' knows about Freddy, and Freddy
10 knows that Jose' is with you?

11 A Freddy didn't know that I was with Jose'.

12 Q Okay. Let's go ahead and get back to where I left off. While
13 you're driving, you testified that there was some struggling going on; correct?

14 A Yes.

15 Q You actually testified earlier that initially Jose' stabbed you in the
16 leg?

17 A Freddy.

18 Q I apologize. Correct. Freddy stabbed you in the leg?

19 A Yes.

20 Q And so he stabbed you. Was it -- was it a deep stab wound?
21 Did he push the knife into your leg?

22 A No, he just touched me a little bit like to frighten me. Something
23 like that.

24 Q Okay. So you said he touched you to frighten you. So that
25 didn't -- wasn't enough to hurt you? It was more to scare you; correct?

1 MS. NYICOS: Objection; speculating.

2 MR. PAULSON: Well, it's her -- it's her opinion.

3 THE COURT: Yeah. You can ask her what she thinks, and you can
4 rehabilitate her, if you want. Go ahead.

5 THE WITNESS: [Through an Interpreter] Yes. But, anyhow, he touched
6 me a little bit.

7 BY MR. PAULSON:

8 Q Okay. And --

9 THE COURT: Did it bleed?

10 THE WITNESS: [Through an Interpreter] No. Just it turned to red.

11 BY MR. PAULSON:

12 Q That was my next question. All right. And at this point you're
13 driving the car; correct?

14 A Yes, but I drove a little while --

15 Q Right.

16 A -- until it stopped.

17 Q When you stopped, you said initially he wanted you to get in the
18 backseat?

19 A Yes, he said go in the back.

20 Q And you went in the back?

21 A Yes.

22 Q At some point he pulls you back into the front seat; right?

23 A When I was in the front seat, he grabbed my hair, and he pulled
24 me in the back, and then he did the same thing when he pulled me to the front.

25 Q Okay. And also when he pulled you into the front, he had to --

1 at some point he grabbed you by the arm also; correct?

2 A Yes.

3 Q Was that -- would've been by your right arm?

4 A Yes.

5 Q Do you remember that when he grabbed you, was it enough to
6 leave a mark on your arm?

7 A Yes, he left a little.

8 Q A little scrape or mark on your arm?

9 A [Nods head].

10 THE COURT: She nodded yes. Go ahead.

11 MR. PAULSON: Thank you.

12 BY MR. PAULSON:

13 Q Okay. And you also testified that at some point there was a
14 struggle, and you were trying to get the attention of the police car in front of
15 you?

16 A [Through an Interpreter] Yes.

17 Q And you ended up pulling over, and that's when he hit you on
18 your right cheek?

19 A Yes.

20 Q And that's the only time he hit you, though; correct?

21 A Yes, after the two times that he grabbed me by the hair.

22 Q Okay.

23 A And then he hit my -- my face.

24 Q Now, after this occurs, you continue driving, and you testified
25 that eventually you get on the freeway?

1 A Yes. No, he was driving. I didn't drive the car.

2 Q Right. At that -- he's driving. You're in the -- you're in the front
3 seat right now; is that correct?

4 A Yes.

5 Q When he was stopped at that mobile home park when you were
6 trying to get the police attention, you didn't try to get out of the vehicle at that
7 point; correct?

8 A I wanted to leave, but that was when he hit me, and he told me
9 to be quiet, to shut my mouth.

10 Q So at some point you get on the freeway, and you drive for
11 about 25 minutes --

12 THE COURT: When you say "you drive," you're confusing her because
13 she's thinking you're implying she's the driver.

14 BY MR. PAULSON:

15 Q Freddy drove, you were the passenger, and you travel for about
16 25 minutes; correct?

17 A [Through an Interpreter] More or less.

18 Q And you testified at some point you get off of the freeway?

19 A [Nods head].

20 Q And that's when he turned onto this dirt street, dirt road?

21 A Yes.

22 Q Now, that dirt street was fairly close to the freeway; correct?

23 A I was nervous. I really cannot tell you the distance, but I know
24 that he left the freeway.

25 Q Now, when you pulled off there, you said you were nervous, you

1 don't really notice, but you did notice that there was a person there; correct?

2 A Yes. There was somebody waling over there where he took me,
3 and there was also a pickup that was there.

4 Q So you recall that there was actually a person there, and you saw
5 that man. In fact, you saw the man, and you headed off; right?

6 A Yes.

7 Q And that was right nearby where you stopped, where Freddy
8 stopped the car?

9 A Yes, but the person wasn't that close to the car either.

10 Q Do you recall when you were speaking with Detective Chavez
11 that you said that that car or that -- or least it was a truck where the person
12 was-- was about a block, a block and a half away?

13 A Approximately, yes.

14 Q Now, you testified at this point Freddy gets out of the car, and
15 he comes around. Does he open the passenger door?

16 A What I am seeing.

17 Q Okay. And you said he put you into the backseat?

18 A Yes.

19 Q You were laying on the backseat?

20 A Yes.

21 Q Now, do you remember at all telling the nurse at the hospital that
22 you were actually laying on the ground?

23 A No, no, on the seat, on the seat of the car.

24 Q So it was on the seat of the car?

25 A Yes, in the backseat.

1 Q Okay. And you testified that he took your shorts and panties
2 off?
3 A That's it.
4 Q Now, did he take them completely off?
5 A Yes.
6 Q Okay. So your testimony right today is that he took your shorts
7 and panties completely off; correct?
8 A Yes.
9 Q Again, you recall speaking about the -- or to Detective Chavez,
10 and when he asked you that same question, you told him no, that they were
11 actually just pulled down and left on the bottom of your legs by your feet. Do
12 you remember that?
13 A Yes, he took it -- he took it down all the way, all the way down
14 to my feet.
15 Q But not completely off?
16 A I don't know. I think that taking it off is just bring all the way
17 down to the feet. I don't know what you mean.
18 Q Okay. I mean, just for clarification, they're not completely off
19 and laying somewhere; they're still around your legs?
20 A Yes, all the way down to my feet.
21 Q Okay. And you were on your back?
22 A Uh-huh, yes.
23 Q And Freddy would've been on top of you; correct?
24 A Yes.
25 Q Now, you testified earlier that Freddy had the knife; correct?

1 A Yes.

2 Q Where is it at this point?

3 A What do you mean where is it?

4 Q Where's the knife?

5 A He has the knife in his hand. He never let it go.

6 Q He has it in his hand?

7 A But he's not pointing it at me. He just have it in his hand.

8 Q So he's not pointing it at you?

9 A No, but he has it in his hand.

10 Q What hand is it in?

11 A Right.

12 Q The knife in his right hand. And do you recall telling Detective

13 Chavez that Freddy grabbed your right hand?

14 A Yes, when my hand's backwards,

15 Q So your hands are backwards?

16 A Just one hand.

17 Q One hand?

18 A Uh-huh.

19 Q Okay. And actually that would've had to have been your right

20 hand because he grabbed you with his left hand; correct?

21 A Well, I don't remember. This is a trauma. This is very difficult.

22 I don't think that anybody can understand.

23 Q I understand that.

24 THE COURT: Are you getting close?

25 BY MR. PAULSON:

1 Q Let me put it this way --

2 MR. PAULSON: Getting close, Judge.

3 THE COURT: All right. It's almost break time.

4 BY MR. PAULSON:

5 Q Let me put it this way: You say he had the knife in his right
6 hand?

7 A [Through an Interpreter] Yes.

8 Q So he couldn't have grabbed you with this hand. He must have
9 used his left hand; right?

10 A It was a small knife. It was like a folded -- folding knife.

11 Q So he's holding the knife in one hand and grabbing your hand,
12 and you said he was on top of you?

13 A Yes.

14 Q And during this time, you testified earlier that you didn't say
15 anything?

16 A I don't remember. I just told Chavez that -- that he had a knife in
17 his hand.

18 Q Okay. My question was, you didn't say anything?

19 A To who? To Freddy?

20 Q Yes.

21 A No, I never said anything.

22 Q You testified earlier that you thought it lasted about 15 minutes;
23 is that correct?

24 A Yes.

25 Q And during this time is Freddy being very rough and forceful with

1 you?

2 A No.

3 Q Not at all?

4 A No.

5 Q You said it lasted about 15 minutes. If you had told Detective
6 Chavez that it lasted about five minutes, you wouldn't necessarily dispute that,
7 would you, if you said five minutes?

8 A I don't know.

9 Q Okay. Now, after this is -- after this is over, you testified you
10 put your clothes back on, you get back in the car and continue to drive on;
11 correct?

12 A Yes.

13 Q You go for about five minutes and then stopped at this gas
14 station?

15 A Yes.

16 Q And earlier you testified that Freddy asked you for money for
17 gas?

18 A Yes, he asked me if I had money, and I said no.

19 Q And you told him no?

20 A Yes.

21 Q You also testified earlier that you were too scared to say no
22 when he was having sex with you, but you weren't too afraid of him to say no
23 about money?

24 A I did have money. I had about 22, \$25. I don't remember. I hid
25 it in my suit.

1 MR. PAULSON: Court's indulgence. Nothing further, Judge.

2 THE COURT: Any redirect?

3 MS. NYICOS: Yes, Judge.

4 THE COURT: Other responses briefly.

5 **REDIRECT EXAMINATION**

6 **BY MS. NYICOS:**

7 Q Now, Bianca, Counsel asked you about when Freddy pulled off to
8 the side of the road, and you saw a man walking down the road with this dog?

9 A [Through an Interpreter] Yes.

10 Q How far away was this man?

11 A He wasn't too far; he wasn't too close. I wanted to make some
12 type of movement to get his attention, but I got afraid.

13 Q Did you scream?

14 A No.

15 Q Why not?

16 A I was afraid. Freddy is violent, and I was afraid.

17 Q Now, he also asked you about the truck that was parked nearby.
18 Did you notice if anyone was in the truck?

19 A No, it seemed like it was a -- a tractor was there. Somebody left
20 it there.

21 Q Now, when Freddy was on top of you and he grabbed your right
22 hand, do you remember if he said anything to you?

23 A No.

24 Q Do you remember telling Detective Chavez if he had said
25 something to you?

1 A No, I don't remember.

2 MS. NYICOS: Judge, with the Interpreter, I'm going to show her her
3 statement, but it's the English translation.

4 THE COURT: Okay.

5 THE INTERPRETER: Do you want me to read it?

6 MS. NYICOS: Yes.

7 THE COURT: Did you tell Detective Chavez this?

8 THE WITNESS: [Through an Interpreter] It seems to me like he said
9 something about it to me, but the truth is that I don't remember.

10 THE COURT: We need to have this read in English.

11 MS. NYICOS: Okay.

12 THE COURT: What did he ask her -- go ahead.

13 BY MS. NYICOS:

14 Q Okay. Bianca, what I had the Interpreter just ask you was, did
15 you -- did you tell Detective Chavez, [reading] Yes, he grabs my hand, and then
16 he told me don't make any movements. You just stay relaxed because, if not,
17 I'm willing to poke you with this?

18 A Yes, it seemed that he -- that I did, but I don't remember.

19 Q Okay.

20 A I was very nervous.

21 THE COURT: That's enough.

22 MS. NYICOS: No problem. Nothing further, Judge.

23 THE COURT: Any recross?

24 MR. PAULSON: None based on that.

25 THE COURT: Okay. Thanks. You're excuse. Okay. Let's take our

1 afternoon break at this time. Don't talk about the case with each other or
2 anybody else. Don't read, watch or listen any report on the case by radio,
3 television, newspaper or Internet. Don't form or express any opinion on the
4 case until it's submitted you. We'll be in recess till 3:15. Okay.

5 [A short recess was taken at 3:03 p.m.]

6 [Outside the presence of the jury.]

7 THE COURT: We're back on the record in Case Number C226586,
8 State of Nevada versus Freddy Martinez. Let the record reflect the presence of
9 Defendant with counsel; counsel for the State. Absence of the jury. Ms.
10 Hamers, you wanted to make a record outside the presence. Go ahead.

11 MS. HAMERS: I do, Judge. Thank you. A few things that were
12 mentioned, a couple by Jose' Castillo when he testified and one by Bianca, that
13 I didn't want to call attention to while the jury was present.

14 Jose' said that Freddy was in jail and that there had been a
15 history of problems with Freddy. Bianca said that Freddy was high on drugs on
16 that day. I think that those statements prejudice the jury against Mr. Martinez.
17 Now that they've heard that, I think it violates his right to a fair trial and due
18 process, and I'd ask for a mistrial on that basis.

19 THE COURT: Well, we know that the item one that was brought up in
20 front of the jury is all B.S. I mean, if you have an objection, you make it, and I
21 will sustain it. But in both of those cases, I immediately stopped them,
22 admonished the jury and said this is relevant, and don't consider it, and I don't
23 think it has any effect on anything.

24 MR. BATEMAN: And we were trying -- I think through a lot of the
25 leading questions --

1 THE COURT: I mean, the drug thing is -- first of all, they don't even
2 know; and, secondly, it's a two-edge sword. It might help you, it might hurt
3 you if they thought that was the case, so --

4 MR. BATEMAN: Well, we were trying to lead through some of that.

5 THE COURT: Of course, and they were very difficult witnesses. And
6 you know what they're going to say because when it gets into Spanish, you
7 don't really understand the question, and you don't know what the answer was
8 until the Interpreter is saying it, and so you just do the best you can. So is that
9 a motion for mistrial?

10 MS. HAMERS: Judge, it is. And I am in no way insinuating, obviously,
11 the Prosecution was trying to do that, but that information was brought out in
12 front of the jury.

13 THE COURT: I think it's irrelevant. The motion for mistrial is denied.

14 MS. HAMERS: One other thing I feel compelled to mention, when we
15 were riding the elevator up on our way back from lunch, the juror who sits in
16 the second chair from the end, a woman who's wearing a green sweater,
17 turned to myself and Mr. Paulson and said, The lunch break went by very
18 quickly. And I told her that we weren't able to talk to her.

19 THE COURT: Perfect.

20 MS. HAMERS: That was the extent of that communication.

21 THE COURT: Appreciate your putting that on the record. That was
22 obviously a professional way to handle that, and I think -- you know, we
23 probably understand that the Chinese wall between the jury and us is a little
24 stricter than they understand it to be. I'm sure that casual comment was
25 meaningless. She was just trying to be pleasant, but you handled that very

1 professionally, and thanks for saying that. All lawyers should do that and put it
2 on the record so that later, if something comes up and it didn't get on the
3 record, you know, people can misinterpret. So I appreciate that.

4 MR. BATEMAN: Judge, can I put one thing on the record, briefly?

5 THE COURT: No, I just let public defenders do it because I like them
6 better.

7 MR. BATEMAN: I usually -- I don't have any --

8 THE COURT: What is it?

9 MR. BATEMAN: I had CSA Grover actually today bring all of these
10 packages in here that I've lodged with the Clerk of Court. It's actually
11 packages 1 through, I believe, 11, and they were actually kind of combined.
12 The reason I did that is most of them were booked by Detective Goddard who
13 can't come until tomorrow. He's also the detective that took the bucal swab
14 from the Defendant. So I could've had Grover get on the stand and say, I
15 brought them from the event -- the vault, but the Defense is being kind enough
16 to just stipulate to any issues as to that.

17 THE COURT: I thought we covered that earlier, but nobody has any
18 problem with chain of custody on this stuff; do they? And the one big box was
19 open in everybody's presence; right?

20 MS. HAMERS: That's correct. The only -- there were additional items
21 brought in a few minutes ago, and we also stipulate to chain of custody on
22 those. There's no problems there.

23 THE COURT: All right. We just won't even mention it. All right. Bring
24 them in. Let's dance.

25 [Jury enters the courtroom at 3:17 p.m.]

1 THE COURT: Ms. Hamers, Mr. Bateman, come up.

2 [Bench conference; not transcribed.]

3 THE COURT: Okay.

4 MR. BATEMAN: Could I have the Court's indulgence just one moment,
5 Judge.

6 MS. NYICOS: Okay.

7 THE COURT: Call your next witness, State.

8 MS. NYICOS: The State calls Shane Charles.

9 THE COURT: Shane Charles. Come up here, sir.

10 ***SHANE ROBERT CHARLES,***

11 having been first duly sworn, testified as follows:

12 THE CLERK: Thank you. You may be seated.

13 THE COURT: State your name, Officer, and spell your name for the
14 court reporter.

15 THE WITNESS: Robert Shane Charles, R-o-b-e-r-t, S-h-a-n-e,
16 C-h-a-r-l-e-s.

17 THE COURT: Go ahead.

18 ***DIRECT EXAMINATION***

19 ***BY MS. NYICOS:***

20 Q Mr. Charles, how are you employed?

21 A With the Mesquite Police Department.

22 Q In what capacity?

23 A I'm a sergeant on patrol.

24 Q Now, directing your attention specifically to August 16th of 2006,
25 were you working that day?

1 A Yes, I was.

2 Q And were you dispatched to the Hockridge Condominiums?

3 A Yes, I was.

4 Q And are those located in Mesquite, Clark County, Nevada?

5 A That's correct.

6 Q Okay. And what was the nature of that call?

7 A We were told that there was a domestic in progress with a knife

8 involved.

9 Q And did you arrive at the Hockridge Condominium?

10 A Yes, I did.

11 Q What did you observe when you got there?

12 A I observed a white truck with someone getting in it, attempting

13 to drive from the parking lot, and we were receiving information at the same

14 time that our suspect might be getting into a truck to leave.

15 Q And the person you observed getting into a truck, do you see him

16 in the courtroom today?

17 A Yes, I do.

18 Q Would you please point to him and describe something he's

19 wearing.

20 A He's at that table with the white shirt on.

21 MS. NYICOS: Can the record reflect the I.D. of Defendant?

22 THE COURT: Yes.

23 MS. NYICOS: Thank you.

24 BY MS. NYICOS:

25 Q And what did you do when you received a call that your suspect

1 might be attempting to flee?

2 A I told the other officers about the truck that was leaving, and we
3 pulled in behind it and stopped it. Did a felony stop on the vehicle.

4 Q Now, you said felony car stop. What does that entail?

5 A It entails pulling out guns and making sure everyone's covered
6 and brought out at gunpoint.

7 Q How many people were involved -- were inside the truck?

8 A If I recall, three. Maybe four.

9 Q I think you need to sit closer to that microphone. And did the
10 Defendant exit the vehicle at that time?

11 A Yes, he did.

12 Q Okay. And at that point what did you do?

13 A I was the cover officer, so I just stood back and covered
14 everyone else.

15 Q Now, you said you originally came on the scene because your
16 call stated it was a domestic involving a knife. Did you later determine that
17 there was more to it than that?

18 A Yes, we did.

19 Q Okay. And how did you make that determination?

20 A We had a lot of witnesses telling us that it involved a victim
21 being raped and brought up against her will from Vegas.

22 Q Okay. Now, at this point knowing that there's some connection
23 to Las Vegas, would this be a Mesquite Police Department case?

24 A No, it wouldn't.

25 Q Okay. What did you do at that point?

1 A We called Las Vegas Metro and advised them of the situation to
2 have some people respond up.

3 Q And did Las Vegas Metropolitan Police Department respond up to
4 Mesquite?

5 A Yes, they did.

6 Q And you drove down here from Mesquite today; is that correct?

7 A Yes, I did.

8 Q How long is that drive?

9 A About 45 minutes to an hour.

10 Q And what interstate did you have to take to get down here?

11 A 15.

12 Q And is Interstate 15, to your knowledge, located entirely within
13 Clark County, Nevada?

14 THE COURT: Not the whole interstate, but that led from --

15 BY MS. NYICOS:

16 Q Well, the interstate that you had to travel today between
17 Mesquite and here, is that located here in Clark County, Nevada?

18 A That's correct.

19 Q Okay. And while you were waiting for Metro officers' arrival,
20 what did you do with respect to the Defendant and the alleged victim in this
21 case?

22 A We isolated him, took the Defendant to the station for
23 questioning and did what we could to comfort the victim. Got her settled
24 down. Took her to the hospital.

25 Q And which hospital would that be?

1 A That was Mesa View Hospital in Mesquite.

2 Q Now, when you made contact with the victim in this case, do
3 you recall her name?

4 A I don't.

5 Q Okay. Do you recall what her demeanor was like when you
6 made contact with her?

7 A She was very hysterical, crying. Real upset.

8 MS. NYICOS: Nothing further.

9 THE COURT: Any cross?

10 MS. HAMERS: Yes, Judge.

11 **CROSS-EXAMINATION**

12 BY MS. HAMERS:

13 Q Good afternoon. You said that you went out to Hockridge.
14 Originally that was based on a domestic battery with a knife involved; right?

15 A That's correct.

16 Q And then you got further information that there could've been
17 more involved?

18 A That's correct.

19 Q But you don't know what happened between Bianca Hernandez
20 and Freddy Martinez?

21 A Just what I was told.

22 Q Right. The impression you had just came from other people.
23 You certainly didn't witness anything that happened between the two of them?

24 A That's correct.

25 Q And I'm not saying no, you don't know where that truck was

1 going?

2 A No, I don't.

3 MS. HAMERS: That's all. Thank you.

4 THE COURT: Thanks, Sergeant.

5 THE WITNESS: Thank you.

6 THE COURT: Appreciate you coming down. I know it's a long trip.

7 Call your next witness.

8 MS. NYICOS: The State calls Lance Barr.

9 **LANCE BARR,**

10 having been first duly sworn, testified as follows:

11 THE CLERK: Thank you. You may be seated.

12 THE COURT: Officer, state your name, and spell your name for the
13 court reporter, please.

14 THE WITNESS: Officer Lance Barr. Last name's spelling, B-a-r-r.

15 THE COURT: Okay. Go ahead.

16 **DIRECT EXAMINATION**

17 **BY MS. NYICOS:**

18 Q Officer Barr, how are you employed?

19 A Police officer for the City of Mesquite, Nevada.

20 Q And how long have you been employed there?

21 A Seven years, seven months.

22 Q Now, directing your attention specifically to August 16th of 2006,
23 were you working that day?

24 A Yes.

25 Q And were you dispatched at some point to the Hockridge

1 Apartments -- I mean, condominiums?

2 A Yes.

3 Q And those are located in Mesquite, Nevada?

4 A Yes, they are.

5 Q Okay. Now, what did you observe when you got there?

6 A We were told that there was a domestic battery in progress and
7 that the perpetrator had a knife and had already assaulted someone and that
8 they were attempting to escape in a white pickup truck.

9 Q Did you observe that white pickup truck at the apartment?

10 A Yes.

11 Q At the condominium?

12 A Yes.

13 Q And how many occupants were in that pickup truck?

14 A As far as I remember there were -- including the suspect, there
15 were three others.

16 Q And you say "the suspect." Do you see the suspect in the
17 courtroom today?

18 A I do.

19 Q Can you please point him out.

20 A Wearing the white shirt sitting at defendant's table.

21 THE COURT: The record will reflect identification of Defendant Freddy
22 Martinez.

23 BY MS. NYICOS:

24 Q And what was this truck doing when you observed it?

25 A Attempting to flee the scene.

1 Q By "the scene," do you mean the condominium complex?

2 A Yes.

3 Q Okay. And what did you do at that point?

4 A Already being forewarned that the -- as of the description of the
5 pickup, we put our lights and sirens on -- sirens on and stopped the vehicle.

6 Q And did you have the occupants of the vehicle exit?

7 A Yes.

8 Q And did that include the Defendant?

9 A Yes.

10 MS. NYICOS: Okay. Judge, can we just have an ongoing permission
11 to approach?

12 THE COURT: Sure.

13 MS. NYICOS: Thank you.

14 BY MS. NYICOS:

15 Q Did you come to search the Defendant?

16 A Yes, I did.

17 Q And when you searched the Defendant, what did you find?

18 A I found a dark colored folding knife.

19 Q Okay. Showing you what's been marked as State's Proposed
20 24-E, do you recognize that?

21 MS. NYICOS: And just for the record, that envelope is open; it was
22 never sealed; correctly -- correct?

23 THE WITNESS: [Nods head].

24 THE COURT: That's actually what could happen, but there was a
25 whole bunch of pieces of evidence. They put them in this big box. It was

1 sealed. It's been kept in the evidence vault intact. It was brought in here by
2 an evidence custodian, and both sides were good enough to stipulate that we
3 can save a half hour of testimony by agreeing to that, that there was no
4 tampering with the evidence. Go ahead, Officer.

5 THE WITNESS: This would be the knife that I removed from suspect's
6 front pocket, right front pocket.

7 BY MS. NYICOS:

8 Q Okay. And do you recognize that?

9 A Yes.

10 MS. NYICOS: Move for admission.

11 THE COURT: Any objection?

12 MS. HAMERS: No objection.

13 THE COURT: Admitted.

14 [State's 24-E admitted.]

15 MS. NYICOS: And just so the record is clear, 24-E, that would
16 encompass the envelope the knife is located in and the knife?

17 THE COURT: Yeah. We're considering both 24-E.

18 MS. NYICOS: Okay.

19 BY MS. NYICOS:

20 Q Could you please remove the knife from the envelope.

21 A [Doing so.]

22 Q Now, could you please describe what you're holding in your
23 hand.

24 A This is a dark colored folding knife with an approximate
25 three inch blade.

1 Q Okay. And is it -- what would you describe it as? Is it like a
2 switchblade?

3 A It's a -- it's a folding knife that's probably got a quick release.
4 It's on a spring, looks like.

5 Q Is it functional?

6 A Yes.

7 Q Now, after searching the Defendant and locating this knife, what
8 did you do at that point?

9 A After I disarmed him, I took this knife and put it in my pocket.

10 Q Okay. And did you eventually hand that off to a Las Vegas
11 Metropolitan Police Department officer?

12 A Yes.

13 Q Okay. Why did you put it in your pocket?

14 A For safekeeping.

15 Q Okay.

16 A Maintain chain.

17 Q Okay. I'm sorry, what?

18 A To maintain chain of evidence.

19 Q Did you have any other evidence in your possession that you
20 needed to turn over to Metro?

21 A No.

22 Q And this was the only thing?

23 A Yes.

24 Q Okay. Do you recall which detective you turned it over to?

25 A Detective Scott Kavon.

1 MS. NYICOS: Okay. Nothing further.

2 THE COURT: Anything else? Any questions?

3 MS. HAMERS: Just a couple, Judge.

4 ***CROSS-EXAMINATION***

5 ***BY MS. HAMERS:***

6 Q You said that when you arrived at this apartment -- these
7 apartments, there was a truck attempting to leave?

8 A Yes.

9 Q You don't know where that truck was going, do you?

10 A No.

11 MS. HAMERS: That's all. Thank you.

12 THE COURT: Okay. Thanks, Officer. Appreciate your time. I know
13 it's a long trip down. Thank you very much. Call your next witness.

14 MR. BATEMAN: Judge, the issue we spoke at the bench, I think it's
15 been resolved, so we're going to call William McPheeters.

16 THE COURT: Okay. If you folks have resolved it, it's okay with me.
17 Come on up, sir. Come up here and stand and raise your right hand.

18 ***WILLIAM MCPHEETERS,***

19 having been first duly sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated.

21 THE COURT: Sir, will you tell us your name, and spell your name for
22 us.

23 THE WITNESS: William McPheeters.

24 THE COURT: Spell McPheeters, please.

25 THE WITNESS: M-c, capital P-h-e-e-t-e-r-s.

1 THE COURT: Okay. Go ahead, Mr. Bateman.

2 MR. BATEMAN: Thank you.

3 **DIRECT EXAMINATION**

4 **BY MR. BATEMAN:**

5 Q Sir, I'm going to direct your attention to August 16th of last year.
6 Do you remember that day?

7 A Well, somewhat, yeah.

8 Q Okay. Where were you working on that day?

9 A At the Glendale Sinclair station.

10 Q Okay. And when you say "Sinclair station," is that a gas
11 station?

12 A Yes, it is.

13 Q Are there any other businesses that are attached or close by the
14 gas station?

15 A Yes.

16 Q What are they?

17 A Well, there's a restaurant, convenience store, bar and motel.

18 Q Okay. And you say "Glendale." Can you tell me about where
19 that is in relation to Mesquite and Las Vegas.

20 A It's about 50 miles north of Las Vegas on I-15 and 30 miles
21 south of Mesquite.

22 Q Okay. That's still here in Clark County?

23 A Yes.

24 Q All right. And were you working on that day at the Sinclair gas
25 station?

1 A Yes.

2 Q Were you like a clerk or what were your job duties?

3 A Cashier.

4 Q Okay. What time did you get to work that day?

5 A Oh, I was probably working 6:00 to 2:00.

6 Q 6:00 a.m.?

7 A Yes.

8 Q Okay. Now, from your -- do you normally work inside a building

9 or are you outside?

10 A Well, I have to do both.

11 Q And are the gas station -- or the pumps near where you would be

12 able to observe what was going on?

13 A Yes.

14 Q All right. On that particular day, did an individual catch your eye,

15 I guess, early -- in the early morning hours?

16 A Yes.

17 Q And how did that come about? How was it that this individual

18 caught your eye?

19 A Well, I watch people all day long.

20 Q Yes.

21 A You know, it's part of the job. And, I don't know, he just

22 seemed to catch my attention.

23 Q What was this individual who caught your attention doing?

24 A Well, first, he was just walking over by the restaurant, and then

25 it looked like he appeared to go inside the restaurant. And after that, he came

1 over to the station and talked to one of the people getting gas in the station.

2 Q Can you describe this individual?

3 A The one he talked to or him?

4 Q The one that you were observing, that went into the restaurant

5 and came back out.

6 A Hispanic male wearing a ball cap, I think a t-shirt. Nothing really

7 outstanding.

8 Q Did the individual have anything in his hands?

9 A Not that I noticed right off the bat.

10 Q Eventually did you notice something?

11 A A gas can.

12 Q Gas can? Was it a red gas can?

13 A I think so.

14 Q Okay. And what was this individual doing when he approached

15 the gas pumps?

16 A Well, he walked up and talked to a Hispanic male and got some

17 gas. Went over to a white car and put it in. And a few minutes later he came

18 back over and talked to another Hispanic male at a different pump and got

19 some more gas and put it in, and after that point, I lost him.

20 Q Okay.

21 A You know, he could've driven off or whatever.

22 Q How far away was the white car parked from the gas pumps?

23 A 20 yards.

24 Q Is that unusual if you were getting gas from your experience?

25 A Yeah.

1 Q Did you see anybody -- did you pay close attention to the white
2 car at all?

3 A No, not really.

4 Q Okay. About how long did this event take place where this
5 individual had gone twice to gas pumps?

6 A I'd say the whole thing, maybe over ten to 15 minutes.

7 Q This individual never came in to like pay for gas; is that correct?

8 A No.

9 Q What ultimately was it about this situation that kind of caught
10 your eye or caught your attention?

11 A Well, it wasn't the fact that he came up and asked one person
12 for gas. It's that he came back and asked a second one.

13 Q And then ultimately after the second time that he received some
14 gas in this container and put it in the car, is it at that point that this individual
15 left?

16 A Yeah.

17 Q Did you see which way he went or did you pay --

18 A No.

19 Q Okay. At some point did police officers come and talk to you
20 about maybe what had happened earlier in the day?

21 A Yes.

22 Q Was that later that day?

23 A Yes.

24 Q And did you describe what you had just told us?

25 A Yes.

1 Q Okay. Do you think you could identify this person again?
2 A It's doubtful.
3 Q Did you -- you didn't get a good look at their face?
4 A I don't think I ever got a look at his face.
5 Q Okay. But you said it was a Hispanic male?
6 A Yes.
7 Q Do you remember the type of car that you would've observed,
8 the car that he was putting gas in?
9 A It was just a smaller white car.
10 MR. BATEMAN: Pass the witness, Judge.
11 THE COURT: Any questions?
12 MS. HAMERS: Yes.

13 ***CROSS-EXAMINATION***

14 ***BY MS. HAMERS:***

15 Q Good afternoon. How far was this white car from the gas
16 pumps? Can you estimate in feet?

17 A In feet? About 60, 70 feet.

18 THE COURT: Well, he just said 20 yards.

19 MS. HAMERS: Oh, did he say 20 yards? I'm sorry. I missed that.

20 ***BY MS. HAMERS:***

21 Q And you said this was all over in about 10 to 15 minutes
22 approximately?

23 A Yes.

24 Q How many customers go through there in 10 to 15 minutes?

25 A It can vary greatly.

1 Q On this day do you remember if it was more than just those two?
2 A Oh, yeah, there were other customers who came and went.
3 Q More than five?
4 A Probably.
5 Q More than ten?
6 A Again, I'm -- I'm not sure.
7 Q Sure. We're just estimating. Would it maybe be safe to say five
8 to ten other people? Not 20?
9 A Like I said, it would be hard to say.
10 Q Okay. But other people?
11 A Yeah.
12 Q Now, you said that it was unusual that more than one person
13 was approached and asked for gas; is that correct?
14 A No. The part that was unusual is he got gas from one, then
15 came back and got gas from another.
16 Q Okay. What was unusual about that?
17 A Well, we have people that do that on occasion there, but usually
18 they get gas from one person, and they're gone.
19 Q Okay. So it was unusual to ask more than one person for gas?
20 A Yes.
21 THE COURT: No, no. He's saying "get," and you're saying "ask." I
22 think it's probably usual that they might ask ten people before they get one of
23 them to give them gas, but to get two people to give him gas is what he's
24 saying is unusual.
25 THE WITNESS: Yes, sir.

1 THE COURT: There you go.

2 BY MS. HAMERS:

3 Q So you're saying once you've already received some gas in that
4 gas can, it's unusual to then ask another person?

5 A Yes.

6 Q Why is that unusual?

7 A Because usually when it happens, they get their gas, and they're
8 gone.

9 MS. HAMERS: Okay. Nothing further. Thanks.

10 THE COURT: Thank you, sir. Appreciate your time. Yes, yes.

11 JUROR NUMBER 10: Can I ask a question or --

12 THE BAILIFF: Hang on.

13 THE COURT: The way you do it is give it to Lisa.

14 JUROR NUMBER 10: I'm not going to ask it here.

15 THE COURT: That's all right. Just give it to Lisa, and she'll give it to
16 me, and if it's under the rules allowed, I'll ask it. If it's not, I'll tell you later
17 why, and that's exactly the way you do it.

18 Fair question. I'm not sure everybody here knows the layout of
19 the whole complex. He wants to know where the car was relative to the
20 restaurant. You said it was 20 yards from the gas pumps. Was it right up next
21 to the restaurant?

22 THE WITNESS: It was parked right next to the southern wall of the
23 restaurant.

24 THE COURT: Okay. And is that an entrance, exit wall or just kind of a
25 dead wall?

1 THE WITNESS: It's a dead wall.

2 THE COURT: Okay. Thank you. You're excused. Thanks for coming
3 down. Appreciate your time.

4 THE WITNESS: Thank you.

5 THE COURT: Call your next witness.

6 MR. BATEMAN: Your Honor, the State calls Kristina Paulette. May I
7 approach the Clerk?

8 THE COURT: Sure.

9 MS. HAMERS: Mr. Bateman, is this your DNA witness?

10 MR. BATEMAN: Yes.

11 ***KRISTINA PAULETTE,***

12 having been first duly sworn, testified as follows:

13 THE CLERK: Thank you. You may be seated.

14 THE COURT: State your name, ma'am, and spell your name for the
15 court reporter.

16 THE WITNESS: Kristina Paulette, K-r-i-s-t-i-n-a, P-a-u-l-e-t-t-e.

17 THE COURT: Okay. Ms. Paulette, you have a very nice soft voice, but
18 this lady over here is doing interpreting, and it's very important that she is able
19 to hear you clearly as well as the jurors. So try to speak up. You can either
20 kind of pull that microphone to you or you can try to project.

21 THE WITNESS: Okay.

22 THE COURT: Thanks.

23 ***DIRECT EXAMINATION***

24 ***BY MR. BATEMAN:***

25 Q Ma'am, what do you do for a living?

1 A I'm a forensic scientist with the Las Vegas Metropolitan Police
2 Department's forensic lab.

3 Q Are you assigned to a particular department in the forensic lab?

4 A I'm in the biology DNA detail.

5 Q And how long have you worked as a criminalist in the forensic
6 lab?

7 A I've been with Metro for almost two years.

8 MS. HAMERS: Judge, we'd be -- we'd offer to stipulate to her
9 qualifications and that Mr. Martinez's DNA was found on Bianca Hernandez.

10 THE COURT: Okay. I understand you may want to bring that out a
11 little bit so that the jury can understand the import of that, but do you have any
12 problem accepting the stipulation that she is a scientist, she is qualified to take
13 and analyze DNA?

14 MR. BATEMAN: No, not at all.

15 THE COURT: All right. Then we'll save about 20 minutes going
16 through her background and qualifications because everybody is going to say
17 okay, she knows her job. She's capable of doing her job, and she's capable of
18 giving the testimony she's going to give her today, and we'll have an
19 abbreviated testimony as to what she did and what it means. Go ahead

20 BY MR. BATEMAN:

21 Q In this particular case were you asked to analyze some DNA
22 samples?

23 A Yes, I was.

24 Q Okay. And just briefly, and I know it's a big topic, can you just
25 briefly describe for the jury what generally DNA is.

1 A DNA is a substance found in the body that allows genetic
2 information to be passed down from generation to generation. Each of us has a
3 unique DNA pattern except for identical twins, and half of our DNA comes from
4 our moms and the other half comes from our dads.

5 Q So what is the process that you go through in comparing DNA
6 samples to see if they either match or maybe identify an individual?

7 Q Okay. The first thing we do is to release the DNA from the cells
8 from any substance that we took a cutting from, and then we -- once we
9 release the DNA, we quantitate the DNA to see how much is there. We make
10 lots and lots of copies of the DNA, which allows a tiny amount of DNA to be
11 recognized by our instruments. And then the instruments separate these DNA
12 fragments by their size.

13 Now, depending on the size of the DNA fragment, each DNA
14 piece is assigned a number. And since we're looking at 15 specific areas of the
15 DNA, we end up with 15 pairs of number -- numbers that make up our profile,
16 and this is because half of our DNA comes from our dads and half of our DNA
17 comes from our moms.

18 Q Okay. So how does DNA technology allow you to make an
19 identification?

20 A Basically, each -- since each of our profiles are unique, we can
21 compare DNA found from an evidentiary sample and compare it to a known
22 sample taken from a particular individual and see if these numbers, indeed,
23 match.

24 Q And do you -- well, let me go forward on this. Were you asked
25 to examine in this particular case a sexual examination kit with a bucal swab?

1 A Yes, I was.

2 MR. BATEMAN: Okay. May I approach, Your Honor?

3 THE COURT: Sure. Why don't you tell the jury what a bucal swab is
4 and what a sex exam kit is.

5 BY MR. BATEMAN:

6 Q Okay. Let's start with -- well, what I'm going to show you is
7 State's Proposed Exhibit 21 and see you recognize this evidence bag and
8 what's contained in the evidence bag.

9 A Yes, I do. This is the sexual assault examination evidence from
10 Bianca Hernandez.

11 Q Okay. Now, you're saying that that's basically what's in this
12 evidence bag; is that correct?

13 A Yes, it is.

14 Q How do you know that that's in this evidence bag?

15 A Because those are the items that I examined and my initials and
16 date of when I seal the evidence are on there.

17 Q So when you receive this bag per the request to analyze DNA, is
18 this basically how you receive the bag to do the analysis?

19 A Yes, it is.

20 Q Okay. Now, there's a red label up here and a blue label down
21 here.

22 A Uh-huh.

23 Q Can you tell me what the difference is.

24 A The red label on top is what's sealed by the officer who actually
25 packaged the evidence and booked it, and the bottom seal is the seal that once

1 I open it up and examine the evidence, I sealed that back up when I was done.

2 Q Okay. Now, tell me -- just like the Judge asked -- what exactly
3 is a sexual examination kit.

4 A A sexual examination kit is taken by a sexual assault nurse
5 examiner, and essentially it can contain things such as a vaginal swab. It
6 contains possibly rectal swabs, oral swabs, any kind of swabs that may have
7 been taken from an alleged sexual assault from a victim. And also they have a
8 reference standard in there from the victim as well.

9 Q What is a reference standard?

10 A A reference standard is a standard -- a known standard from the
11 person so that you know that that is their actually DNA profile if we run that
12 swab.

13 Q Was that contained in this particular --

14 A Yes, it was.

15 Q Okay.

16 THE COURT: You mean, they have something that gives you DNA of
17 Bianca Hernandez so that you know that when you look at something it isn't
18 her? Is that what you're saying?

19 THE WITNESS: Right. Correct.

20 BY MR. BATEMAN:

21 Q Okay. Basically to rule her out?

22 A An elimination standard, yes.

23 Q Okay.

24 A Essentially.

25 Q The sexual assault kit in this particular case, was there any items

1 of potential DNA that you actually used in the process of making an
2 identification?

3 A Yes, I examined a vaginal swab.

4 Q Okay. Now, when you say you examine it, what exactly do you
5 do?

6 A I took a cutting from the vaginal swab. After -- I tested it
7 presumptively to see that there was semen present, and then once I did that, I
8 went through the entire DNA process and ended up with a DNA profile.

9 Q And you said you can get that from semen?

10 A Yes.

11 Q Okay. And then you actually found some DNA; is that correct?

12 A Yes, I did.

13 Q And did you find Bianca's DNA?

14 A I found DNA that is consistent with Bianca as well as DNA that is
15 consistent with Freddy Martinez.

16 Q Now, you say Freddy Martinez. How do you know it's consistent
17 with an individual by the name of Freddy Martinez?

18 A Because when I compared his reference standard to the DNA
19 profile found on the vaginal swab, it was match.

20 Q You say "his reference standard." Did you get that from
21 basically a bucal swab --

22 A Yes, I did.

23 Q -- that was provided to you? What exactly is a bucal swab?

24 A A bucal swab is a swab taken from the cheek. They basically
25 just take a swab and rub it on the inside of the cheek.

1 Q Okay. I'm going to show you what's been marked as State's
2 Proposed Exhibit 20. It appears to be also an evidence bag. Is this the bucal
3 swab that you received to do your analysis in this particular case?

4 A Yes, it is.

5 Q And it also has the red label and the blue label just like the other
6 evidence bag; correct?

7 A Correct.

8 Q When you received it, it just had the red label?

9 A Yes.

10 Q And then this blue label at the bottom, it's your sealing of the --

11 A Yes, it is.

12 Q Of the bag; is that correct? Okay. Now, the bucal swab, was it
13 actually found in this particular bag?

14 A Yes, it was.

15 Q Okay. So you analyzed the DNA from this particular bucal swab
16 with what you found in the vaginal bucal swab in the sex assault kit; is that
17 correct?

18 A Correct.

19 Q Okay. And what ultimately was your conclusion?

20 A My conclusion was that the DNA -- there's actually -- when we
21 do a DNA extraction of sexual assault samples, we do -- there's sort of two
22 fractions to the DNA extract because you're dealing with sperm cells and
23 you're dealing with epithelia or skin cells from the victim. And so what we do
24 is an enrichment process, which makes one of the fractions have the epithelia
25 cells and one of the fractions has the sperm cells. So the fraction with the

1 sperm cells, the DNA profile matched Freddy Martinez's bucal swab.

2 Q And can you say to what -- is there a percentage or that you in
3 the forensic lab used to determine how likely it is that this is an individual's
4 DNA that had been left in the sexual assault kit?

5 A Yes. We use the stat 1 in 600 billion. It actually is greater than
6 that, but that is our cutoff.

7 Q And so, in your opinion, would the DNA that was in the sexual
8 assault kit and on the vaginal bucal swab be the same DNA that was found on
9 the bucal swab in State's Proposed Exhibit 20 of Freddy Martinez?

10 A Correct.

11 MR. BATEMAN: Your Honor, I'd move State's Proposed Exhibits 20
12 and 21. I don't believe I have any other questions.

13 MS. HAMERS: No objection.

14 THE COURT: No objection. They'll be admitted.

15 [State's 20 and 21 admitted.]

16 THE COURT: Ms. Hamers.

17 MS. HAMERS: Thank you, Judge.

18 **CROSS-EXAMINATION**

19 **BY MS. HAMERS:**

20 Q Good afternoon.

21 A Hi.

22 Q You keep saying the sex assault sample. Just so the jury is clear
23 and we're all clear, there's no special sex assault DNA; right?

24 A No.

25 Q This is just saying that his DNA was present in the sperm that

1 was found in the sample?

2 A Correct.

3 Q And that could happen whether there was consensual sex or
4 whether there was a sex assault?

5 A Correct.

6 Q Okay. And is it possible that other DNA was present as well or
7 was that something you would've seen? And excuse my ignorance on this.
8 Sometimes you see a report come back that says, you know, there's this DNA,
9 and there's that DNA, and then there's unknown DNA. Is that something that
10 existed here or were those two DNA's present and that's it?

11 A There were no foreign -- there was no indication of foreign DNA
12 present other than Bianca Hernandez and Freddy Martinez.

13 Q And if there was other DNA present, would that have shown up
14 or would you have needed some other sample to test?

15 A We would've expected to see it, and if that were the case, we
16 would've asked for other comparison standards if there was perhaps another
17 suspect or another victim in the case.

18 Q So do we know one way or another whether or not someone
19 else's DNA was present?

20 A There -- I don't have any other elimination standards. All I know
21 is that in the sperm fraction, it matches, the major profile matches the DNA
22 from Freddy Martinez. And in the epithelial fraction, the major profile matches
23 Bianca Henderson [sic], and I don't have any other reference standards to
24 compare --

25 THE COURT: You said "Henderson." Do you mean Hernandez now?

1 THE WITNESS: Hernandez. I'm sorry.
2 THE COURT: Okay.
3 THE WITNESS: There could be --
4 BY MS. HAMERS:
5 Q Without some other --
6 A Without other standards, there's no way to tell if there's any
7 other DNA there.
8 MS. HAMERS: That's exactly what I wanted to know. Thank you
9 THE COURT: Anything else?
10 MR. BATEMAN: No, Your Honor.
11 THE COURT: Thank you, Ms. Paulette. Thank you very much.
12 You're excused. Call your next witness.
13 MS. NYICOS: Judge, I think there's a juror question.
14 THE COURT: Wait a minute. Hold on just a second. Did you do any
15 investigation of any sample of blood or any other substance that was taken
16 from the knife that might be related to this case?
17 THE WITNESS: No, I did not.
18 THE COURT: The only DNA examination you were asked to do and
19 that you did was to compare the sperm sample taken from the vaginal area of
20 Ms. Hernandez with the known profile of Freddy Martinez and the elimination
21 sample of Ms. Hernandez; is that right?
22 THE WITNESS: Correct.
23 THE COURT: Okay. You got a question? There's your answer.
24 Thank you. You're excused. Call your next witness.
25 MS. NYICOS: The State calls Arturo Chavez.

1 THE COURT: Come on up, Officer.

2 **ARTURO CHAVEZ,**

3 having been first duly sworn as a witness, testified as follows:

4 THE CLERK: Thank you. Please be seated.

5 THE COURT: State your name, please, Officer, and spell your name for
6 the court reporter.

7 THE WITNESS: My name is Arturo Chavez, A-r-t-u-r-o. Last name of
8 C-h-a-v-e-z.

9 THE COURT: Go ahead.

10 ***DIRECT EXAMINATION***

11 ***BY MS. NYICOS:***

12 Q Mr. Chavez, how are you employed?

13 A With the Las Vegas Metropolitan Police Department..

14 Q And in what capacity?

15 A I am a sexual assault detective.

16 Q And how long have you been so employed?

17 A With Metro, 16 years now, and with the sexual assault unit, a
18 little over five years now.

19 Q And as a sex assault detective, can you just briefly tell me what
20 your job duties entail.

21 A Primary duties is to investigate any sex crimes, sexual assaults,
22 loitering with a purpose -- I mean, excuse me. I was working Vice.

23 Q Okay.

24 A Exploitation of children, anything to do with sexually related
25 crimes.

1 Q Okay. And that would encompass child victims as well as adult
2 victims?

3 A That is correct.

4 Q Okay. Now, directing your attention specifically to August 16th
5 of 2006, were you on duty that day?

6 A Yes, I was.

7 Q And do you work with a specific partner all the time or how does
8 that generally work?

9 A The majority of the time, yes, I do have a partner.

10 Q And what's your partner's name?

11 A Detective Goddard.

12 Q Is that G-o-d-d-a-r-d?

13 A That is correct. Yes.

14 Q And was he working with you that day?

15 A Yes, he was.

16 Q Now, where were you called out to?

17 A We were called out to Mesquite, Nevada.

18 Q Were you also aware of an initial call that was made down in Las
19 Vegas, Nevada, earlier that day?

20 A That is correct. Yes, there was.

21 Q Okay. And what was the nature of that call?

22 A It was the kidnapping.

23 Q Now, do you respond to kidnappings?

24 A No, robbery detail does.

25 Q Okay. So you were called out to respond to Mesquite, Nevada,

1 and why is that?

2 A After they apprehended the subject that kidnapped the victim,
3 she stated she was sexually assaulted --

4 MS. HAMERS: Judge, I'm going to object to the conclusion that
5 someone was kidnapped --

6 THE COURT: Alleged. Alleged.

7 MS. HAMERS: -- and also to the continued use of the term "victim."

8 THE COURT: Alleged kidnapping.

9 THE WITNESS: Alleged kidnapping.

10 THE COURT: Okay.

11 BY MS. NYICOS:

12 Q So it wasn't until later that day up in Mesquite that there was
13 any knowledge that this was sexually related crime?

14 A That is correct.

15 Q Okay. And did you respond to Mesquite, Nevada?

16 A Yes, we did.

17 Q Where did you go first when you got up there?

18 A First we went to the hospital.

19 Q And do you recall the name of that hospital up there?

20 A Mesa View, I believe it was, Mesa View Hospital.

21 Q And who did you come into contact with at Mesa View Hospital?

22 A I made contact with two individuals at the time, Bianca, the
23 victim --

24 THE COURT: Alleged victim.

25 THE WITNESS: Alleged victim. Excuse me. And also the -- her

1 boyfriend.

2 BY MS. NYICOS:

3 Q And her boyfriend, did he have a name?

4 A Yes, Jose'.

5 Q Now, when you made contact with Bianca, was this in an exam
6 room?

7 A Yes.

8 Q Okay. And to your knowledge, had she already been examined
9 by a nurse or was she waiting for one?

10 A She was waiting for one.

11 Q Okay. And what was her demeanor when you spoke to her?

12 A She was crying. She had red eyes, puffy eyes, upset. But at the
13 same time she was calm in a way.

14 Q And was she able to give you an account of the events that
15 occurred that day?

16 A Yes, she did.

17 Q And was this interview that you conducted with Bianca, was this
18 in English or in Spanish?

19 A It was done in Spanish.

20 Q And do you speak Spanish fluently?

21 A Yes, I do.

22 Q Okay. Now, is that your primary language?

23 A Yes, it is.

24 Q Okay. And --

25 THE COURT: You don't want us to get you an interpreter here to help

1 you with your questions?

2 THE WITNESS: No, no, I'll be fine. Thank you.

3 BY MS. NYICOS:

4 Q All right. So after speaking with Bianca, where did your
5 investigation take you next?

6 A After speaking with Bianca?

7 Q Yes.

8 A After I got her statement --

9 Q Uh-huh.

10 A -- we then -- Detective Goddard and myself then proceeded to go
11 to the -- Mesquite's jail, detain facility.

12 Q Okay. And did you come into contact with anyone you see in
13 the courtroom today at the Mesquite holding facility?

14 A Yes.

15 Q Okay. Could you point to him and describe something's he's
16 wearing.

17 A I think he's wearing a white shirt, and he has a brown -- a
18 multicolor brown tie.

19 THE COURT: The record will reflect identification of the Defendant
20 Freddy Martinez.

21 MS. NYICOS: Thank you.

22 BY MS. NYICOS:

23 Q And did you conduct an interview with Freddy Martinez at the
24 Mesquite holding facility?

25 A No.

1 Q Okay. Did you later conduct an interview with Freddy Martinez?

2 A Yes, we did.

3 Q Okay.

4 A Yes, I did.

5 Q Where did that interview take place?

6 A That occurred here in Las Vegas, Nevada.

7 Q Now, when you made contact with the Defendant in the

8 Mesquite holding facility, what did you do with him at that point?

9 A At that point we put him in the car, in the backseat of the car. I

10 sat with him in the backseat of the car, at which time I did read him his rights

11 in English and in Spanish. He speaks both languages. And then we drove out

12 here to Las Vegas. And once we got here to Las Vegas, we took him to our

13 sexual assault office, and, once again, we interviewed him there, and, once

14 again, read him his rights in Spanish and in English.

15 Q Okay. Now, you said you read him his rights?

16 A Correct.

17 Q Are those found in -- do you read those from a card or do you

18 recite those from memory?

19 A On him we did it -- I did it on memory.

20 Q And what are those rights?

21 A He has a right to remain silent. Anything you say can and will be

22 used against you in a court of law. He has a right to an attorney. If you can't

23 afford an attorney, one will be appointed to you at no cost. Once you wish to

24 stop all interviews, all interviews stop.

25 Q Okay.

1 A Do you understand your rights.
2 Q And you said you gave him those rights in English and in
3 Spanish?
4 A In Spanish, correct.
5 Q In Spanish?
6 A In Spanish also.
7 Q Okay. And twice?
8 A Twice.
9 Q So the first time in the car before you brought him back to Las
10 Vegas?
11 A Correct.
12 Q And the second time at the sex assault detail office?
13 A That is correct.
14 Q Now, the second time you gave him those rights at the sex
15 assault detail office, did he indicate to you that he understood those rights?
16 A Yes.
17 Q Did he indicate to you that he wished to speak with you?
18 A Yes.
19 Q And did you then interview the Defendant?
20 A Yes, I did.
21 Q Okay. And just as an overview, what did the Defendant tell
22 you?
23 A Basically he stated that he had been having a sexual relationship
24 with Bianca for the last 16 years, that he was very in love with her. That about
25 a month ago she moved out of the house or out of the trailer. She -- he also

1 said that he suspected that she was dating someone else. That one day he
2 was walking, he was going to use a payphone, and he observed Bianca going
3 into this residence where she at the time was living.

4 He stated that -- that that morning -- the early morning hours he
5 was waiting for her to come out. At approximately 5:00, 5:30 in the morning,
6 she came out about three times. She came outside. She started the car, like
7 warming up the car. She came in and out.

8 Q Did he tell you if he had something in his hand while he was
9 waiting?

10 A He stated that when he walked up to the car to Bianca, he took
11 out a knife.

12 Q What else did he tell you?

13 A He said he saw Bianca the third time by the car. He had a knife
14 in his hand. He walked towards the car. He approached the car where Bianca
15 was at. At this time her -- he wasn't sure if it was her boyfriend or friend came
16 out. Pointed this -- the knife at him, and he then walked towards the victim,
17 told the victim to get in the car --

18 MS. HAMERS: Judge, same objection. I'd ask that the witness be
19 admonished to quit saying the word "victim."

20 THE WITNESS: I do. Bianca.

21 THE COURT: I think he understood the alleged victim. We've already
22 made that determination, but it's kind of a natural thing to do. Go ahead.

23 THE WITNESS: Okay.

24 BY MS. NYICOS:

25 Q Okay. And he got in the car with Bianca?

1 A He got in the car with Bianca, correct.

2 Q What did he tell you happened once he got in the car with
3 Bianca?

4 A Well, first he stated that he sat in the passenger seat and made
5 her drive. He had a knife and pointed a knife at her thigh. He then had her
6 drive just around the corner. He then switched, told her to get in the backseat.
7 He then jumped into the driver's seat. He then proceeded to drive.

8 He was asking her or telling her, You're mine. You're going to be
9 -- you know, you're going to be with me, tell me the truth. Do you love me or
10 are you with somebody else? He did admit that they got into an altercation or
11 -- in the vehicle. That she did not want to put on her seatbelt. That he did
12 grab her seatbelt and try to put it on her so that she wouldn't get out of the
13 car. At one point I asked if there was any fighting because she had a red mark,
14 and he did state that -- he said, No, well, maybe I did, but it was during the
15 altercation.

16 Q Over the seatbelt?

17 A Over the seatbelt, correct.

18 Q Okay. Did he also talk to you about stopping the car along the
19 I-15?

20 A Yes, he did.

21 Q And what did he tell you about that?

22 A And he did proceed to go to Mesquite because he had a job up
23 there in Mesquite, and they were driving to Mesquite. He also said that she
24 wasn't going to see her son, that her son was going to stay where -- at her
25 mom's -- at his mom's house, and her brother was going to take care of her

1 son. And then they stopped at the side of the road, and he admitted to say
2 that he had sexual relations with Bianca.

3 Q Okay. Did he tell you whether or not this was a consensual
4 sexual relation they had?

5 A He said he took it. He took it because there was -- she was his.
6 And there was several times I told him, Why would you force yourself? Why
7 would you force someone to do something like that? He goes, She's mine.

8 Q And that's what he said to you?

9 A She's mine, correct.

10 MS. NYICOS: Court's indulgence. Pass the witness.

11 THE COURT: Cross?

12 MS. HAMERS: Yes.

13 ***CROSS-EXAMINATION***

14 ***BY MS. HAMERS:***

15 Q Good afternoon.

16 A Good afternoon.

17 Q The interview you had with Mr. Martinez was recorded; right?

18 A Yes. That's correct.

19 Q Well, let me try to start at the beginning. You first come into
20 contact with Mr. Martinez in Mesquite; right?

21 A Correct.

22 Q And you do -- actually do a number of interviews in this case?

23 A Correct.

24 Q With Jose', Bianca, Mr. Martinez?

25 A Martinez.

1 Q Anyone else?
2 A No.
3 Q Okay. Do you interview Bianca before you interview Mr.
4 Martinez?
5 A Yes. That's correct.
6 Q Do you interview Bianca after you interview Jose'?
7 A No, no, that's correct. I interviewed Bianca before Mr. Martinez.
8 Q Before Mr. Martinez?
9 A Correct.
10 Q Jose' Castillo, was that before or after --
11 A I'm sorry.
12 Q That's okay.
13 A Jose' was first, Bianca was second and then Martinez.
14 Q Okay. That's exactly what I was getting at. It's the order I had
15 in mine as well. When you interview Bianca, she tells you she doesn't have a
16 sexual relationship with Mr. Martinez; right?
17 A That is correct.
18 Q And she does admit to you that she was hiding Jose' from
19 Freddy?
20 A That is correct.
21 Q And when you're talking to her, when she talks about Jose', she
22 calls him the man that lives with the family?
23 MS. NYICOS: Judge, I'm going to object. This is all hearsay. He's
24 asking her what Bianca told him. I mean, she's asking him what Bianca told
25 him.

1 MS. HAMERS: Judge --

2 THE COURT: Go ahead.

3 MS. HAMERS: -- I believe it's an inconsistent statement. She testified
4 that he was her boyfriend and what she told police when she was interviewed
5 was different.

6 MS. NYICOS: She admitted to telling the police that on cross, so it's
7 not really inconsistent.

8 MS. HAMERS: It is.

9 THE COURT: Overruled. I'll let her get it in.

10 BY MS. HAMERS:

11 Q She told you that he was the man that lived at the apartment
12 where she lived with a family?

13 A At first, correct, and then during the middle of the interview, she
14 admitted it was her boyfriend.

15 Q When you asked her directly, He's your boyfriend; right?

16 A That is correct.

17 Q Okay. So before that she had said, He's the man that lives with
18 the family?

19 A That's correct.

20 Q And she told you that she went to live with a family when she
21 left the trailer with Freddy?

22 A That's correct.

23 Q She didn't tell you that she went to live with her boyfriend Jose'?

24 A Correct.

25 Q Okay. And she said that she had done that four months prior to

1 that August 16th date?

2 A Three to four months.

3 Q Three to four months?

4 A Correct.

5 Q A matter of months. Certainly not years prior?

6 A Correct.

7 Q Okay. You also asked her about why she was at Freddy's house

8 the previous Monday; right?

9 A Correct.

10 Q Because you and -- I'm kind of assuming by taking her statement

11 and Jose's statement that that was based on information you had from Jose'?

12 A Which part? I'm sorry.

13 Q Well, you -- in your interview with Ms. Hernandez, you start

14 talking to her about why she was at Freddy's house on a previous occasion.

15 A Why she drove --

16 Q She doesn't bring that up.

17 A Why she drove by, correct.

18 Q Right.

19 A Right.

20 Q But she doesn't bring that up, you do. So I'm assuming that was

21 based on information you had from the previous interview with Jose' since he

22 was interviewed first?

23 A That is correct, yes.

24 Q Okay. So he had given you that information and then you ask

25 Ms. Hernandez about it?

1 A That is correct, yes.

2 Q Okay. And she tells you she wasn't going there. She was just

3 driving by; right?

4 A That is correct.

5 Q And that Freddy is just a brother to her?

6 A Sees him as a brother, correct.

7 Q Okay. In this case did you ultimately end up impounding

8 clothing?

9 A Detective Goddard did.

10 Q Detective Goddard did?

11 A Correct.

12 Q Did you see that clothing?

13 A Detective Goddard is the one that -- that did the clothing.

14 Q Okay.

15 A The clothing.

16 Q Are you aware of what the condition of that clothing was?

17 THE COURT: Are you talking about the clothing of the alleged victim or

18 the clothing of the Defendant?

19 MS. HAMERS: I actually think that they impounded both.

20 THE COURT: Yeah. Well, I mean, the answer may be different --

21 MS. HAMERS: I'll ask him specifically --

22 THE COURT: There you go.

23 BY MS. HAMERS:

24 Q The alleged victim, are you aware of the condition of that

25 clothing?

1 A No. Detective Goddard did that.

2 Q Are you aware of the condition of it, is what I'm asking now? I

3 realize he impounded it, but you were working on the case.

4 A No.

5 Q Okay. Mr. Martinez's clothing?

6 A What he was wearing, yes. Oh, actually, no --

7 Q You weren't aware of that?

8 A He was -- what he was wearing, actually, it was in a bag. I do

9 apologize. It was in a bag in a locker in Mesquite.

10 Q Okay.

11 A Detective Goddard -- Detective Goddard was the primary

12 investigator in this case.

13 Q Sure.

14 A Okay.

15 Q So you weren't aware of the condition of that clothing?

16 A Correct.

17 Q Okay. Now, you interview Jose' Castillo; right?

18 A Correct.

19 Q And he told you that he had seen --

20 MS. NYICOS: Objection; hearsay.

21 THE COURT: Why isn't that hearsay?

22 MS. HAMERS: Well, Judge, it's really not for the truth. It's his

23 investigation and why he did what he did and why he asked these people the

24 questions he did.

25 THE COURT: As a result of talking to Jose' Castillo, why did you --

1 MS. HAMERS: Well, okay.

2 BY MS. HAMERS:

3 Q As a result of your conversation with Jose', why were you
4 asking Bianca these questions about her relationship with Freddy?

5 A As a detective it makes you prove or disprove a case.

6 Q Okay. But you were asking questions not about this specific
7 incident, but about her relationship in total with Mr. Martinez; is that correct?

8 A That is correct.

9 Q And why is that?

10 A To gain knowledge, to gain knowledge of the relationship.
11 What's the relationship or was there a relationship? Just to gain knowledge at
12 this time.

13 Q Okay. But after she had initially denied that there was a
14 relationship, you continued to question her about that; didn't you?

15 A Correct, yes.

16 Q In fact, you told her, It's okay. You don't have to feel like you
17 have to hide that?

18 A Correct.

19 Q Was there a reason that you asked those additional questions?

20 A Based on experience, there's, you know, numerous times where
21 a person -- they do have a sexual relationship with a person, but they don't
22 want to mention anything due to the fact that maybe they won't believe them
23 later on. And that's why I was trying to get more information.

24 Q You just wanted to make sure she was being honest with you?

25 A That is correct.

1 Q Okay. Now, when you interview Mr. Martinez, he tells you he
2 went there to talk to Bianca about the truth; right?
3 A Correct.
4 Q And he doesn't say he went there to sexually assault her, does
5 he?
6 A No.
7 Q He tells you he had the knife to scare Jose'; right?
8 A He had a knife, correct.
9 Q And he told you that he had the knife to scare Jose'?
10 A He said he used it to scare Jose', correct.
11 Q Okay. And that Jose' ran away when he pulled a knife on him?
12 A Correct.
13 Q Okay. And he told you that he took her on the trip to Mesquite
14 to make Jose' mad, to make Jose' come after him?
15 A Correct, at one point he did say that.
16 Q Okay. And he admitted to being with Ms. Hernandez that day?
17 A Yes, he did.
18 Q He admitted to getting in a car with her?
19 A Yes, he did.
20 Q He admitted to having a knife?
21 A Yes, he did.
22 Q He admitted to going all the way to Mesquite?
23 A Yes, he did.
24 Q He admitted to having sex with her?
25 A Yes, he did.

1 Q But he told you that the sex was not forced, nor without her
2 consent?

3 A No, he -- he said that he took it.

4 Q And you recorded this statement; right?

5 A Yes.

6 MS. HAMERS: Court's indulgence.

7 BY MS. HAMERS:

8 Q I'm going to show you a transcript of that interview. Do you
9 prefer to see it in English or Spanish?

10 A English.

11 Q English, I would assume. I'm going to show you what we've
12 now labeled page 12, a transcript. I just want you to read down here to
13 yourself.

14 A Which part? Okay. From this line? Martinez?

15 Q Yes, just to yourself.

16 A Okay. [Reading document]. Okay.

17 Q Thanks. After reading that, is it true that he told you that it was
18 neither forced nor without her consent?

19 A Yes. At first he did, correct.

20 Q Okay. And you testified today -- I want to try to get your words
21 right here -- that he several times said -- that several times when he was asked,
22 Why would you force that, why would you do that? And he said he took it
23 because she was his; is that right?

24 A Correct.

25 Q I mean, that's what you testified to today?

1 A Correct.

2 Q Do you have a copy of this same transcript in front of you that I
3 just handed you?

4 A Yes, I believe so.

5 Q Okay. Can you show me where in that transcript that sentence.

6 A Maybe look on page 14. Here's, Something made me --
7 something made me take --

8 MS. HAMERS: Sorry. Court's indulgence. It's my fault. I'm trying to
9 find the right page here.

10 THE WITNESS: Okay.

11 THE COURT: Detective, what page and what line?

12 THE WITNESS: It's page number 14. It's the middle of the page under
13 Martinez.

14 THE COURT: What's it say?

15 THE WITNESS: It says, For her to forgive me, forgive me. What we
16 did in the backseat, it happened without -- you know, it being my intention, but
17 I don't know. I don't know. Something in me made me take it. Forgive me for
18 that, but --

19 BY MS. HAMERS:

20 Q Where it says, That it wasn't -- and it wasn't -- that everything
21 that went on that day wasn't against her, that I am sorry and to forgive me. I
22 showed it to her and returned her keys to her car, and she was driving. It is
23 not harm that I want to do, but always with her first.

24 A Right after that, correct. If you go -- when you past Logandale
25 from there, what happened, the next line, and then you have Martinez.

1 Q So you passed Logandale from there, what do we know?
2 A And then right after that you have Martinez.
3 Q For her to forgive -- to forgive what we did in the backseat. It
4 happened without it being my intention, but I don't know. I don't know.
5 Something in me made me take -- forgive me for that, but, is that what you're
6 referring to?
7 A Correct.
8 Q Okay. And so when you testified today that he several times,
9 when you asked him, Why would you force yourself on someone, and he said,
10 Because she was mine to take, that's what you're referring to?
11 A No. There's another portion somewhere here, Why did you force
12 yourself on her. Also there is a --
13 Q Let's go ahead and take them one step at a time.
14 A Okay.
15 Q Where do you see, Why did you force it on her?
16 A There -- which page?
17 Q Please.
18 A I don't know. [Looking through document].
19 MS. NYICOS: And, Judge, just so the record is clear, we're all fumbling
20 around because this is not a normal transcript. This has no line numbers and
21 no pages numbers.
22 THE COURT: Okay.
23 THE WITNESS: I believe it's by number 13, we start talking about -- I
24 started mentioning it, Why did you take her by force?
25 THE COURT: What was his response?

1 THE WITNESS: He said she stole both, in the car and her. Page 13.
2 Okay. What I'm telling you, you cannot take -- you know, take by force or --
3 BY MS. HAMERS:
4 Q And that's you?
5 A Pardon me?
6 Q So you're quoting right now? That's you?
7 A That's what I'm saying, correct. [Reading]. That's what I'm
8 telling you. You cannot take, you know, by force. That's what I'm telling you.
9 Officer, it's nothing against her. It's nothing, and she doesn't tell me the truth.
10 I want to find out the reactions. Okay. Yes. Like I'm mad. If you are
11 gentleman, and you are with a woman. When a man has sexual relations with
12 a woman, you have to react when another rooster comes and takes a woman
13 when she is with you. He has to respond, react. Has to -- what, what?
14 What's happening here?
15 Q And I'm going to stop you.
16 A [Reading]. And I did it, but he did not react. I'm sorry?
17 Q What -- is there something in there that you're saying says that
18 he forced himself on her? That's what I'm trying to find out.
19 A I think you couldn't -- you can't force a woman, and he's the one
20 that's saying, you know, it's -- he does not say he -- it just says he has nothing
21 against her. It's nothing, and she doesn't tell me the truth. I just wanted to
22 react.
23 Q Okay. So you --
24 A And I'm the one that said, Why did you force her? He goes, I
25 didn't want to -- to --

1 MS. NYICOS: Judge, to make this just a little bit easier, perhaps we
2 can mark one and just move to admit it.

3 THE COURT: Do you want it in?

4 MS. NYICOS: That way we can just read it -- read from it without -- I
5 mean, it's Defendant's statement.

6 THE COURT: It's up to Ms. Hamers. Do you want it in or no?

7 MS. HAMERS: Judge, that's fine. I just don't know if there will be -- if
8 we have a little need to do anything with it before doing that.

9 THE COURT: So do you want to figure that out tonight and decide
10 tomorrow?

11 MS. HAMERS: Yes. So if we can just reserve those issues.

12 THE COURT: You got it. Just be ready first thing in the morning.

13 BY MS. HAMERS:

14 Q But I would still like to ask this officer -- I'm sorry. It's
15 detective?

16 A Yes, ma'am.

17 Q I'm sorry, this detective. So that he doesn't say there that he
18 forced her. Where is it that he says, Because it was mine to take? I believe
19 you testified today he said that several times.

20 A He said it -- correct. He said, She was mine. Maybe I read it in
21 the officer's report.

22 Q And let's talk about that because I know exactly what you're
23 referring to, or at least I think I do, in the arrest report. You didn't write that
24 report; right?

25 A No.

1 Q Officer Goddard --
2 A Goddard.
3 Q -- did?
4 A That is correct.
5 Q But he certainly did it with your input?
6 A Correct, yes.
7 Q And you certainly reviewed it after that?
8 A Correct. After he typed it, correct. Yes.
9 Q And you reviewed it after that?
10 A Yes.
11 Q And if there was something inaccurate, you would've told him
12 that?
13 A That is correct.
14 Q And he wouldn't have included it in his report?
15 A That is correct. Yes.
16 Q And in that report he talks about this very recorded interview
17 that you did with Mr. Martinez?
18 A Yes, he does.
19 Q And what he says is, Detective Chavez asks him, and in quotes,
20 Why did you rape her? He replied, in quotes, I was mad?
21 A That's correct.
22 Q Right? That's on page six and seven of that report?
23 A That is -- that is correct.
24 Q But that question and answer is actually nowhere in that
25 interview, is it?

1 A Not in this interview. That is correct.

2 Q Okay. And when Officer -- is he a detective as well?

3 A Yes.

4 Q I'll quit calling him officer.

5 A Yes.

6 Q When Detective Goddard put down in the report, he puts in, in
7 particular, about what was done during this interview in Las Vegas with Mr.
8 Martinez; correct?

9 A Correct.

10 Q But it's not in there?

11 A Not at this statement. This is not all there, correct.

12 MS. HAMERS: Okay. Court's indulgence.

13 BY MS. HAMERS:

14 Q And you already read a little bit of this, so I'm kind of going
15 backwards. Mr. Martinez told you something about when a man is with a
16 woman and another rooster comes around, he should do something about it?

17 A Correct.

18 Q And he's actually -- what he's talking about or in the context of
19 your interview when he's saying that, he's talking about Jose' should react
20 when he goes and takes off with Bianca?

21 A Correct.

22 Q Okay. And when he says that he told Bianca that she wasn't
23 returning to Las Vegas and that someone else was going to take care of her
24 son, he tells you that he told her that so that she would tell him the truth?

25 A Correct. Correct. He mentioned that.

1 MS. HAMERS: Court's indulgence. That's all, Judge.

2 THE COURT: Anything else?

3 MS. NYICOS: Yes, please, Judge.

4 **REDIRECT EXAMINATION**

5 **BY MS. NYICOS:**

6 Q Now, the interview you have in front of you, the transcript, okay,
7 is that a Las Vegas Metropolitan Police Department certified transcript?

8 A No, it's not.

9 Q Okay. And that was actually one that was provided to you from
10 me that I had gotten from the Defense; is that correct?

11 A That is correct.

12 Q All right. And you reviewed this transcript yesterday and today;
13 correct?

14 A That is correct.

15 Q Did you notice things that were perhaps not included in this
16 transcript that you distinctly recall being said in this interview?

17 A Yes, I do.

18 Q Okay. And a normal Metropolitan Police transcript that we
19 would normally work with, there's places where there's a parenthesis, and it'll
20 say "inaudible," and there's places where there will be a long dash to indicate
21 that some things were being said that weren't being picked up?

22 A That is correct. Yes.

23 Q Do you see anything like that in this transcript?

24 A Not like that. I see little dots.

25 Q Ellipses?

1 A I see little dots in between wordings or sentences.

2 Q Okay. Now, in particular, is there something that sticks out in
3 your mind that you distinctly recall having occurred during this interview that is
4 not in this transcript?

5 A Yes, I do.

6 Q Okay. And what is that?

7 A One of them is that, why did he pull her out of the car or
8 something of that sort because I remember that I asked him why did he pull her
9 out of the car, and I phrased it no, But I said, we -- yes, we saw it and when
10 you pulled her out of the car. And he said, I was just angry. I was mad. And
11 that's what I recall that happened. It was in the interview that I don't see here.

12 Q Okay. And also with respect to the segment that Ms. Hamers
13 read to you out of the arrest report, do you recall that conversation taking
14 place?

15 A I remember he said he was mad.

16 Q Now, with the exception of those two things, is this overall a fair
17 and accurate --

18 A Overall --

19 Q -- statement?

20 A -- it's pretty accurate, yes. There's --

21 Q Now, this interview was conducted in Spanish as well; correct?

22 A That is correct.

23 Q Did you conduct any interviews in English?

24 A No.

25 Q Okay. Now, how many interviews have you conducted in

1 Spanish throughout your career?

2 A Wow. I can't give a number, to be honest. It's a lot.

3 Q Are most of your interviews done in Spanish?

4 A It seems that way.

5 Q Okay. Now, in your experience, are there sometimes language
6 barriers?

7 A Absolutely.

8 Q Things that possibly get lost in translation when this gets put
9 down into English?

10 A Absolutely.

11 Q Now, Ms. Hamers asked you about questioning Jose' Castillo and
12 questioning Bianca regarding her relationship with Mr. Martinez?

13 A Yes.

14 Q And Mr. Martinez also related to you that he had had a sexual
15 relationship with her for over the span of 16 years?

16 A Yes. That's correct.

17 Q And you said that you ask these questions to determine whether
18 a relationship actually exists or not?

19 A That is correct. Yes.

20 Q Based on your conversations with Mr. Castillo, with Bianca
21 Hernandez and with Freddy Martinez, do you yourself believe a relationship --

22 MS. HAMERS: Judge, I'm going to object.

23 THE COURT: Sustained.

24 MS. NYICOS: Okay.

25 THE COURT: It's up to the jury to decide if there was and what effect

1 that would have on the testimony.

2 MS. NYICOS: Okay. That's fine.

3 BY MS. NYICOS:

4 Q During your conversation with Mr. Martinez, the Defendant,
5 however, were you under the impression that a relationship was still ongoing?

6 A Absolutely not.

7 Q And what was Mr. Martinez telling you that led you to believe
8 that?

9 A That there was no relationship?

10 Q That there -- that it was over?

11 A He says she -- she moved out, you know, a month ago, that he
12 wanted to find out if she was seeing someone else. I think the day before that
13 incident or -- I'm sorry. Three days before that incident, I mean, he saw
14 another man with Bianca, that he followed them in his car, pulled in front of
15 them to approach --

16 MS. HAMERS: I'm going to object at this point.

17 MS. NYICOS: Okay.

18 THE COURT: Well, there's nothing to object to there, but that will be
19 the end of that testimony. Go ahead.

20 MS. NYICOS: That's fine. Okay.

21 BY MS. NYICOS:

22 Q And could you have done some more investigation to determine
23 whether or not there once was a relationship?

24 A I mean, there's always more. There's always more we -- yes.

25 Q Okay. That's fine. Did you do that in this case?

1 A No.

2 Q And why is that?

3 MS. HAMERS: Judge, I'm going to object. She's going to the -- she's
4 trying to get the same exact conclusion as to his opinion as to whether or not
5 there was a relationship.

6 MS. NYICOS: Judge, that's not what I'm doing.

7 THE COURT: No, no. Overruled this time. It is different, saying, Why
8 didn't you do further investigation?

9 BY MS. NYICOS:

10 Q Why didn't you investigate into this relationship further?

11 A Because it was clear to me that there was no relationship -- at
12 least for about a month, if there was a relationship. I mean, definitely there
13 was no relationship. She had a relationship with someone else.

14 Q Would the existence of a relationship between the Defendant and
15 Bianca change your opinion as to how to charge the case?

16 A Absolutely not.

17 THE COURT: You're talking about a relationship a long time ago

18 MS. NYICOS: Any.

19 THE COURT: -- or a relationship on August 16th?

20 MS. NYICOS: Any.

21 MS. HAMERS: Judge, I'm going to object. That's his opinion of
22 whether or not that changes what the charges are.

23 THE COURT: Overruled. That's different than his opinion on -- as to
24 who's truthful or whether or not a person is guilty of the charges. Go ahead.
25 You can answer, Officer.

1 THE WITNESS: Those charges would definitely apply, I mean, in this
2 case for -- for what we had.

3 MS. NYICOS: Okay. Nothing further.

4 THE COURT: Anything else?

5 MS. HAMERS: Sorry, Judge.

6 THE COURT: Well, it has to relate to this.

7 MS. HAMERS: It does.

8 **RECROSS-EXAMINATION**

9 **BY MS. HAMERS:**

10 Q Ms. Nyicos asked you about this unusual transcript that you've
11 been shown in court today and that Ms. Nyicos gave you a copy of; correct?

12 A Correct.

13 Q Unusual in the sense that it wasn't prepared by Metro?

14 A It is different, correct. Unusual.

15 Q Okay. And usually when there's a recoded interview, a
16 transcript is prepared by Metro?

17 A That is correct.

18 Q And in this case, even when the report was written, it says,
19 Refer to transcript anticipating that Metro would prepare one?

20 A That is correct.

21 Q But Metro didn't prepare one in this case; is that correct?

22 A I don't know.

23 Q Were you the lead detective on this case?

24 A No, I was not.

25 Q And so is that information that Mr. Goddard would know?

1 A That is correct.

2 Q And what you're saying is, that there was information in that

3 interview where you actually asked Mr. Martinez, Why did you rape her? And

4 he said because he was mad, and that somehow didn't make it into the

5 transcript?

6 A No, I said -- I recall, Why were you mad when you raped her? He

7 said, I was mad. He goes, Yes, I saw -- we were able to see that you pulled

8 her out of the car mad. And he said, Yes, I was mad.

9 Q Of the -- so --

10 A Of that -- I can't recall exactly the words, what was said --

11 Q If I played that interview for you, would it refresh your

12 recollection as to exactly what was said?

13 A Absolutely.

14 MS. HAMERS: Okay. I'd ask to do that at this time.

15 THE COURT: It's in Spanish; right?

16 MS. HAMERS: It is in Spanish, and I have a transcript in Spanish he

17 could look at. I don't know any other way to do it at this point if he's going to

18 say it's not in the transcript.

19 THE COURT: Well, is it the case that there are spots in the

20 transcription where what was said wasn't loud enough or wasn't clear enough

21 that it couldn't come through?

22 MS. HAMERS: That's not my understanding.

23 MS. NYICOS: It's my understanding.

24 THE COURT: What does the dot, dot, dot mean?

25 MS. HAMERS: I'm sorry?

1 THE COURT: You said that in the transcript there are places where
2 there are just a bunch of dots in between words or sentences. Is that true?

3 MS. HAMERS: Okay. Yeah, there are -- there are dots.

4 THE COURT: What does that mean? Does that mean that there is
5 something there, but they couldn't understand what it is?

6 MS. HAMERS: I can't speak for what exactly that means. I mean, I
7 think he could tell me if he listened to the interview whether or not there's
8 something there that's not being picked up. If he's saying, Yeah, that's what
9 was said there, and now we can't hear it on the interview --

10 THE COURT: Okay. Why don't we have him do it tonight. Why don't
11 have him listen --

12 MR. BATEMAN: May we approach?

13 THE COURT: Yes, sir.

14 [Bench conference; not transcribed.]

15 THE COURT: Okay. You know, we're not going to have you sit here
16 while he goes through a tape in Spanish for some period of time. What we're
17 going to do is direct him -- he can listen to it or they can all listen to it together
18 or they can get an interpreter and figure it out on their time and not yours. And
19 then we can ask a few questions in the morning so we can sort of clear up any
20 misunderstanding. With that in mind, he's excused now; is that right?

21 MS. NYICOS: For now, yes.

22 THE COURT: But we need him back at 9:00 tomorrow?

23 MS. NYICOS: 9:00 tomorrow.

24 THE COURT: All right. Now, do you have any other -- is that okay,
25 Detective?

1 THE WITNESS: That's okay.

2 THE COURT: Okay. Thanks. You're excused, but don't leave
3 because these lawyers are going to need to get with you and kind of define
4 what needs to be done. They don't want you to work all night, but we need to
5 have you do some work tonight. Now, do you have any other witnesses
6 today?

7 MS. NYICOS: No, Judge, he would've been the last one for the day.

8 THE COURT: Okay. What have you got? A couple tomorrow?

9 MS. NYICOS: One, possibly two, tomorrow.

10 THE COURT: And then the Defense. Okay. Well, this is about where
11 we expected to be. We sort of expected to be here tonight. The State has one
12 or two witnesses tomorrow. I'm sure the nurse who can't be here today and
13 the Defense. But we're every bit of halfway or more in the case because
14 picking a jury and doing opening statements takes a little longer than reading
15 the instructions and doing closing statements, and we're a little more than half
16 the witnesses. So we're just fine on time in terms of being done exactly when
17 we are supposed to. So that said, we'll get out just a little bit early tonight.

18 Again, don't talk about the case with each other or anybody else.
19 Please, please, please. When you go home and they want to know what's
20 going on, just say, It's a sexual assault case. I swore that I wouldn't talk about
21 the details. Tomorrow night I'll tell you everything I know, but give me a break
22 tonight.

23 Don't read, watch or listen to any report on the case. I'm sure
24 there's none. There's no reporters in here. I keep a close eye out for that. So
25 if you want to read the paper and have a cup of coffee in the morning, don't

1 worry that you're going run across something. If you do, just skip it, but that
2 isn't going to happen. Please keep an open mind until all the evidence is in.
3 Have a nice night. You'll put -- yes, sir.

4 JUROR NUMBER 10: Do we leave these here?

5 THE COURT: Yeah, you can leave that stuff and your badges on your
6 chair. Lisa will take charge of it. She will have it on your chair when we get
7 together tomorrow. We'll pick up at 9:00 tomorrow.

8 Why don't we start earlier? Well, the truth is that, while I'm in
9 trial on one case, my job is to manage about a thousand cases in the
10 courthouse. Each judge has about a thousand they manage. So from 8:00 till,
11 you know, 9:00, 10:00, whatever length of time it takes, we do pretrial issues
12 and post-trial issues on cases. Usually anywhere from ten to 50 in the
13 morning, and usually it takes us till 9:30 or so.

14 As it is tomorrow, we only have three or four, and it's going to
15 be very quick at 8:30, but I'm going to make the lawyers be here early so that
16 we can argue about the jury instructions and not waste your time when that
17 comes around. So if we get you here at 9:00, we should be able to sail right
18 through other than lunch and get this case to you mid to late afternoon.

19 Okay. Have a nice evening. We'll see you promptly at 9:00.
20 Give yourself a little extra time because the elevators are lousy in this building.
21 They're leaving, Lisa. If you'll take charge of them.

22 [Jury exits the courtroom at 4:35 p.m.]

23 [Out of the presence of the jury.]

24 THE COURT: Okay. The record should reflect that the jury has exited.
25 Anything else to be on the record?

1 MS. HAMERS: Yes, Judge, we should make a record about the witness
2 who testified, Mr. Artheris [phonetic]. Mr. Paulson spoke to him, so I'll let him
3 make a record on that.

4 THE COURT: Go ahead, Ron.

5 MR. PAULSON: That's true, Judge. We learned that during the
6 break --

7 THE COURT: In fact, before we start, let's start this: Right after lunch
8 Lisa came to me and said, I saw one of our jurors -- I believe it was Number 9 --
9 making chitchat with a person and said, Who are you or something. Are you a
10 witness in the case? And he said yes, and she was concerned. So I brought
11 everybody to the bench and said, What do you want to do? And Mr. Bateman,
12 said, Well, it's not a real important witness. If you want, we won't call him.
13 That will eliminate the problem.

14 Everybody sort seemed that that was okay, so we did nothing,
15 and we went back with that understanding. Then two witnesses down the
16 road, the representation was, We've worked this out, and it's okay to call
17 them. Now, Mr. Paulson, we're then to you.

18 MR. PAULSON: That's correct, Judge. I went out to the hallway and
19 spoke to Mr. McPheeters. I asked him if he, indeed, had a conversation with
20 one of the jurors. He informed me that as far as he was concerned, the juror
21 didn't know that he was a witness. He had -- he didn't really know or didn't
22 indicate to me that he had any idea that she was a juror in this particular case.

23 THE COURT: That's why we have them wear a red badge. Maybe we
24 need to have some lights around it.

25 MR. PAULSON: He said that that their conversation simply consisted

1 of him asking if it was as cold in this room as it was out in the hallway. She
2 indicated yes. They had a brief conversation about Las Vegas because he was
3 from a little further north. That was the extent of the conversation. I was
4 confident that they never discussed anything to do with this particular case,
5 and there wasn't any --

6 THE COURT: So you were relating the issues, and you told Mr.
7 Bateman, and we put the witness on?

8 MR. PAULSON: That's correct.

9 THE COURT: Okay. Well, I think, again, I appreciate the
10 professionalism of you guys. I mean, this is the way you handle it. When we
11 have something that comes to our attention that could be untoward, you
12 honestly share it with everybody and decide how to come up with a solution
13 that's practical and works, and I think that was a reasonable solution.

14 I also think this: He said virtually nothing, so if we would've left
15 him off, it wouldn't have made a whip bit of difference in the trial. He saw a
16 guy that he can't identify that was Hispanic approach somebody twice and get
17 gas and put it in a white car on the same day that this occurred. So it added
18 nothing and detracted nothing. So how do we handle this? I'm sure it
19 wouldn't have made a whip bit of difference. Thank you. Anything else?

20 MS. HAMERS: No, Judge.

21 THE COURT: Okay. I gave you what I think is my best last set of
22 instructions after we've had a couple submissions by everybody. So let's get
23 together at 8:45. We'll do the instructions. We'll be ready at 9:00. We'll put
24 this officer back on unless you guys agree that you don't need him. If you
25 don't need him, you don't need him, but I want Kathleen and you guys to get

1 together with the officer and make sure that you have instructions to what you
2 need, what you want him to do, whether you want to be present, how you
3 want to handle it so we don't get tomorrow at 9:00 with a jury here and we
4 say, Well, Judge, he needed to do this, that and the other.

5 So you're driving the train, Ms. Hamers. Whatever you want him
6 to do. If you want to be there; if you want to have a Spanish-speaking
7 investigator from your office there. However you want to do it to ensure that
8 we get the best testimony we can. You orchestrate it, but let's make sure
9 everybody's clear on what's going to happen so we don't waste the jury's
10 time.

11 MS. HAMERS: Okay.

12 THE COURT: He'll go at 9:00, and then we'll go with the nurse, and if
13 you have something else, fine. I would expect we need your witnesses here by
14 a little earlier than 9:30. The nurse ain't going to take long.

15 MS. HAMERS: A couple things.

16 THE COURT: Yeah.

17 MS. HAMERS: I have -- based on what happens today, I have a couple
18 more instructions to submit. I can do that probably by ten after 5:00 today. I
19 can send them to you and to Ms. Nyicos, so we can still be ready to deal with
20 those tomorrow morning.

21 THE COURT: Perfect. You fax them over. When I get into work at
22 5:45 in the morning, I will -- that was a joke. I don't get in till 6:00. When I
23 get in in the morning, I'll look at them and see if they're good to go. If they're
24 good to go, I'll put them in the set. If they're not, you know, you can
25 obviously make a record, and we'll be ready to go at 8:45.

1 MS. HAMERS: And -- okay. So as far as the detective and the
2 interview on the tape, he's going to go home and watch it. He'll pick out --

3 THE COURT: Here's what's happening: You and Ms. Nyicos and he
4 are going to go outside, and you're going to reach some agreement on exactly
5 what you want done and whether you want somebody there or you don't want
6 somebody there and what you want to do in the morning. We're going to try
7 to get him on and off in a few minutes at 9:00 in the morning. So you guys go
8 out and figure out what you want.

9 MR. BATEMAN: Ron and I don't have to be a part of this; do we?

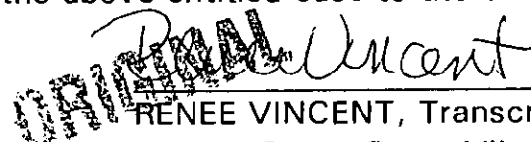
10 THE COURT: Well, I mean, at least one counsel -- at least one counsel
11 from each side. You can have two. You can have an investigator. Do
12 whatever you want, but Ms. Hamers is driving the train. I want her to be
13 satisfied that he can either point out or say, I can't hear this or do whatever. I
14 mean, she's entitled to kind of get into that. So let her sort of decide how it's
15 going to go, and then let's make sure everybody is on the same page of how
16 it's going.

17 MS. HAMERS: Thank you, Judge.

18 THE COURT: Okay. Have a good night. We'll see you at 8:45.

19
20 [Proceedings adjourned at 4:42 p.m.]

21
22 ATTEST: I hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

24 
25 RENEÉ VINCENT, Transcriber
District Court, Dept. VII
(702) 671-4339

-171-

Day 1 - Volume I

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

FREDDY MARTINEZ,

Defendant.

CASE NO. C226586

DEPT. VII

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE
THURSDAY, APRIL 12, 2007

RECORDER'S PARTIAL TRANSCRIPT OF
JURY TRIAL and VERDICT
DAY 2 - VOLUME II

APPEARANCES:

For the Plaintiff:

NOREEN C. NYICOS, ESQ.
Deputy District Attorney
SAMUEL G. BATEMAN, ESQ.
Deputy District Attorney

For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender
RONALD S. PAULSON, ESQ.
Deputy Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

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Day 2 - Volume II

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I N D E X

PAGE

WITNESS: ***DEBORAH B. YOUNG***

DIRECT EXAMINATION BY MS. NYICOS 16

CROSS-EXAMINATION BY MR. PAULSON 28

REDIRECT EXAMINATION BY MS. NYICOS 39

RECROSS-EXAMINATION BY MR. PAULSON 40

WITNESS: ***ARTURO CHAVEZ [CONTINUED]***

RECROSS-EXAMINATION BY MS. HAMERS 44

WITNESS: ***MARIA DIAZ***

DIRECT EXAMINATION BY MS. HAMERS 55

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1 Thursday, April 12, 2007 - 9:04 a.m.

2 [Out of the presence of the jury.]
3

4 THE COURT: Okay. Let's go on the record in Case C226586, State
5 of Nevada versus Freddy Martinez. Morning.

6 MS. NYICOS: Morning, Your Honor.

7 THE COURT: Let the record reflect that Mr. Martinez is present with
8 the court-appointed interpreter. Ms. Hamers, Mr. Paulson, Ms. Nyicos, Mr.
9 Bateman. Absence of the jury.

10 Okay. This is the time for settling instructions. I have given you
11 a proposed packet. Last night Ms. Hamers submitted some additional
12 instructions. I intend to add to the proposed packet their request for an
13 instruction on false imprisonment right after the definition of kidnapping. I
14 intend to give their instruction that, you know, they have to have 12 people
15 think it's first degree or it's second degree. They have to have 12 people think
16 it's second degree or it is false imprisonment, and then -- right behind that.

17 And then the instruction that reads, In order for you to find the
18 Defendant guilty of both first degree kidnapping and then an associated offense
19 of sexual assault, I think if you delete "both first degree," those three words,
20 then it's -- then it's both first degree and second degree have to be distinct
21 from the sexual assault to make it good. I think that cures their issue.

22 And I know you've got a couple you want to submit that I'm not
23 going to give, but -- is the State familiar with the proposed instructions
24 including the addition of the two and the correction of the one?

25 MS. NYICOS: We are, Judge.

1 THE COURT: Does the State object to the instruction -- any of the
2 instructions now that the Court intends to give?

3 MS. NYICOS: No, Your Honor.

4 THE COURT: Does the State have any additional instructions to
5 propose?

6 MS. NYICOS: No, Your Honor.

7 THE COURT: Is the Defense familiar with the proposed set of
8 instructions now, including two of your latest proffered instructions and the
9 correction of one to conform to the possibility that the allegation of kidnapping
10 could be something other than first degree kidnapping?

11 MS. HAMERS: Yes, Judge.

12 THE COURT: And do you have any objection to any of these now?

13 MS. HAMERS: Yes.

14 THE COURT: You do?

15 MS. HAMERS: Yes.

16 THE COURT: Okay. Go ahead.

17 MS. HAMERS: Starting on what -- what would be -- it's page 11. It's
18 the definition of first degree kidnap. I'd ask that that instruction be limited to
19 sex assault. That's what's charged here. Not for any other reason, for
20 ransom, reward, all these listed things. It's the 11th one.

21 THE COURT: And what -- there's only really two objections to a jury
22 instruction. One is, you know, not supported by the facts; two, it's not the
23 law. You're saying this isn't supported by the facts?

24 MS. HAMERS: That's correct.

25 THE COURT: Don't you think the jury is entitled to know that there's a

1 number of ways you can have first degree kidnapping? In this case there's only
2 one State's theory, but that it isn't just limited to sexual assault?

3 MS. HAMERS: Well, the State hasn't put us on notice of any other
4 theory, and so for the jury to --

5 THE COURT: The State isn't going to argue any other theory, I'm sure.

6 MS. HAMERS: So there's no reason for the instruction.

7 THE COURT: Okay. Your objection is denied, but the State has
8 ordered that they cannot argue any other theory than the predicate is for the
9 purpose of committing sexual assault. Go ahead.

10 MS. HAMERS: What would be page 14, it -- a person -- they say sex
11 assault definition. It refers to the word "victim" twice. I'd ask that we use
12 either "person" or something else other than the word "victim." It
13 presupposes that a crime has been committed.

14 THE COURT: Wait a minute. Where is it?

15 MS. HAMERS: It starts with, A person who subjects another person to
16 sexual penetration against a victim's will. I think it's -- it was three pages
17 further.

18 THE COURT: Okay. I mean, when you objected to them saying
19 "victim," you're sort of saying to the jury that that's your decision, and I've
20 kind of sustained your objection. But in this case, it is -- it's assumed that -- I
21 mean, if there's a sexual assault, this is what -- they are a victim. I mean, if
22 you do this against their will, they are definitionally a victim.

23 MS. HAMERS: Right. If one person does this to another person, then a
24 sexual assault has occurred, then there's a victim.

25 THE COURT: Right.

1 MS. HAMERS: I mean, to put "victim" earlier in that transaction, if
2 someone does this to a victim, I think it's prejudicial and presupposes a crime.

3 THE COURT: I've agreed with you as to the testimony. We should try
4 to say "alleged victim," but in this, it says, Hey, if you do this, then they are a
5 victim. Overruled. Go ahead.

6 MS. HAMERS: Okay. The next instruction, I'm aware of the Court's
7 position. This is the no requirement that the testimony of the victim of sexual
8 assault be corroborated. I'd object to this instruction. It unfairly focuses the
9 jury on the testimony of one witness. It also --

10 THE COURT: Okay. Are you saying it's not the law?

11 MS. HAMERS: It may be the law right now. The law -- it's a law -- it's
12 an appellate standard is what it is. It's an appellate standard that's true, but it
13 doesn't mean that that's an instruction that needs to be submitted to the jury.

14 THE COURT: Or are you saying that I should take it upon myself to
15 decide that the Supreme Court is wrong here and upon review is going to
16 change this?

17 MS. HAMERS: Well, Judge, I think I need to make a record about the
18 possibility here --

19 THE COURT: Oh, you can. But, I mean, the point is, when you're a
20 trial judge, you have to take the law as the Supreme Court tells you. In rare
21 cases they get stupid, and they actually reverse a case even though you applied
22 the law that was existent at the time. What they should do, of course, is if
23 they want to change the standard, change it prospectively, but no trial judge
24 should take it upon themselves not to follow the law that the Supreme Court
25 says is the law at the time you have a trial.

1 But your record is that you think that they should change this
2 standard, and you're going to argue that on appeal of this case if you get a
3 conviction, and they certainly have every right to do whatever the hell they
4 want to.

5 MS. HAMERS: So three things: It, again, refers to victim, presupposes
6 that a crime has been committed. It is the jury's determination whether or not
7 there's credibility to focus on this -- on one witness, and that credibility of that,
8 I think, is prejudicial to the client, and it violates his due process right.

9 In addition, I think every time that this instruction is given, that
10 there should also be a converse instruction that states that if there's nothing
11 but testimony and you don't believe that testimony beyond a reasonable doubt,
12 then you can't convict him of a sexual assault.

13 THE COURT: Well, those are the same. That's like saying two bits and
14 a quarter. You don't have to say the same thing twice.

15 MS. HAMERS: And then -- well, I think --

16 THE COURT: It does tell them that, and you certainly have every right
17 to argue that and say, Ladies and gentlemen, this is what it says. What that
18 means by definition, ladies and gentlemen, is that if you don't find this, you
19 can't convict. That's your job. Not my job. Go ahead.

20 MS. HAMERS: Well, and I think *State versus Crawford*, the Supreme
21 Court has said that we are entitled to an instruction on our theory of defense,
22 so I can argue that as well as having an instruction on that.

23 THE COURT: What is your theory of defense in this case?

24 MS. HAMERS: If it -- if it is a theory of defense, if there's any evidence
25 at all that --

1 THE COURT: Okay. Here's what I'm asking you, I mean, a theory of
2 defense means consent. A theory of defense could be someone else did it. A
3 theory of defense could be that coerced -- what is your theory of defense here
4 that I'm not instructing on?

5 MS. HAMERS: With regard to this instruction, it would be a theory of
6 the Defense that if you have nothing else but the victim's testimony and you do
7 not believe that testimony beyond a reasonable doubt, then you cannot find
8 him guilty of a sexual assault.

9 THE COURT: Well, that is an argument you can make based on this.
10 That isn't a theory of defense. What is the theory of defense? The theory of
11 defense is self-defense -- I mean, articulate in one word the theory of defense.

12 MS. HAMERS: Judge, I don't think that it has to be one theory to the
13 whole case. There are multiple charges, there are multiple evidence in line with
14 theory with regard to each.

15 THE COURT: Well, okay. No, I mean, articulate the theory of defense
16 to the sexual assault that I'm not instructing them on.

17 MS. HAMERS: That if they don't believe her testimony beyond a
18 reasonable doubt and they don't have anything else, then they can't find him
19 guilty.

20 THE COURT: That's your job. You argue that.

21 MS. HAMERS: I had submitted as an instruction that --

22 THE COURT: We're at this level. Would be objections to these. I'm
23 going to let you make a record on any others you want to add, but as to
24 these --

25 MS. HAMERS: You have an instruction that seems to have

1 encompassed part of my instruction and didn't encompass them. That's why
2 I'm commenting on that.

3 THE COURT: What number?

4 MS. HAMERS: It's two forward. It says it's a defense to the charge of
5 sexual assault.

6 MS. NYICOS: The *Huneycutt* instruction.

7 THE COURT: Okay.

8 MS. HAMERS: And the thing that I think is missing from there is that
9 the State must prove lack of consent beyond a reasonable doubt. I think
10 *Huneycutt* and *Carter* both entitle us to that instruction, and that's not in there.

11 THE COURT: What do you think it should say? I mean, it seems to me
12 every one of these is said, and you're saying, Well, we have to say that -- not
13 only that it's up, but that up is knocked down.

14 MS. HAMERS: Well, actually in this one, I think I'm saying it in the
15 positive. I'm not saying if they don't prove it --

16 THE COURT: What does it say? It is a defense to the charge of sexual
17 assault if he entertained a good faith belief of consent. That's the standard. If
18 he thought she consented, then he's not guilty, even though they may think
19 objectively that he did not. What am I supposed to say?

20 MS. HAMERS: The State must prove lack of consent beyond a
21 reasonable doubt. It's an element of the crime and that nowhere does it point
22 out that the State has to prove that element. And to say it's a defense to the
23 charge, sure, it might be the same thing, but it's a burden shifting.

24 THE COURT: There's no burden shifting. Okay. I mean, I tell them
25 that in the definition of sexual assault --

1 MR. BATEMAN: Right.

2 THE COURT: -- that it's against the consent. I mean, you only have to
3 say things once. You don't have to say them four times. Okay. Go ahead.

4 MS. HAMERS: I'd object to the flight instruction. That's further back. I
5 don't think there's been evidence of flight.

6 THE COURT: Well, there was some testimony that he was taking off in
7 a white truck with some other people, and they got pulled over and made a
8 felony stop. I mean, whether that is flight or not is for the jury to determine.
9 I'm not determining it is, I'm not determining that it isn't, but I think they're
10 entitled of the law.

11 MS. HAMERS: And we'd just argue that they haven't met the threshold
12 that he was fleeing a crime scene. That wasn't even alleged to be a crime
13 scene.

14 THE COURT: It is -- again, when there is no possible way that a jury
15 conclude that there's flight, they don't get this instruction. This is certainly
16 one that they could conclude yes; they could conclude no. So they get the
17 instruction. They can do whatever they want.

18 MS. HAMERS: The instruction that starts, A credibility or believability
19 of a witness should be determined by his manner upon the stand, this entire
20 instruction is phrased in the "his." I just ask that it be "his" or "her" or
21 "his/her," so that we're not just focusing on his testimony, her testimony. It
22 certainly is subject to the same.

23 THE COURT: I don't think it makes any difference, but I'll do that.

24 MS. HAMERS: Okay.

25 THE COURT: In civil cases -- in a criminal case I've never seen it done,

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DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff(s),

-VS-

FREDDY MARTINEZ,

Defendant(s).

CASE NO. C226586

DEPT. NO. VII

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 12th day of April, 2007.

Charles J. Short, Clerk of the Court

By: 

TINA HURD, Deputy Clerk

D6FT'S

INSTRUCTION NO. A

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If you State has failed to prove beyond a reasonable doubt that the Defendant entered a vehicle with the intent to commit a kidnapping, he is not guilty of burglary.

Defendant's

INSTRUCTION NO. B

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If the State has failed to prove beyond a reasonable doubt that the Defendant subjected another to sexual penetration against that persons will then he is not guilty of sexual assault.

DEFT'S

INSTRUCTION NO. C

If the State has failed to prove beyond a reasonable doubt that the Defendant willfully seized, confined, inveigled, enticed, decoyed, abducted, concealed or carried away a person with the intent to commit sexual assault he is not guilty of first degree kidnapping.

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DEF-15

INSTRUCTION NO. D

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2 If the State has failed to prove beyond a reasonable doubt that the Defendant willfully and
3 unlawfully used force or violence upon the person of another with the use of a deadly weapon, he
4 is not guilty of battery with use of a deadly weapon.
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APR 12 2007

CHARLES J. SHORT
CLERK OF THE COURT

BY

TINA HURD

DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDDY MARTINEZ,

Defendant.

CASE NO: C226586

DEPT NO: VII

VERDICT

We, the jury in the above entitled case, find the Defendant FREDDY MARTINEZ, as follows:

COUNT 1 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☒ Guilty of Burglary While In Possession of a Weapon
☐ Burglary Without Possession of a Weapon
☐ Not Guilty

We, the jury in the above entitled case, find the Defendant FREDDY MARTINEZ, as follows:

COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☒ Guilty of Battery With Use of a Deadly Weapon
☐ Battery Without Use of a Deadly Weapon
☐ Not Guilty

JUDGMENT ENTERED

23 2007

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1 We, the jury in the above entitled case, find the Defendant FREDDY MARTINEZ, as
2 follows:

3 **COUNT 3** – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

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

- 5 ☒ Guilty of First Degree Kidnapping With Use of a Deadly Weapon
6 ☐ Guilty of First Degree Kidnapping Without Use of a Deadly Weapon
7 ☐ Guilty of Second Degree Kidnapping With Use of a Deadly Weapon
8 ☐ Guilty of Second Degree Kidnapping Without Use of a Deadly Weapon
9 ☐ Guilty of False Imprisonment With Use of a Deadly Weapon
10 ☐ Guilty of False Imprisonment Without Use of a Deadly Weapon
11 ☐ Not Guilty

12
13 We, the jury in the above entitled case, find the Defendant FREDDY MARTINEZ, as
14 follows:

15 **COUNT 4** – Sexual Assault With Use of a Deadly Weapon

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

- 17 ☐ Guilty of Sexual Assault With Use of a Deadly Weapon
18 ☐ Guilty of Sexual Assault Without Use of a Deadly Weapon
19 ☒ Not Guilty

20
21 DATED this 12 day of April, 2007.

22
23 Jim EAGAN
24 FOREPERSON
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JOC

FILED

May 31 2 25 PM '07

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C226586

-vs-

DEPT. NO. VII

FREDDY MARTINEZ
aka Fredys A. Martinez
#1361243

Defendant.

[Handwritten mark]

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060, COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS 200.481, COUNT 3 – FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 193.165, 200.310, 200.320, COUNT 4 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – BURGLARY WHILE IN

JUDGMENT ENTERED

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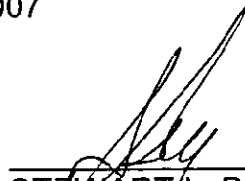

CLERK OF THE COURT

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1 POSSESSION OF A WEAPON (Category B Felony), in violation of NRS 205.060,
2 COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony), in
3 violation of NRS 200.481, COUNT 3 – FIRST DEGREE KIDNAPING WITH USE OF A
4 DEADLY WEAPON (Category A Felony), in violation of NRS 193.165, 200.310,
5 200.320, COUNT 4 – FOUND NOT GUILTY; thereafter, on the 24TH day of May, 2007,
6 the Defendant was present in court for sentencing with his counsel, KATHLEEN
7 HAMERS, Deputy Public Defender, and good cause appearing,
8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
10 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
11 including testing to determine genetic markers, the Defendant is SENTENCED to the
12 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO A
13 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
14 Eligibility of SIXTY (60) MONTHS; AS TO COUNT 2 - TO A MAXIMUM of ONE
15 HUNDRED TWENTY (120) with a MINIMUM Parole Eligibility of FORTY-EIGHT (48)
16 MONTHS; AS TO COUNT 3 - TO LIFE with the MINIMUM Parole Eligibility of SIXTY
17 (60) MONTHS, plus an EQUAL and CONSECUTIVE term of LIFE with the MINIMUM
18 Parole Eligibility of SIXTY (60) MONTHS for the Use of a Deadly Weapon; COUNTS 1,
19 2, and 3 to run CONCURRENT; with TWO HUNDRED EIGHTY-ONE (281) DAYS credit
20 for time served.
21
22
23

24
25 DATED this 30 day of May, 2007
26
27
28


STEWART L. BELL
DISTRICT JUDGE 

449
DORA
Fredys Martinez, #1361243
330 S. Casino Ctr. Dr.
Las Vegas, NV. 89101-6102
DEFENDANT-IN PROPER-PERSON

FILED

District Court
Clark County, Nevada

JUN 4 5 31 PM '07

* * *
Clerk of the Court
CLERK OF THE COURT

The State of Nevada,
Plaintiff,

CASE NO. 226586

vs.

DEPT. NO. XV

Fredys Martinez,
Defendant,


DESIGNATION OF RECORD ON APPEAL

TO: Charles Short, Clerk of the Court
200 Lewis Avenue
Post Office Box 551160
Las Vegas, NV. 89155-1160

The above-named Defendant, Fredys Martinez,
by and through his Proper Person, HEREBY, designates,
all papers, motions and pleadings thereof, as and for
the Record on Appeal.

DATED THIS 24 DAY OF MAY, 2007.

Respectfully Submitted,


Fredys Martinez, #1361243
330 S. CASINO CTR. DR.
LAS VEGAS, NV, 89101-6102

- 2 -

RECEIVED

CLERK OF THE COURT
JUN 4 2007

CERT

CERTIFICATE OF SERVICE


* * *

I, FREDYS MARTINEZ, HEREBY CERTIFY, that a true and correct copy of NOTICE OF APPEAL, was placed in the U.S. mail, by and through the Clark County Detention Center's Inmate mailing system, with postage pre paid, to the following addresses:

1. DAVID Roger, District Attorney
200 Lewis Ave
P.O. Box 552212
Las Vegas, NV. 89155-2212

2. Charles Short, clerk of the Court
200 Lewis Ave
P.O. Box 551160
Las Vegas, NV. 89155-1160

DATED THIS 34 DAY OF MAY, 2007.

By: 
Fredys Martinez, #1361243
330 S. CASINO CTR DR.
Las Vegas, NV. 89101-6102

NOA

Fredys Martinez #1361243
330 S. Casino Ctr. Dr.
Las Vegas, NV. 89101-6102

DEFENDANT-IN PROPER PERSON

FILED

District Court 5 31 PM '07
Clark County, Nevada

* CLERK OF THE COURT

The State of Nevada,
Plaintiff,

CASE NO. 226586

vs.

DEPT. NO. XV

Fredys Martinez,
Defendant

NOTICE OF APPEAL

NOTICE is HEREBY GIVEN, that, Fredys Martinez Defendant, by and through his Proper Person, HEREBY Appeals to the Nevada Supreme Court, from the Eighth Judicial District Court's Judgment of Conviction that was entered on or about May 24, 2007.

DATED THIS 24th DAY OF MAY, 2007.

Respectfully Submitted,

~~Fredys Martinez~~
Fredys Martinez, #1361243
330 S. Casino Ctr. Dr.
Las Vegas, NV. 89101-6102
DEFENDANT-IN PROPER PERSON

MAY 8 2007

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2007 JUN -6 : A 11:42

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No: C226586

Dept No: VII

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1 6. District Court Attorney, Appointed

2 7. On Appeal, N/A

3 8. Forma Pauperis, N/A

4 9. Date Commenced in District Court: September 29, 2006

5 Dated This 6 day of June 2007.

6 Charles J. Short, Clerk of the Court

7
8 By:

Teodora Jones

9 Teodora Jones, Deputy Clerk

10 200 Lewis Ave

11 PO Box 551601

12 Las Vegas, Nevada 89155-1601

13 (702) 671-0512

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D

1 NOAS

2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

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CLERK OF THE COURT

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C226586X
13)
14 v.) DEPT. NO. VII
15)
16 FREDDY A. MARTINEZ,)
17)
18 Defendant.)

19 NOTICE OF APPEAL

20 TO: THE STATE OF NEVADA

21 DAVID ROGER, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
22 DEPARTMENT NO. VII OF THE EIGHTH JUDICIAL DISTRICT COURT
23 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

24 NOTICE is hereby given that Defendant, Freddy A.
25 Martinez, presently incarcerated in the Nevada State Prison,
26 appeals to the Supreme Court of the State of Nevada from the
27 judgment entered against said Defendant on the 31st day of May,
28 2007, whereby he was convicted of Count 1 - Burglary While in
Possession of a Weapon; Count 2 - Battery With Use of a Deadly
Weapon; Count 3 - First Degree Kidnapping With Use of a Deadly
Weapon; Count 4 - Not Guilty and sentenced to \$25.00
Administrative fee; \$150.00 DNA Analysis fee; genetic testing;
Count 1 - 60-180 months in prison; Count 2 - 48-120 months in

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JUN 19 2007


CLERK OF THE COURT

1 prison; Count 3 - 60-Life in prison, plus an equal and consecutive
2 term of 60-Life for the Use of a Deadly Weapon; Counts 1, 2, and 3
3 to run concurrent; 281 days credit for time served.

4 DATED this 18th day of June, 2007.


5 PHILIP J. KOHN
6 CLARK COUNTY PUBLIC DEFENDER

7
8 By:


9 KEDRIC A. BASSETT, #4214
10 Deputy Public Defender
11 309 S. Third Street, Ste. 226
12 Las Vegas, Nevada 89155
13 (702) 455-4685
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I declare under penalty of perjury that the foregoing is true and correct.


An employee of the Clark County
Public Defender's Office

DAVID ROGER
CLARK COUNTY DISTRICT ATTORNEY

By: Mary English

53
1 CAS
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

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JUN 19 9 58 AM '07

Cheryl S. [Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)
9 Plaintiff,) CASE NO. C226586X
10 v.) DEPT. NO. VII
11 FREDDY A. MARTINEZ,)
12 Defendant.)
13 _____)

CASE APPEAL STATEMENT

14
15 1. Appellant filing this case appeal statement:
16 Freddy A. Martinez.

17 2. Judge issuing the decision, judgment, or order
18 appealed from: Stewart L. Bell.

19 3. All parties to the proceedings in the district
20 court (the use of et al. To denote parties is prohibited): The
21 State of Nevada, Plaintiff; Freddy A. Martinez, Defendant.

22 4. All parties involved in this appeal (the use of et.
23 al. to denote parties is prohibited): Freddy A. Martinez,
24 Appellant; The State of Nevada, Respondent.

25 / / /

26 / / /

27 / / /

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JUN 19 2007

CLERK OF THE COURT

5. Name, law firm, address, and telephone number of
all counsel on appeal and party or parties whom they represent:

PHILIP J. KOHN
Clark County Public Defender
309 South Third Street, #226
Las Vegas, Nevada 89155-2610

DAVID ROGER
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

Attorney for Appellant

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

6. Whether appellant was represented by appointed or
retained counsel in the district court: Appointed.

7. Whether appellant is represented by appointed or
retained counsel on appeal: Appointed.

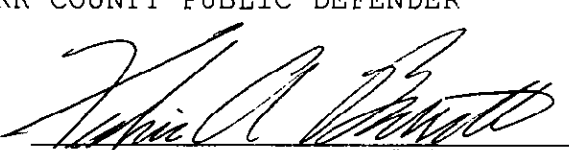
8. Whether appellant was granted leave to proceed in
forma pauperis, and the date of entry of the district court order
granting such leave: N/A.

9. Date proceedings commenced in the district court
(e.g., date complaint, indictment, information, or petition was
filed): Grand jury indictment filed 09/29/06.

DATED this 18th day of June, 2007.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By:


KEDRIC A. BASSETT, #4214
Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

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RECEIPT OF COPY of the foregoing Case Appeal Statement
is hereby acknowledged this 19 day of June, 2007.

DAVID ROGER
CLARK COUNTY DISTRICT ATTORNEY

By: Margie English

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1 ORDR

2
3 DISTRICT COURT

2007 JUN 28 P 1:44

4 CLARK COUNTY, NEVADA

5 CLERK OF THE COURT

6
7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 FREDDY MARTINEZ,)

11 Defendant.)

CASE NO. C226586
DEPT. NO. VII

12
13 **ORDER APPOINTING APPELLANT COUNSEL**

14 Pursuant to Order of the Nevada Supreme Court,

15 IT IS HEREBY ORDERED that the Clark County Public Defender's
16 Office is hereby appointed as appellant counsel to represent the above-
17 named Defendant.
18

19 DATED this 27th day of June, 2007.

20
21
22 
23 STEWART L. BELL
24 DISTRICT COURT JUDGE

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RECEIVED
JUN 28 2007
CLERK OF THE COURT

STEWART L. BELL
DISTRICT JUDGE
DEPARTMENT SEVEN
LAS VEGAS, NEVADA 89155

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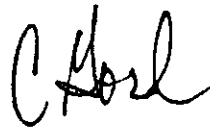
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of the filing hereof,
she placed a copy of the foregoing Order in the attorney's folders in the
Clerk's Office or mailed a copy thereof as follows:

Nevada Supreme Court

Phil Kohn
Clark County Public Defender
Attorney for Defendant

David Roger
Clark County District Attorney



Judicial Executive Assistant

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
Order Appointing Appellant Counsel
filed in District Court case number 6-2116581
DOES NOT contain the social security number of any person.

STEWART L. BELL

District Judge

Date 6-27-07

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CRof
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

1 TRAN
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7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 FREDDY MARTINEZ, aka,
11 FREDYS A. MARTINEZ,

12 Defendant.

CASE NO. C226586

DEPT. VII

ARRAIGNMENT HELD IN DEPT. LLA

13
14 BEFORE THE HONORABLE KEVIN V. WILLIAMS, DISTRICT COURT
ARRAIGNMENT MASTER

15 THURSDAY, OCTOBER 5, 2006

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **ARRAIGNMENT**

18 APPEARANCES:

19 For the State:

SUSAN BENEDICT, ESQ.,
Deputy District Attorney

21 For the Defendant:

KATHLEEN M. HAMERS, ESQ.,
Deputy Public Defender

22 Also Present:

VERONICA PELAS,
Court Interpreter

25 RECORDED BY: KIARA SCHMIDT, COURT RECORDER

S11

CLERK OF THE COURT

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RECEIVED

1 THURSDAY, OCTOBER 5, 2006

2
3 THE COURT: Case Number C226586, State of Nevada versus Freddy
4 Martinez.

5 Yes, Ms. Hamers?

6 MS. HAMERS: Thank you, Judge. This is a Grand Jury Indictment.
7 Mr. Martinez will be -- would -- can waive the reading. He's going to be entering a
8 not-guilty plea, invoking his right to speedy trial. I'd like 21 days from the filing of the
9 transcript for any writ issues.

10 THE COURT: You'll have 21 days from the filing of the transcript for any writ
11 issues.

12 MS. HAMERS: Thank you.

13 THE COURT: And would the interpreter please state her appearance for the
14 record?

15 THE INTERPRETER: Veronica Pelas.

16 THE COURT: Thank you.

17 What's your true name, sir?

18 THE DEFENDANT: Freddy Martinez.

19 THE COURT: How old are you, sir.

20 THE DEFENDANT: Thirty-four.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Sixth grade.

23 THE COURT: Read, write, and understand the Spanish language?

24 THE DEFENDANT: Yes.

25 THE COURT: And what's your plea to the charge, sir?

1 THE DEFENDANT: Not guilty.

2 THE COURT: You have a right to a speedy trial within 60 days. You want a
3 speedy trial?

4 THE DEFENDANT: Yes.

5 THE COURT: Speedy trial for Mr. Martinez.

6 THE CLERK: Calendar call, November the 9th, 8:30. Jury trial, November
7 13th, 9:30, department seven.

8 MS. HAMERS: Thank you, Judge.

9 THE COURT: Uh-huh.

10 (Proceedings concluded)

11

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

14 
15 Kiara Schmidt, Court Recorder/Transcriber

16

17

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Transcript filed in District Court Case No. C226586 does not contain the social security number of any person.

A handwritten signature in cursive script, appearing to read 'K Schmidt', written over a horizontal line.

KIARA SCHMIDT, Court Recorder/Transcriber
Date: 7/17/07

FILED

Jun 25 10 26 AM '07

ORIGINAL

CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
FREDDY A. MARTINEZ
Defendant.

Case No. C226586X
Dept. No. 24

Before the Hon. James M. Bixler
Regional Justice Center

THURSDAY, JANUARY 25, 2007
Reporter's Transcript of Proceedings

APPEARANCES :

For the State: C. Martinovsky, Esq.
Deputy District Attorney

For the Defendant: C. Landis, Esq.
Deputy Public Defender

REPORTED BY: JACKIE NELSON, RPR, CCR 809

NELSON & NELSON
Certified Court Reporters

702.360.4677
Fax 360.2844

\$11

THURSDAY, JANUARY 25, 2007

* * * * *

THE COURT: State of Nevada vs. Freddy
Martinez.

Mr. Martinez is present in custody.

This is a calendar call.

(Court Interpreter provided for Defendant.)

MR. LANDIS: This is negotiated.
Unfortunately, the guilty plea agreement is not
complete. It's missing some information, so we just
need to get a new guilty plea agreement.

Mr. Martinez is ready to sign it if you
could pass it to sometime next week.

THE COURT: Okay. We're working off of a
lost files. Sure.

Do you want it like next Tuesday?

MR. LANDIS: The State has to prepare the
guilty plea so --

THE COURT: How long do you need?

MR. MARTINOVSKY: Usually it doesn't take
that long. Tuesday should be fine.

THE COURT: All right. Pass it one week.

THE CLERK: Tuesday, January 30th, 8:30.

1 Do you want to vacate the trial date?

2 THE COURT: Vacate the trial date, yes.

3 -o0o-

4 (Proceedings concluded.)

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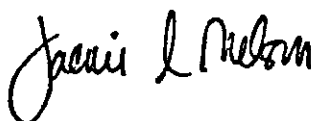
25

CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, JACKIE NELSON, RPR, CCR 809, 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. James M. Bixler, District
Judge, presiding.

Dated at Las Vegas, Nevada, this
12th day of July 2007.



Jackie Nelson, RPR, CCR 809

1	Esq [2] - 1:21, 23	next [2] - 2:15, 18 notes [1] - 4:15	vs [2] - 1:11, 2:5
12th [1] - 4:20	F	O	W
2	files [1] - 2:17 fine [1] - 2:23 foregoing [1] - 4:13 FREDDY [1] - 1:12 Freddy [1] - 2:5	OF [2] - 1:9, 4:7 one [1] - 2:24 original [1] - 4:15	week [2] - 2:15, 24
2007 [3] - 1:17, 2:1, 4:20 24 [1] - 1:11 25 [2] - 1:17, 2:1	G	P	
3	guilty [3] - 2:11, 13, 20	pass [1] - 2:15 Pass [1] - 2:24 place [1] - 4:16 Plaintiff [1] - 1:10 plea [3] - 2:11, 13, 20 prepare [1] - 2:19 present [1] - 2:7 presiding [1] - 4:17 Proceedings [2] - 1:18, 3:4 proceedings [1] - 4:13 provided [1] - 2:9 Public [1] - 1:23	
30th [1] - 2:25	H	R	
8	hereby [1] - 4:12 Hon [2] - 1:15, 4:16	ready [1] - 2:14 reflected [1] - 4:14 Regional [1] - 1:16 reported [1] - 4:13 REPORTED [1] - 1:25 Reporter's [1] - 1:18 RPR [3] - 1:25, 4:12, 25	
809 [3] - 1:25, 4:12, 25 8:30 [1] - 2:25	I	S	
A	IN [1] - 1:6 information [1] - 2:12 Interpreter [1] - 2:9	shorthand [1] - 4:15 sign [1] - 2:14 sometime [1] - 2:15 ss [1] - 4:8 STATE [2] - 1:9, 4:7 State [3] - 1:21, 2:5, 19	
agreement [2] - 2:11, 13 APPEARANCES [1] - 1:20 Attorney [1] - 1:22	J	T	
B	Jackie [1] - 4:25 JACKIE [2] - 1:25, 4:12 James [2] - 1:15, 4:16 January [1] - 2:25 JANUARY [2] - 1:17, 2:1 Judge [1] - 4:17 JUDICIAL [1] - 1:6 July [1] - 4:20 Justice [1] - 1:16	U	
Bixler [2] - 1:15, 4:16 BY [1] - 1:25	L	Unfortunately [1] - 2:11	
C	Landis [1] - 1:23 LANDIS [2] - 2:10, 19 Las [1] - 4:19 lost [1] - 2:17	V	
C226586X [1] - 1:11 calendar [1] - 2:8 Case [1] - 1:11 CCR [3] - 1:25, 4:12, 25 Center [1] - 1:16 CERTIFICATE [1] - 4:3 certify [1] - 4:13 CLARK [2] - 1:7, 4:9 CLERK [1] - 2:25 complete [1] - 2:12 concluded [1] - 3:4 correct [1] - 4:14 COUNTY [2] - 1:7, 4:9 COURT [6] - 1:6, 2:5, 16, 21, 24, 3:2 Court [1] - 2:9 custody [1] - 2:7	M	vacate [1] - 3:1 Vacate [1] - 3:2 Vegas [1] - 4:19	
D	machine [1] - 4:15 MARTINEZ [1] - 1:12 Martinez [3] - 2:6, 14 MARTINOVSKY [1] - 2:22 Martinovsky [1] - 1:21 missing [1] - 2:12 MR [3] - 2:10, 19, 22		
date [2] - 3:1 Dated [1] - 4:19 Defendant [3] - 1:13, 23, 2:9 Defender [1] - 1:23 Dept [1] - 1:11 Deputy [2] - 1:22 DISTRICT [1] - 1:6 District [2] - 1:22, 4:16	N		
E	need [2] - 2:13, 21 negotiated [1] - 2:10 Nelson [1] - 4:25 NELSON [2] - 1:25, 4:12 NEVADA [3] - 1:7, 9, 4:7 Nevada [2] - 2:5, 4:19 new [1] - 2:13		
EIGHTH [1] - 1:6			

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CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

9 STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 FREDDY A. MARTINEZ)
13 Defendant.)

Case No. C226586X
Dept. No. 24

Before the Hon. James M. Bixler
Regional Justice Center

TUESDAY, JANUARY 30, 2007
Reporter's Transcript of Proceedings

20 APPEARANCES:

21 For the State: E. Baum, Esq.
Deputy District Attorney

For the Defendant: K. Hamers, Esq.
Deputy Public Defender

25 REPORTED BY: JACKIE NELSON, RPR, CCR 809

NELSON & NELSON
Certified Court Reporters

702.360.4677
Fax 360.2844

TUESDAY, JANUARY 30, 2007

* * * * *

THE COURT: State of Nevada vs. Freddy Martinez.

MS. HAMERS: Judge, he's present out of custody with the Interpreter.

(Court Interpreter provided for Defendant.)

Due to the nature of the charge, I wanted a record of what he actually read regarding the consequences of his plea.

Today he's going to plead guilty to one count of sex assault. State retains the right to argue.

MR. BAUM: That's correct, your Honor.

THE COURT: He's pleading guilty to what was that, Count 4, one count of, just one count of sexual assault?

MS. HAMERS: Right.

Count 4 would have been a assault with use. This would be the amended.

THE CLERK: I need the original.

THE COURT: We don't have a file.

First of all, you are Freddie A. Martinez, is that right?

THE DEFENDANT: Yes.

1 THE COURT: Mr. Martinez, you are a Spanish
2 speaker, is that correct?

3 THE DEFENDANT: Yes.

4 THE COURT: And is it your understanding
5 that today you are going to be entering a plea of
6 guilt to the amended charge of one felony, one count
7 of sexual assault, is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: There is a guilty plea
10 agreement has been provided to the Court. There's
11 one guilty plea agreement that's in English, and
12 there's one guilty plea agreement that's in Spanish.

13 Have you read through this guilty plea
14 agreement?

15 THE DEFENDANT: Yes.

16 THE COURT: And did you understand what you
17 read?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you go through that plea
20 agreement with your attorney?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you sign that plea
23 agreement?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you entering -- are you

1 freely and voluntarily entering a plea of guilt to
2 this charge?

3 THE DEFENDANT: Yes.

4 THE COURT: Has anybody promised you
5 anything in return for your plea of guilt?

6 THE DEFENDANT: No.

7 THE COURT: Have you discussed with your
8 attorney the possible range of sentence that the
9 Court could impose after you have pled guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: Counsel, what did you explain
12 to the Defendant in the regards to the range of
13 sentence the Court could impose.

14 MS. HAMERS: Judge, I spoke to the
15 Defendant today and on numerous previous occasions
16 that the range of sentencing is ten to life, that
17 that would mean parole eligibility could begin in ten
18 years.

19 THE COURT: Mr. Martinez, do you understand
20 that, that the Court can impose a sentence anywhere
21 from ten years, which would be the mandatory minimum,
22 up to and including life in prison?

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And the sentence that the Court

1 imposes at the time of sentencing is entirely up to
2 the Court. No one can promise or predict what kind
3 of a sentence the Court's going to impose.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone threatened you or
7 anyone in your family that something bad would happen
8 to you if you did not plead guilty to this charge?

9 THE DEFENDANT: No.

10 THE COURT: According to the Amended
11 Information -- excuse me, this Amended Indictment, it
12 says that on the 16th of August of last year 2006,
13 you committed a sexual assault upon Bianca Hernandez.

14 Why don't you tell me in your own words
15 what happened.

16 THE DEFENDANT: That day Bianca was my wife
17 of 16 years. I got in the car with her and we went
18 to -- I went to work, it was in Mesquite, and we had
19 sex on the way to work, and we had a fight before
20 that.

21 THE COURT: Was that all done against her
22 will?

23 THE DEFENDANT: No.

24 MS. HAMERS: Judge, I think specifically
25 we're talking about whether or not the sex was

1 against her will.

2 There were some kidnapping charges,
3 etcetera.

4 THE COURT: What I'm asking you, was the
5 act of have sexual intercourse with Bianca Hernandez,
6 was that act done against her will?

7 THE DEFENDANT: No.

8 THE COURT: I can't accept your plea of
9 guilt if you're telling me that you're not guilty.
10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Well, you're going to have to
13 discuss it with your attorney.

14 If you're going to plead guilty, I need to
15 have a factual basis for your plea, unless you want
16 to make this an Alford.

17 MS. HAMERS: And, Judge, I don't think
18 that's in his best interest.

19 We've talked about this.

20 Can you give me one moment?

21 THE COURT: All right. Why don't we move
22 on to another case.

23 (Proceedings suspended.)

24 ///

25

1
2 (Proceedings resumed.)
3

4 THE COURT: Recalling Freddy Martinez.

5 (Court Interpreter provided for Defendant.)

6 MS. HAMERS: Judge, Mr. Martinez had a few
7 changes of heart today.

8 I'm really not comfortable with him making
9 a decision one way or the other considering the
10 consequences of our conversation today.

11 And, Judge, if I could have a couple days
12 to speak to him some more, other than in court.

13 THE COURT: You want to pass it a week?

14 MS. HAMERS: That's fine with me if it's
15 okay with the State.

16 MR. BAUM: That's fine, your Honor.

17 As long as it's off the trial calendar.

18 MS. HAMERS: Yes. The trial's been
19 vacated.

20 THE COURT: We're not going to take his
21 plea. We're going to go back to ground zero, except
22 we are vacating the trial.

23 MS. HAMERS: We did that last week.

24 THE COURT: Oh, okay.

25 Mr. Martinez, you need to talk to your

1 attorney.

2 You need to understand what will be
3 expected of you if you're going to plead, either
4 plead guilty or plead guilty pursuant to an Alford
5 decision, and you think that's a possibility.

6 Is there some reason why --

7 MS. HAMERS: Well, Judge, I've spoken to
8 Mr. Martinez extensively. What happens in these sort
9 of cases if you enter a plea by Alford, later on it
10 affects your parole, so it's kind of a complicated
11 thing to talk about.

12 We revisited that today.

13 THE COURT: Give me a quick education.
14 What affect does that have?

15 MS. HAMERS: Well, what happens is when you
16 go before the parole board, particularly on these
17 nature of charges, it's very important whether or not
18 you're accepting responsibility.

19 If you've entered an Alford plea and
20 thereby said, I'm not saying that I did this, but I'm
21 saying that I value my --

22 THE COURT: Well, how can they use that to
23 write up an adverse PSI?

24 MS. HAMERS: I absolutely agree with you,
25 but it happens before the parole board all the time.

1 When they look at acceptance of
2 responsibility and whether or not there's a risk, if
3 someone has entered an Alford and maintains their
4 innocence --

5 THE COURT: That doesn't sound right at
6 all.

7 I mean, what happens the point of --

8 I'll tell you what, you don't have to worry
9 about that in here with me because, if that's a
10 problem and there's an adverse report and that's what
11 it's based upon because it was an Alford plea and
12 they're using the fact that he doesn't admit
13 anything, I'm not --

14 MS. HAMERS: The problem is actually before
15 the board.

16 THE COURT: Oh, the board.

17 MS. HAMERS: Because he'd end up with a
18 straight ten to life on this, which is a huge range,
19 it leaves all the discretion with the parole board
20 rather than with the court.

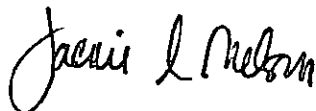
21 THE COURT: All right.

22 THE CLERK: February the 8th, 8:30.

23 -o0o-

24 (Proceedings concluded.)

25

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2
3 CERTIFICATE
4
5
67 STATE OF NEVADA)
8) ss.
9 CLARK COUNTY)
10
1112 I, JACKIE NELSON, RPR, CCR 809, do hereby
13 certify that I reported the foregoing proceedings;
14 that the same is true and correct as reflected by my
15 original machine shorthand notes taken at said time
16 and place before the Hon. James M. Bixler, District
17 Judge, presiding.
1819 Dated at Las Vegas, Nevada, this
20 12th day of July 2007.
2122 
23
2425 _____
Jackie Nelson, RPR, CCR 809

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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF CLARK

8 THE HON. JAMES M. BIXLER, DISTRICT JUDGE, PRESIDING

9
10 THE STATE OF NEVADA,
11 Plaintiff,

12 v.
13 FREDDY A. MARTINEZ,
14 Defendant.

Case No. C-226586-X
Dept. XXIV

15 TRANSCRIPT OF PROCEEDINGS

16 Calendar Call

17 COURTHOUSE

18 April 5, 2007

19 Las Vegas, Nevada

20
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22
23 Reported by:

Lee M. Bahr, CP, CCR 173

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CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-243-3386

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1 APPEARANCES:

2
3 For the State:

NOREEN C. NYICOS, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155

4
5
6
7 Defendant present in court.

8 For the Defendant:

CASEY LANDIS, ESQ.
Deputy Public Defender
309 South Third Street
Suite 226
Las Vegas, NV. 89101

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12
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14
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16
17
18 No other appearances.

19
20 *****

TRANSCRIPT OF PROCEEDINGS

THE COURT: The State of Nevada v. Freddy Martinez,
and that is where on the calendar?

MS. NYIKOS: I think page four at the bottom.

THE COURT: Where is it?

THE CLERK: Bottom of seven?

MS. NYIKOS: Bottom of four.

THE COURT: Okay, what page is it?

THE CLERK: Bottom of four.

THE COURT: The State of Nevada v. Freddy Martinez,
bottom of page four, calendar call.

What we are going to do, if he qualifies for
overflow, we are already kind of jammed so --

THE CLERK: And they can't go to overflow because
they have one out-of-state witness.

MS. NYIKOS: Well, I talked to Judge Bell in the
past, and I did clarify with Charmaine. They are fine with
overflow with out-of-state witnesses.

The only thing they are picky about is whether
or not we can get them there in the time frame.

So what my suggestion would be is to go ahead,
send it to overflow.

I will talk to Charmaine and let them know what
my problem is that I have to put this witness on Thursday,

1 and if they can't accommodate us, they will just take it
2 back.

3 THE COURT: All right, okay.

4 THE CLERK: Got to go tomorrow morning at nine
5 a.m. with Judge Bell.

6 MR. LANDIS: That is what we want as well.

7 THE COURT: You've got it.

8 THE CLERK: So both of you are trying this case?

9 MR. LANDIS: No, it is actually Ms. Hammers.

10 MS. HAMMERS: I am Kathleen Hammers. I have Sam
11 Bateman with me.

12 THE CLERK: Okay. How many days?

13 THE COURT: Three days.

14 MS. NYIKOS: Two and a half.

15 THE CLERK: Okay.

16 MS. NYIKOS: Two and a half in here, two in
17 Judge Bell's.

18 THE COURT: I haven't had enough practice yet.

19 MS. NYIKOS: You will get there, Judge.

20 MR. LANDIS: Not necessarily good though.

21 THE CLERK: They need to go tomorrow morning
22 at nine a.m., April 6 at nine a.m., before Judge Bell.

23 MS. NYIKOS: Thank you. That does it for me.
24 Thank you, Judge.

25 MR. LANDIS: Thank you, Judge.

1 THE COURT: Thank you.

2 *****

3 (End of proceedings.)

4 *****

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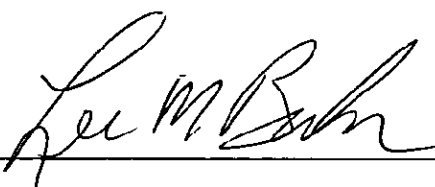
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CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, 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. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
16th day of July, 2007.

A handwritten signature in cursive script, reading "Lee M. Bahr", is written over a horizontal line.

LEE M. BAHR, CP, CCR 173

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DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff,

vs.

FREDDY A. MARTINEZ,

Defendant.

CASE NO. C226586

DEPT. VII

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

Wednesday, April 11, 2007

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL
DAY 1 - VOLUME I

APPEARANCES:

For the State:

NOREEN C. NYICOS, ESQ.
Deputy District Attorney
SAMUEL G. BATEMAN, ESQ.
Deputy District Attorney

For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender
RONALD S. PAULSON, ESQ.
Deputy Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

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Day 1 - Volume I

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1 Tuesday, April 11, 2007 - 9:11 a.m.

2 [Out of the presence of the jury]

3
4 THE COURT: This is Case Number C226586, State of Nevada versus
5 Freddy Martinez. Let the record reflect the presence of Mr. Martinez, his
6 counsel, Mr. Paulson, Ms. Hamers; Mr. Bateman, and I guess Ms. Nyicos is
7 coming for the State. Absence of the jury. Any matters to come before the
8 Court before we bring the jury in?

9 MS. HAMERS: Not from us, Judge.

10 MR. BATEMAN: I don't believe so. The only thing, Your Honor, was,
11 we did have some witness availability issues, one of the detectives and then
12 our nurse. The nurse is coming in from out of state.

13 MS. NYICOS: Absolutely cannot be here until tomorrow.

14 MR. BATEMAN: Right.

15 MS. NYICOS: But I think we've got enough today to fill today.

16 MR. BATEMAN: Most of today.

17 MS. NYICOS: Yeah.

18 THE COURT: Okay. We do the best we can. I thought we'd probably
19 get all of our witnesses today and argument tomorrow, but obviously we
20 won't, so we'll be done tomorrow night.

21 MR. BATEMAN: At the very latest. I mean --

22 MS. NYICOS: Yeah. I mean, we'll be done tomorrow morning.

23 MR. BATEMAN: Yeah.

24 THE COURT: This Defendant doesn't have prior felonies. If I had to
25 guess, I guess he's probably going to get on the stand. And so by the time we

1 get through argument and get them the case at 4:00, it's probably what we're
2 dealing with. Okay.

3 [Court at ease.]

4 THE COURT: Okay. We'll do one alternate, so that's 13. So you'll
5 have nine each. Certainly, you wouldn't need to use nine, but if you need to,
6 do what you gotta do. I take it the Defendant doesn't speak English since we
7 have the interpreter?

8 MS. NYICOS: Yes.

9 THE COURT: Do we have witnesses who don't speak English?

10 MS. NYICOS: Yes.

11 THE COURT: And we have interpreters -- separate interpreters coming
12 up for them?

13 MS. NYICOS: Yeah.

14 [Court at ease; waiting for prospective jury panel.]

15 [Prospective jury panel enters the courtroom at 9:28 a.m.]

16 THE COURT: Okay. Good morning, ladies and gentlemen. This is the
17 time set for trial in Case Number C226586, State of Nevada versus Freddy
18 Martinez. This is Mr. Martinez here in the white shirt and the tie with his
19 attorneys, Mr. Ron Paulson and Ms. Kathleen Hamers. These are prosecuting
20 attorneys, Ms. Noreen Nyicos and Mr. Sam Bateman, who represent the State
21 of Nevada. This is a criminal case, and Mr. Martinez is charged with sexual
22 assault and a couple of related other charges.

23 My name is Stew Bell. I'm the judge assigned to try this case.
24 You're in Department VII. You've been summoned here to act as potential
25 jurors to decide this case.

1 Let me introduce the staff to you. This is Renee Vincent. She's
2 our court reporter/recorder. It is her job to see that everything is said and by
3 whom is taken down accurately. The reason for that is that after the trial, if
4 one side or the other thinks I didn't do my job right and they want to appeal to
5 the Nevada Supreme Court, a transcript of exactly what happened is prepared
6 and sent to the Court, and that's what they review to determine whether or not
7 both sides had a fair trial.

8 This is Tina Hurd. She's our records clerk. She's responsible for
9 keeping track of all the records, all the evidence, swearing the witnesses, and
10 she keeps Minutes, which is the official record of this Court.

11 Finally, you've met Lisa Cologna. She's a deputy sheriff assigned
12 to this court as a bailiff. Her job is courtroom security. That is the security of
13 all the persons and property in the courtroom, including yourselves. She is also
14 the only participate in the trial that is allowed to talk to jurors during the trial
15 for obvious reasons.

16 So if there's something you need to ask, if there's something you
17 need to bring to my attention or the lawyers' attention or you just want to
18 know where the restroom is or whatever, you talk to Lisa, and she'll give you
19 the answer. And if it's something that needs to be brought to somebody else's
20 attention, she knows exactly how to do it within the context of the rules.

21 Ms. Nyicos, will you introduce yourself and your co-counsel and
22 tell the ladies and gentlemen of the jury the witnesses you intend to call.

23 MS. NYICOS: Thank you. Ladies and gentlemen, my name is Noreen
24 Nyicos. I'm a deputy district attorney here in Clark County, Nevada. With me
25 is Sam Bateman, another deputy district attorney to assist me. We're here to

1 prosecute the case of State of Nevada versus Freddy Martinez. We have
2 alleged on or about the 16th day of August 2006 that the Defendant kidnapped
3 Bianca Hernandez at knifepoint, took her in her vehicle, drove her up to
4 Mesquite, Nevada. On the way up to Mesquite, he pulled off to the side of the
5 road and sexually assaulted her at knifepoint.

6 Witnesses the State intends to call in this case -- we may not call
7 all these witnesses, but these are all the people related to this case. You need
8 to listen carefully to these names. Arturo Chavez, Las Vegas Metropolitan
9 Police Department; Scott Kavon, Las Vegas Metropolitan Police Department;
10 Christopher Tomaino, Metro Police; Bradley Grover, Metro Police; Troy Givens,
11 Metro Police; Blake Goddard, Metro Police; Michelle Briggs, Metro Police;
12 Bianca Hernandez, Las Vegas, Nevada; Jose' Quiroz-Castillo, Las Vegas,
13 Nevada; William McPherson [sic], Moapa, Nevada; Debbie Young. She's a
14 nurse, operates out of St. George, Utah.

15 THE COURT: Okay.

16 MS. NYICOS: Do you want me to start over?

17 THE COURT: Start over.

18 MS. NYICOS: Okay.

19 THE COURT: We just had a prospective juror come in, and obviously
20 everybody has to hear what Ms. Nyicos has to say. So, Ms. Nyicos, please
21 start over.

22 MS. NYICOS: All right. My name is Noreen Nyicos, Deputy District
23 Attorney. With me is Sam Bateman, also a deputy district attorney. We're
24 here to prosecute State of Nevada versus Freddy Martinez, the Defendant. We
25 have alleged that on or about August 16th of 2006 that Mr. Martinez kidnapped

1 Bianca Hernandez at knifepoint here in Las Vegas, Nevada; that he took her in
2 her vehicle up to Mesquite, Nevada, along the I-15. At some point during that
3 drive, he pulled off to the side of the road near Logandale where he sexually
4 assaulted her at knifepoint.

5 Witnesses involved in this case, although we are not going to call
6 every single witness, you need to pay attention to these names, and I didn't
7 get through the list very far, so here we go. Arturo Chavez, Metro Police;
8 Scott Kavon, K-a-v-o-n, Metro Police; Christopher Tomaino, T-o-m-a-i-n-o,
9 Metro Police; Bradley Grover, Metro Police; Troy Givens, Metro Police; Blake
10 Goddard, Metro Police; Michelle Briggs, Metro Police; Bianca Hernandez, Las
11 Vegas, Nevada; Jose' Quiroz-Castillo, Las Vegas, Nevada; William McPherson
12 [sic], Moapa, Nevada; Debbie Young. She's a nurse. She operates out of St.
13 George, Utah.

14 Franklin Martinez, Las Vegas, Nevada; Lance Barr, Mesquite
15 Police Department; Shane Charles, Mesquite Police Department; Ron Richmond,
16 Mesquite Police Department; C.J. Larsen, Mesquite Police Department; Millie
17 Tara, Mesquite, Nevada. We also have Kristina Paulette, Las Vegas
18 Metropolitan Police Department, the DNA lab; and Clayton Fuller, M.D., Las
19 Vegas, Nevada.

20 THE COURT: Thanks. Ms. Hamers, will you introduce yourself, your
21 co-counsel and your client, please.

22 MS. HAMERS: Thank you, Judge. Good morning. My name is
23 Kathleen Hamers, and along with my co-counsel, Ron Paulson, we will be
24 representing Freddy Martinez in this case. In addition to the witnesses that the
25 State has just listed off, the Defense may call Gregorio David Martinez, Maria

1 Diaz and Naomi Conaway.

2 THE COURT: Okay. Thanks. Okay. Let me -- let me tell you the
3 good news first, and we'll get going. The good news is that they read all these
4 witnesses because that's the rules. One of the rules we operate by is there no
5 trial by ambush, so you have to tell the other side who your witnesses are, so
6 we get to the truth and not that somebody wins because they're unprepared or
7 surprised.

8 The truth is, the State will call maybe a quarter of those
9 witnesses, and the Defense may call anywhere from zero to three of the
10 witnesses they called. The sum and substance of it is, while our average trial
11 in District Court takes six days -- you know, some take two days; some take
12 two weeks; some take six weeks; six days the average -- this case is two days.
13 It's all day today, a good hard day, and all day tomorrow. We will be finished
14 tomorrow at 5:00, 5:30.

15 I've got another trial starting Friday. I just know how long these are
16 going to take. So I've never been wrong in several hundred trials. That's how
17 long it's going to take because I go over it with the lawyers in advance, and I
18 know what witnesses they're going to call, and I know how long it's going to
19 take. And it's only fair to give you an honest assessment of how long a trial is
20 going to take because you may have other things that would otherwise get in
21 the way of your serving.

22 One other thing that you may have noticed, this lady in the nice
23 green suit, she's an interpreter. She works for the court. Mr. Martinez does
24 not speak English. I assume he speaks -- well, I know he speaks Spanish only
25 or Spanish is his primary language. And when we have that happen -- we have

1 it all the time with languages all over the world -- the court has interpreters that
2 interpret as necessary for the benefit of defendants. We're going to have some
3 witnesses that only speak Spanish, and the interpreters will interpret for you.

4 These are very, very skilled people who have to go through
5 rigorous education and testing. They're all certified. They all work for the
6 court and not for any party, and you will see that we'll proceed through this in
7 a virtually seamless manner, notwithstanding the fact that several people do
8 not speak English.

9 You'll probably see interpreters come and go because it's very,
10 very taxing and very, very tiring, and they can only go for a certain amount of
11 time, and then they need to have a replacement because they are talking as
12 fast as I'm talking to make sure that the Defendant and the witnesses
13 understand what's going on.

14 Okay. The next thing that happens is we have a roll call of all
15 the jurors to make sure that we have an accurate record of who's here. Just
16 like school, when they call your name, say "present" or "here," please, and
17 we'll get going.

18 [The Clerk calls roll of the prospective jury panel; not transcribed]

19 THE COURT: Is there anyone who's name was not called? Okay. The
20 next thing that happens is what we call the *voir dire* process. It's a process
21 where mostly the Court, a little bit counsel asked very non-personal, non-
22 evasive questions of potential jurors to make sure that the ultimate jurors that
23 sit in judgment in this case can be fair to both the State and Mr. Martinez.

24 Ultimately, we will have 12 people sit in judgment -- they probably
25 told you that downstairs -- in a criminal case. We have 13 potential people in

1 the box. Why so? Well, because the rules say that we have to have 12 people
2 make the decision, and in a criminal case, they have to be unanimous. Things
3 do happen. Even good citizens that are here doing their duty, people get in car
4 wrecks; they have sick kids; they have relatives go in the hospital. Things
5 happen that can abort the process for a juror here or a juror there.

6 So we start off with enough people to make sure we get to the
7 finish line with 12. In a two-day trial, 13 is plenty. If this was a six-week trial,
8 we might start off with 20 or 22 because we know we're going to lose a few,
9 and if we lose down below the minimum amount, the law says it's a do-over,
10 and it's a very big waste of time and money, including your time.

11 So we'll start with 13, and we'll end up with 12 tomorrow. If, in
12 fact, we end up with 13 tomorrow, it's probably much better than 50/50 of the
13 case. Then at the end of the trial, the Clerk draws a number of a juror at
14 random out of a cup, and that person serves as an alternate.

15 In any event, the idea is to make sure that everybody can be fair
16 and impartial. I have no doubt that all of you could be fair and impartial in 98
17 percent of the cases you might be called upon to sit as a juror. We want to
18 make sure that this isn't one of those rare cases that you couldn't, and it has
19 to do with background experiences. It has nothing to do with your character or
20 your ability or your talent or your willingness to serve or citizenship or anything
21 like that. It is experiences you may have had that may make it difficult for you
22 to come to your task with a clean slate.

23 How could that be? Well, maybe Ms. Hamers is your personal
24 attorney. Maybe you live next door to Ms. Nyicos. Maybe you've had dealings
25 with one of the witnesses that would make it difficult for you to objectively

1 judge their veracity. Maybe you personally or somebody close to you has had
2 an experience so similar to the allegations in this case that it makes it difficult
3 for you to be objective. Those are the kinds of things we're looking for,
4 background experiences.

5 And so the way this goes is, I'm going to ask some questions of
6 everybody en masse, and then I'm going to ask a few individual questions of
7 the 13 starters here, so to speak, and then each of the lawyers has a chance to
8 ask a few questions. Again, they're not personal; just gives us a flavor of
9 what's going on.

10 And then the final thing is what we call preemptory challenges,
11 and that means each side gets to ask to have excused persons for any reason
12 or no reason, and it usually is no reason. I mean, usually it is just a feeling in
13 the gut of a lawyer that, Maybe this person isn't going to understand this
14 particular case from my point of view, and it's all subjective. It isn't objective.
15 That isn't because of the case. It's just sort of their feeling because when we
16 get there, we want to make sure that both sides, including the Defendant and
17 the lawyers, have a feeling that they're comfortable with the jurors and that
18 both sides get a fair shake.

19 So this whole process will take us maybe an hour and half, hour
20 and 45 minutes, and then we'll get started with the trial, and we will work two
21 good long days, and we'll be done.

22 It's very important that everybody tells the truth, and to that end,
23 the law says the rules we play by are that this is done under oath. So if you'll
24 stand and raise your right hand, the Clerk will administer the oath, and we'll get
25 cooking.

1 [The Clerk administers the oath en masse to the prospective jury panel]

2 THE CLERK: Thank you. You may be seated.

3 [Jury *voir dire*; not transcribed.]

4 THE COURT: Okay. Thanks. All right, folks. We have our jury.

5 Obviously, it takes more than 13 folks to get a jury in a case like this. The way
6 this work is, you that are sitting in the back of the room, you go back
7 downstairs, and they'll see if they can find a different -- another case for you to
8 work on.

9 Basically the way it works is this, or supposed to work is, they
10 take their turn, and theoretically, although occasionally you have one slip
11 through, we don't call them again until we go through the whole citizenry,
12 which is typically 15, 18 years, and people have a couple turns in their life. If
13 you go downstairs and they don't have another case, they'll just send you
14 home. If you go out three times today on three different cases and it just so
15 happens that you're, luck of the draw, in the back of the room and you don't
16 get picked, we don't make you come back day after day after day. You get to
17 go home. We'll have another couple hundred people come into tomorrow, and
18 we'll start again. So if you'll go back downstairs, they'll tell you what you
19 need to do. Thanks very much.

20 Ladies and gentlemen of our jury, your jury service is done under
21 oath. If you'll raise -- stand and raise your right hand, please, the Clerk will
22 administer the oath, and we'll get going.

23 [The Clerk administers the oath to the jury panel.]

24 THE CLERK: Thank you. You may be seated.

25 THE COURT: Okay. Let me give you a couple pointers, and we'll get

1 started. First of all, next to your seat you're going find a clipboard with a pad
2 of paper and a pencil or pen and a hard red badge. If you'll take that hard
3 badge and replace your soft badge, it will identify you as actually being a juror
4 here in Department VII as opposed to a potential juror somewhere. There's a
5 lot of reasons for that, but maybe most important is that if you're outside at
6 lunch or at a break or whatever and people see that you're a juror in
7 Department VII and they're witnesses or investigators in this case, they'll be
8 sensitive not to talk about the case in your presence.

9 We give you the pad and writing implement because you are
10 entitled to take notes. You can write down what you think is important or
11 maybe just a question you want to ask of your fellow jurors when you get in
12 the jury room, but you can take whatever notes you take into the jury room
13 with you.

14 Ultimately your decision has to be based on what you hear here
15 in court. While it is a noble virtue to want to get as much information and
16 evidence as you can before making any decision in life, it would be against the
17 rules to do independent investigation. To decide that you want to go to the
18 scene or look things up on the Internet, that would be against the rules; and if
19 somebody did it and the Court found out about it, it would void everything.
20 We'd have to do it over. It's difficult. It's expensive. It's not fair to your
21 fellow jurors, so please do not do that. Simply pay attention in court and
22 render your verdict.

23 As I said earlier, during the trial all the participants are not
24 allowed to talk to you for obvious reasons. The only person that's allowed to
25 talk to you is Lisa. If you have any questions or concerns or anything you

1 want, you just flag down Lisa, and she'll take care of it. She's done hundreds
2 and hundreds and hundreds of these. You won't present her with an issue
3 she's not familiar with.

4 This is a criminal trial. It is commenced by the filing of a
5 document called an Indictment. An Indictment is simply a charge. It is no
6 evidence whatsoever of the guilt of the Defendant. For the sole purpose of you
7 understanding the specific nature of the charge, the Clerk is going to read to
8 you the Indictment. You do not have to take notes. This is just so you'll kind
9 of understand what's coming. When I instruct you on the law at the end of the
10 case, I will actually give you an instruction that embodies all the language here,
11 so you won't have to take it down. Ms. Clerk.

12 [The Clerk reads the Indictment aloud; not transcribed.]

13 THE COURT: Okay. Thanks. The process goes like this: As soon as
14 I'm done talking in a couple minutes, we'll hear the opening statement from the
15 State. An opening statement is not evidence. It is a framework to help you
16 understand the evidence. I liken it to the picture on the outside of a jigsaw
17 box. You pick up any jigsaw puzzle piece and look at it, it's just gibberish.
18 You can't -- it doesn't make any sense.

19 But if you can look at this picture and you see that there's a lot
20 of red up here, you kind of know it goes up here. I mean, that's the idea.
21 Evidence comes in a bit here and a piece there, and instead of having you try to
22 have to put it all together after the fact with no idea of what it means, the
23 State is going to tell you what they think the evidence is going to show, so as
24 it comes in, it sort of makes sense to you.

25 Then the Defense has three options. They may get up and make

1 an opening statement and tell you what they believe the evidence will or will
2 not show, for that matter, or they can wait until the State's case is done and
3 make an opening statement or they don't have to make an opening statement
4 at all. That's just a strategic decision they'll make.

5 Then we'll hear the actual evidence. It will start with the State
6 calling their witnesses. The State under our procedure has the entire burden of
7 proof, and so they call first any and all witnesses they have. Sometimes you
8 have witnesses that both the Defense and State would like to call. They have
9 things that each would like to bring out to you, and so the State calls them --
10 well, if the State didn't call them, the Defense might call them, but because the
11 State has called them, we don't call them back. We bring them in, we take
12 one turn at them, and everybody gets -- so sometimes witnesses are really both
13 sides' witnesses.

14 When the State is done calling witnesses, again, the Defendant
15 may or may not call witnesses. They have absolutely no obligation to call any;
16 no obligation to put the Defendant on the stand. If they believe that the State
17 hasn't proved their case, they have a right to stand up and argue that or they
18 can call witnesses. That's their choice. If they wish to call witnesses, they
19 can.

20 The State can then, if they wish, call what we call rebuttal
21 witnesses, somebody that didn't -- they didn't put on in their case, but may
22 have something to rebut what the Defense said. It doesn't happen very often,
23 but they have that right.

24 Then I'll give you the law as it applies to this case. I start by
25 having it done in advance. I work on it all the time as the trial is going so that I

1 have it ready when the time comes, and I'll give it to you. It doesn't take very
2 long to impart it to you.

3 Then we hear closing argument. Closing argument is the mirror
4 image or the opposite of opening statement. It is what the lawyer thinks the
5 evidence did or did not show and why that supports their theory of the case,
6 why the State thinks that this is enough to convict the Defendant; why the
7 Defense thinks it is not enough for you to convict the Defendant.

8 Because the State has the burden of proof, in closing arguments
9 they go first and last. So we'll hear from the State, the Defense, then the
10 State. Then the case is submitted to you.

11 During the course of the trial, you are not allowed to talk about the
12 case with each other or anyone else, and every time we recess, I'll tell you
13 that. There are a number of important reasons, but mainly we want people to
14 keep an open mind until the end of the case. So if you're at a break or you
15 want to call home, you want to call home and say, I'm a juror. It's a sexual
16 assault case. It's two days. I can't talk about it now, but Thursday night I'll
17 be glad to talk to you, honey, that is fine. Please don't talk with each other or
18 anybody else about the specifics of what's been said in here.

19 Ultimately the weight and value to be given any evidence or
20 testimony is up to you. You decide who's telling the truth or what to believe or
21 what not to believe. During the course of the trial you may hear lawyers say
22 "object" or "I object, Your Honor" or "objection." What does that mean? You
23 may have seen it if you've been a juror before. You may have seen it on TV.
24 What it means is this: Trials are conducted under rules, and they are good
25 rules. They are not rules designed to keep things from jurors. They are rules

1 designed to make sure that the playing field stays level, that both sides have a
2 fair chance to have their position considered, and my job is, I'm the enforcer of
3 the rules. I'm like the home plate umpire. You know, I don't care what the
4 result is. I don't care if the Defendant is convicted or acquitted. All I care is
5 that both sides have a fair opportunity to present their circumstances and that I
6 get you out by tomorrow night. That's my sole job.

7 So when the lawyer says, Objection, Your Honor, what he's
8 saying is, Judge, under the rules you can't ask a question that way or that's
9 not a fair piece of evidence or whatever, and it's just up to me to make a
10 decision. That's all.

11 If you can't hear a witness or can't see something or you don't
12 quite understand, please raise your hand and say, I didn't understand or I didn't
13 hear it, and we'll rephrase it. We want everybody to see, hear and understand
14 everything.

15 Also, there's some water over there. Lisa will put some cups
16 out. If you want a drink of water, that's certainly fine. If you go to lunch or go
17 to a break and you want to bring back a bottle of water or a small Coke or
18 something just to keep your mouth from getting dry, as long as your subtle
19 about it, that's perfectly fine. You can't have a picnic in the jury box, but I
20 know sometimes it's a little more comfortable if you have something to sip on.

21 Under the rules you are entitled to ask questions. We didn't have
22 this process up till about two and a half years ago, but now jurors are entitled
23 to ask questions. And the way it works is this: If you think a question needs
24 to be asked that one of the lawyers didn't ask, while the witness is still here --
25 not after they went back to Newark -- while they are still here, get Lisa's

1 attention. Tear a sheet out of your pad, write your juror number and the
2 question. Forget those old numbers. You're now 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
3 11, 12, 13. Juror Number 13, What color's the cat? That's the question.

4 You give it to Lisa on a piece of paper; she'll give it to me. If it is
5 a proper question, under the rules I'll ask the question, and you deem the
6 answer the same as if one of the lawyers asked the question. If it is not
7 allowable under the rules, and we don't expect you, of course, to know all the
8 rules, I'll just set it aside. I won't ask it. It won't be any big deal.

9 After the trial is over, I'll pick it back up, and I'll go over it with
10 you, and I'll tell you what the rule is, and why we have that rule. Why does
11 that rule tend to keep the playing field level? Why does it make sense, and
12 then I think it'll make sense to you.

13 In my experience in doing this literally hundreds of times since
14 we invoked the jury's right to ask questions, it's been my experience about 75
15 percent of the time we don't have any jury questions. I attribute that to pretty
16 capable lawyers who bring out everything from their point of view that's
17 necessary. About 25 percent of the time we have a few questions. I haven't
18 found that it has changed the process much, but that's the way it goes.

19 Finally, our schedule is something like this: We'll go to about
20 noon. We'll take an hour break for lunch. We'll go for a couple hours. We'll
21 take a 10-, 12-minute break for restroom, cigarette, get a drink of water. In
22 the afternoon we'll go for a couple more hours. We'll break for the night. Sort
23 of the same schedule tomorrow. Two, two and a half hours in the morning, a
24 break, a couple hours, break, couple hours. We will be done by tomorrow
25 night. I promise you we're going to be right on schedule. We're not going to

1 be done by tomorrow noon, and we're not going to be here on Friday on this
2 case.

3 That said, having given you the schedule, you know, if right now
4 somebody needs to use the restroom and they don't want to wait until noon,
5 and that includes the lawyers, or if somebody needs to make a call or get a
6 drink of water or somebody says, Judge, can we have five minutes, we'll just
7 take five minutes. It ain't any big deal. We'll pick back up, and we'll get on
8 schedule. So if you need a break or you need something, just raise your hand
9 and say, Let's go, and we'll go. If I don't have somebody raise their hand, I'll
10 assume everybody is good to go till noon. We will take a five-minute break.

11 Now, listen, every time we break, I have to give you three
12 instructions. It is part of the rules. They are good rules to have to give you, in
13 my opinion, and my opinion doesn't count. It is a stupid rule that I have to give
14 it to you every time because once I give it to you once, you'll have it, but
15 you're going to hear it about four times during the trial.

16 One, don't talk about the case with each other or anyone else. I
17 already told you that. Talk about the weather, talk about Iraq, the ballgame,
18 politics, anything you want, but do not talk about the case.

19 Number two, don't read, watch or listen to any report on the
20 case by Internet, television, radio or newspaper. I don't think this will be
21 reported, but it might be. I'll look for a reporter. If there's somebody in here,
22 I'll kind of clue you in. If not, you probably don't have to sanitize your paper.

23 And number three, don't form or express an opinion on the case
24 until you deliberate. Keep an open mind. Just fundamental fairness. We'll
25 take a five-minute break, and we'll come in with the State's opening. Okay.

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[Jury exits the courtroom.]

[A short break was taken at 11:15 a.m.]

[The jury returns to the courtroom.]

THE COURT: Okay. Back on the record in Case Number C226586, State of Nevada versus Freddy Martinez. Let the record reflect the presence of Mr. Martinez with his counsel; counsel for the State. All ladies and gentlemen of the jury are back in the box. We're missing someone. No?

THE BAILIFF: No.

THE COURT: We've got them. Okay. State, your opening statement.

STATE'S OPENING STATEMENT

MS. NYICOS: Thank you, Judge. Counsel. Good morning, ladies and gentlemen. We're here today to try State of Nevada versus Freddy Martinez. You're going to hear from 11 witnesses from the State. I know I read about 30. You're going to hear from 11. Maybe ten.

What these witnesses are going to tell you is that on the morning of August 16th, 2006, the Defendant, Freddy Martinez, showed up at the home of Bianca Hernandez shared with her boyfriend, Jose' Quiroz-Castillo, and her son, 16-year-old Franklin Martinez. You're going to hear that on that morning, he had a knife, a small folding knife.

You're going to hear that that morning, it was around 5:30, 6:00 o'clock in the morning, Bianca was taking Jose' to work. She was outside in the car waiting for him. That as Jose' steps outside the front door, he sees the Defendant cross the street with something in his hand. Jose' is going to tell you he didn't know what that something was, but whatever it was, it scared

1 him because Jose' [sic] went like this to him [indicating]. Jose' stopped as the
2 Defendant pointed this knife at him. Then Jose' watches the Defendant then
3 go to the car where Bianca is, put the knife up against her face and that Bianca
4 drove away.

5 You're going to hear from Bianca that the Defendant made her
6 drive up toward Nellis near Las Vegas Boulevard, that at some point Defendant
7 takes over the wheel because she's not shifting very well because she's
8 scared, because she doesn't want to be with him.

9 You're also going to hear at some point Bianca sees a police car
10 two cars ahead of her, that she grabs onto the steering wheel, and she's trying
11 to make the steering wheel jerk to get that police officer's attention, and at
12 that point Defendant hit her.

13 That throughout this car ride, Defendant is telling her, Forget about
14 Las Vegas. You're never going back there. Forget about your ex-husband
15 David. You're never going to see him again. Forget about your son. You're
16 never going to see him again.

17 You're also going to hear that the Defendant takes her on the 15,
18 that some point near Logandale, he pulls off to the side of the road. Bianca is
19 going to tell you that she didn't know exactly where she was, but she
20 remembered there was an abandoned truck. And they pulled off in that little
21 alcove, he forces her into the backseat and has sexual intercourse with her.
22 And she's going to tell you that he had a knife and that she was scared and
23 that she did what he wanted to do because she was afraid for her life, and she
24 needed to be here alive for her son.

25 She's also going to tell you that at numerous points during this

1 car drive she contemplated opening the door and jumping out of the car, but he
2 was just driving too fast. That he drives her all the way up to Mesquite. Once
3 he gets to Mesquite, he stops in an apartment complex because there's some
4 guy there that owes him money, and that's Bianca's chance to get away. She
5 flags down a woman walking by in the apartment complex, the woman calls
6 9-1-1, and Mesquite Police arrive at the apartment complex.

7 You're going to hear from Officer Lance -- Lance Barr and
8 Sergeant Shane Charles from Mesquite. They said they made contact with
9 Bianca, that she was scared, she was shook up, she was balling her eyes out.
10 And you're going to hear how they made contact with the Defendant. He had
11 gotten into a white pickup truck occupied by two other men and that this
12 pickup truck was attempting leave the apartment complex, and that's where
13 they found the Defendant.

14 Once they detain the Defendant, they transport Bianca to the
15 hospital. You're going to hear from the nurse, Debbie Young, that she
16 examined Bianca, that Bianca had some abrasions or puncture marks on her
17 right thigh. And Bianca is going to tell you that those came from the Defendant
18 poking her in the thigh with the knife, that she had a mark on her wrist. Bianca
19 is going to tell you that came from the Defendant grabbing her. That she had
20 swelling on her face. Bianca is going to tell you that came from the Defendant
21 hitting her.

22 And you're also going to hear from the nurse that there was an
23 abrasion on Bianca's vagina around 6:00 o'clock, down near the bottom
24 consistent with sexual intercourse. You're also going to hear from Kristina
25 Paulette, a forensic analyst from the police department, that she analyzed

1 samples taken from the sex assault kit with what's called a bucal swab taken
2 from Defendant's cheek and that Defendant's DNA was inside Bianca's vagina.

3 And you're also going to hear from Detective Art Chavez from
4 the Las Vegas Metropolitan Police Department. He's going to tell you he
5 interviewed the Defendant. He's going to tell you, Defendant admitted to him
6 that he showed up at the house that morning to take her and that he had a
7 knife with him.

8 Now, you're also going to hear the Defendant was under the
9 impression that they were having a relationship, but in his statement you're
10 going to hear that he tells Detective Chavez that Bianca moved away, that he
11 didn't know why because she didn't tell him where she was going, that she
12 knew he was -- she was -- that he knew she was with another man, and he
13 just had to find out.

14 And he told the police that the day before he took her at knifepoint
15 by his own admission, he had to be sure whether she was with another man or
16 not, so he followed her, and he confirmed that that was true. And that's when
17 he decided to do what he did. So he took a knife, and he showed up where
18 she lived, and he pointed the knife at Jose', and he took Bianca right in front of
19 Jose'.

20 Now, you're going to hear from Jose', and you're going to hear
21 from Franklin, who's Bianca's son, and you're also going to hear from Bianca
22 that there wasn't a relationship, that the Defendant is Bianca's ex-husband's
23 brother and that they allowed him to live with them for 16 years and that he
24 was nothing more than a brother, than a family member. And you're going to
25 hear that Bianca did not want to go to Mesquite with him. Did not want to

1 have sex with him.

2 And at the conclusion of that, we're going to ask that you return
3 the only verdict in this case, which is guilty, burglary with a weapon; first
4 degree kidnapping with a weapon; sex assault with a weapon; and battery with
5 a weapon.

6 THE COURT: Mr. Paulson.

7 MR. PAULSON: Thank you, Judge.

8 ***DEFENSE OPENING STATMENT***

9 MR. PAULSON: We've all heard the saying, The truth shall set you
10 free. Many of the things the Prosecutor just said are not disputed. There's no
11 dispute that on the morning of August 16th Freddy Martinez and Bianca
12 Hernandez had sexual intercourse. You're going to hear testimony to that
13 effect, and we're certainly not disputing that fact.

14 But this trial is about getting to the truth. It's about credibility,
15 accountability and the fact that a man should be held accountable for what he
16 has done. Freddy Martinez should be held accountable for what he did, but
17 we're going to ask you that you don't hold him accountable for everything he's
18 been charged with, for things that he did not do in this case.

19 It's true that there was a relationship between Bianca Hernandez
20 and Jose' Castillo, and Freddy Martinez wanted answers about that particular
21 relationship. Freddy Martinez suspected that the woman that he had been
22 living with for nearly three years was with another man. The truth was, in
23 Freddy's mind as he relayed it to the police, there was another rooster. He
24 referred to Jose' Castillo as a rooster, and he tells this to the police.

25 Now, Freddy couldn't handle the truth that there was another

1 man in Bianca's life, at least the truth that was untold. The fact was, Freddy
2 was trying to talk to Bianca Hernandez to hear directly from her that there was
3 another man in her life and that Freddy was no longer part of her life. Freddy
4 Martinez had absolutely no intent to harm Bianca on this day, and he told the
5 police that in his statement.

6 A lot of this case is going to go back -- you'll hear testimony
7 about the relationship between Bianca Hernandez and Freddy Martinez and
8 Freddy's brother David and their son Franklin. You'll hear that Freddy Martinez
9 came to Bianca Hernandez's life about 16 years ago. He moved in with Bianca
10 and Freddy's brother David. David and Bianca were partners, and they had a
11 son together, Franklin. Freddy came to the United States and lived with his
12 brother.

13 At some point Bianca's relationship with David ended. It's about
14 three years ago. At that point Bianca and her son continued to live with Freddy
15 Martinez. For the next three years they lived together as a family in a mobile
16 home on Lake Mead Boulevard. Freddy worked, provided for Bianca and her
17 son, and Freddy, yes, loved Bianca, and there was an ongoing sexual
18 relationship between them.

19 At some point Jose' Quiroz-Castillo comes into the picture.
20 You'll hear that Jose' met Bianca about three or four year ago. Jose' was
21 Bianca's boyfriend for at least the last two years, maybe three years, which she
22 continued to live with Freddy during that time in the mobile home.

23 At some point Bianca moved out of the mobile home about four
24 months prior to the August 16th incident, so we're talking about April of 2006.
25 She moves out and explains that she's moving into an apartment with a family.

1 She moves into an apartment on Lamont Street, and this is with Jose'. True,
2 at some point Freddy found out about Jose', about this other rooster as he
3 explains it to the police. You're also going to hear that Jose' suspected or may
4 have thought that Bianca was seeing somebody else.

5 Now, a couple days prior to the incident on August 16th, about
6 Monday the 14th of August, you'll hear that Bianca went by the mobile home
7 and spoke to Freddy that morning. In fact, you'll hear that Bianca went by the
8 mobile home frequently. On this particular day, she goes by to talk to Freddy,
9 and Jose' sees her in the car talking to Freddy. Later that night, Jose' asks
10 Bianca to give him a ride. He wants to go by Freddy's, where Freddy is living
11 in the mobile home on Lake Mead, and so he asks Bianca to take him there.

12 As they're passing the mobile home, Freddy actually sees Jose'
13 and Bianca together passing by, and he decides he's going to follow them in his
14 car. Freddy wants to find out about this relationship. Bianca has left. She
15 hasn't explained to him why; yet, she keeps coming back to see him. Freddy
16 wants to confront this other man. He wants to find out what is going on.

17 He stops them, but it just so happens that when he's trying to
18 talk to them, as he approaches the car, there's a police officer or a traffic cop
19 there writing a ticket to somebody else, and because he sees Freddy coming
20 toward them in what you may call an aggressive manner, the police officer
21 stops him, so he never gets a chance to speak to Jose' and Bianca on that day.
22 The police officer tells Freddy to leave, he leaves, and everybody goes away
23 that particular day. Freddy never has the opportunity to talk to either Jose' or
24 Bianca that night.

25 So now that leads us to the morning of August 16th. That

1 particular morning Bianca comes back from taking Jose' to work, and Freddy is
2 waiting and decides that he is going to confront Bianca to get the truth. He
3 wants to know what is going on. He gets in the passenger seat -- she's in the
4 driver's seat already -- and tells her to drive. She drives. He wanted to talk to
5 her about this other man, about this other rooster.

6 He told police he wasn't intending to harm Bianca. He told them
7 that in his statement, but he only wanted to scare her. He had been trying to
8 get her to tell him what was going on for a long period of time now and could
9 never get her to say anything. He intended to scare her. Freddy told police
10 this was all -- this whole thing was about making Jose' mad so that he would
11 be able to confront Jose', and Jose' would be gone from their lives.

12 Now, you heard about after Freddy gets in the car, they drive.
13 You'll hear that during the drive there are some -- there are some struggles.
14 Bianca is trying to get the attention of other people around, and there's a police
15 car a couple cars in front of them, and she's attempting to attract attention so
16 she can get some help. There's some struggles.

17 During those struggles, you'll that hear Freddy grabs her by the
18 arm and tries to pull her. Freddy does hit her in the face and causes an injury
19 to her cheek. And as he's holding this -- this knife and she's attempting to
20 shift gears and he's attempting to shift and she's struggling with the steering
21 wheel, that the knife does make contact with her leg.

22 At some point the drive takes them to I-15, and they head
23 northbound toward Mesquite. They drive for about 25 minutes. It's a long
24 drive. Around Logandale, in that area, they pull off the freeway, get off on an
25 exit, and they park on the side of the road, and they engage in sexual

1 intercourse. Freddy explains to the police that it's happened like it always
2 happened, like they had had sex before.

3 This lasts for a short period of time, five, ten minutes or so.
4 They get back on I-15, and they drive about five minutes and stop at a gas
5 station. You'll hear testimony that they stopped the car, Freddy went and got
6 gas in the gas can and then put gas in the car, and they continued on to
7 Mesquite.

8 In Mesquite they finally stop in an apartment complex, and
9 Freddy -- and you'll hear testimony from Bianca the fact that Freddy stopped at
10 this particular apartment complex because it's where he used to work. There's
11 a construction site there. Freddy used to work there. He was looking for some
12 friends of his.

13 Eventually the police are called by somebody that Bianca is able
14 to get the attention of, and Freddy is arrested when he's coming back to the
15 car. He's -- he didn't run away. He was coming back to the car, the police
16 arrest him, and that leads us here.

17 Now, ladies and gentlemen, when we talked earlier about
18 reasonable doubt, it's the highest legal standard, that the State has to prove
19 every element and every charge beyond a reasonable doubt. After hearing and
20 considering all of the evidence in this case, we're confident that you will find
21 that they have not met that burden.

22 As I said earlier, this is about getting to the truth. You're going to
23 hear testimony of many witnesses and have the opportunity to see what they
24 say and test what they say against the other evidence. It's also about
25 credibility, believability, and, yes, it is about holding Freddy Martinez

1 accountable for what he did. At the end of this trial, we will ask you to hold
2 him accountable only for what he did, but not for things that he did not do.
3 Thank you.

4 THE COURT: Thanks. Okay. Well, we are 15 minutes ahead of
5 schedule. According to the way I've scheduled the trial, I expected us to be
6 here at noon. It's a quarter to noon, so we're doing just great. But also what
7 that means is, they've got their witnesses coming an hour from now because
8 we expected to go till lunch.

9 So we're going to just break for lunch now, and then we'll pick up
10 an hour from now. We'll pick up at a quarter to 1:00, and that will give us an
11 extra 15 minutes this afternoon, and the State will be ready with their
12 witnesses.

13 So don't talk about the case with each other or anybody else.
14 Don't read, watch or listen to any report on the case by TV, Internet,
15 newspaper or radio, and don't form an opinion on the case until it's submitted
16 to you. Leave your stuff on your chairs. Wear your badge while you're in the
17 building. We'll be in recess until 12:45.

18 If you need to know where to eat or where to go potty or
19 anything you need, just ask Lisa. She'll take care of it. She is the deputy
20 sheriff and concierges. Okay. We'll see you all at quarter to. You either take
21 it with you or leave it there, sir. The Bailiff will guard the room, so whatever
22 your pleasure.

23 [Jury exits the courtroom for lunch at 11:43 a.m.]

24 THE COURT: Okay. The record will reflect that the jury has exited.
25 Counsel and Defendant are still here. Mr. Martinez, you understand that under

1 the Constitution of the United States and the Constitution of the State of
2 Nevada, you cannot be compelled or forced to get on the stand and tell your
3 side of the story? Do you understand that?

4 THE DEFENDANT: [Through the Interpreter] Yes.

5 THE COURT: If you wish, you can get on the stand and testify, but if
6 you do testify, then the State is going to be able to ask you questions, and
7 anything you say, whether on direct examination or cross-examination, it could
8 be commented on to the jury. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: If you decide not to testify, I will -- upon request of Ms.
11 Hamers, I will give an instruction that says, one, you can't be compelled to
12 testify; two, the jury can't draw any inference from the fact that you didn't
13 testify and, in fact, really can't even talk about it when they're in the jury
14 room. Do you understand that? And Ms. Hamers has submitted one, so I
15 assume that's your request that I give it; right?

16 MS. HAMERS: If that's the decision we make at that time, yes.

17 THE COURT: All right. I'll put it in the packet.

18 MS. HAMERS: Thank you, Judge.

19 THE COURT: Do you also understand that if you have a felony
20 conviction -- and I don't know that you do -- but if you do and less than ten
21 years has elapsed since you've been released from parole or probation or
22 prison, that if you testify, you could be asked if you've been convicted, when,
23 where and what was the conviction, but no details? Do you understand that?

24 THE DEFENDANT: I've never been convicted anywhere.

25 THE COURT: Okay. Then it won't come into play. It's just a right

1 that I have to tell you. So if you haven't been convicted of a felony, then if
2 you testify or if you don't testify, either way, any of your background stuff
3 won't be gone into. They couldn't ask you about arrests or misdemeanor
4 convictions. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. With those rights in mind, I want you to talk to
7 Ms. Hamers and Mr. Paulson between now and the time that it becomes
8 material and make a collective, intelligent decision as to whether you wish to
9 testify. If they don't call you to the stand when their turn comes, I will assume
10 that the three of you have agreed that it's in your best interest not to testify.
11 Fair enough?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. Have a good lunch. We'll see you at quarter to
14 1:00.

15 [Jury exits courtroom.]

16 [A lunch break was taken at 11:43 p.m.]

17 [Out of the presence of the jury.]

18 THE COURT: Back on the record in Case C226586, State of Nevada
19 versus Freddy Martinez. Let the record reflect the presence of Mr. Martinez,
20 counsel for the State, counsel for the Defense. Absence of the jury. It's my
21 understanding that by stipulation we're going to open a sealed box of evidence
22 because the person who's actually going to introduce it is not going to testify
23 in order before somebody who's going to testify where you need to lay
24 foundation for the evidence. Is that right, Mr. Bateman?

25 MR. BATEMAN: That's correct, Judge.

1 THE COURT: Any objection, Ms. Hamers?
2 MS. HAMERS: No, no objection. I just know we're on the record, but
3 we don't have an interpreter.
4 THE COURT: Okay. But --
5 MS. HAMERS: Which is fine.
6 THE COURT: -- the point is, the box is sealed; you've seen it. There's
7 no issue of chain of custody, and the Interpreter can tell Mr. Martinez what we
8 did.
9 THE CLERK: And we actually did not break the seal where there's a
10 hinge there.
11 THE COURT: Where's the Interpreter?
12 [Court at ease.]
13 [Interpreter enters the courtroom.]
14 THE COURT: Okay. Let's dance. Bring them in.
15 [Jury enters the courtroom at 12:46 p.m.]
16 THE COURT: Okay. Back on the record in Case C226586, State of
17 Nevada versus Freddy Martinez. Let the record reflect the presence of Mr.
18 Martinez with his counsel; counsel for the State. All ladies and gentlemen of
19 the jury are back in the box. Ms. Nyicos, call your first witness.
20 MR. BATEMAN: The State calls Franklin Martinez.
21 THE COURT: Franklin Martinez. Does Franklin need an interpreter?
22 MS. NYICOS: No.
23 MR. BATEMAN: He does not.
24 THE COURT: Okay. We're going to get to a witness or two that needs
25 an interpreter, and the way it works is this: These interpreters, as I said, are all

1 educated, certified whenever they work for the court. The lawyer will ask the
2 interpreter a question in English. The interpreter will interpret it to their witness
3 in Spanish. The witness will answer back in Spanish.

4 The interpreter's answer under the law is deemed to be the
5 answer of the witness. So if by chance we have somebody that speaks
6 Spanish, don't try to listen to the Spanish part. Just listen to the English part
7 because that is the answer.

8 Sir, will you stand and raise your right hand, please.

9 THE CLERK: Please stand and raise your right hand.

10 **FRANKLIN MARTINEZ,**

11 having been first duly sworn testified as follows:

12 THE CLERK: Thank you. You may be seated.

13 THE COURT: State your name, sir, and spell your name for the court
14 reporter.

15 THE WITNESS: Franklin Martinez, F-r-a-n-k-l-i-n, M-r -- M-a-r-t-i-n-e-z.

16 THE COURT: Go ahead, Mr. Bateman.

17 **DIRECT EXAMINATION**

18 **BY MR. BATEMAN:**

19 Q Sir, I'm just going to ask you to speak up because --

20 A That's right.

21 Q -- this lady right here is writing everything down. Do you know
22 someone by the name of Bianca Hernandez?

23 A Yeah.

24 Q Who is that?

25 A That's my mother.

1 Q Okay. Do you know someone by the name of -- well, who is
2 your father?
3 A David Martinez.
4 Q Okay. Do you know someone by the name of Freddy Martinez?
5 A Yes.
6 Q Who is Freddy Martinez?
7 A Uncle, my uncle.
8 Q So is he related to your --
9 A My dad.
10 Q Okay. Do you see Freddy in the courtroom here today?
11 A Yes.
12 Q Can you please point to him and describe an article of clothing
13 that he's wearing.
14 A He's right there [indicating]. He's wearing a white long-sleeved
15 shirt, button shirt.
16 Q Is he wearing a tie?
17 A Yeah.
18 THE COURT: Let the record reflect the identification of the Defendant,
19 Freddy Martinez.
20 BY MR. BATEMAN:
21 Q How old are you, sir?
22 A 16.
23 Q Where are you currently residing?
24 A Right now we're living at 4921 Sammy Mill [phonetic],
25 Apartment Number 2.

1 Q Who are you living with?
2 A With my mom and Jose'.
3 Q Do you know Jose's last name?
4 A Jose' Martinez.
5 Q Martinez?
6 A Yeah.
7 Q Okay. Who's Jose'? Is that your mom's boyfriend?
8 A Yes.
9 Q How long have you been living with your mom and your mom's
10 boyfriend Jose'?
11 A About three -- three years. Three to two years.
12 Q How long have you lived in Las Vegas?
13 A About 14, 15 years.
14 Q Was there a period of time in which you lived with your mom
15 Bianca and your father -- is it David?
16 A Yes.
17 Q Okay. Did there come a point in time in which you stopped
18 living with both your mother and your father David?
19 A Yeah.
20 Q How long ago was that?
21 A About four years.
22 Q Did your mom and David split up?
23 A Yes.
24 Q Okay. During the period of time that you were living with your
25 mom and David, was anyone else living with you?

1 A Yes.

2 Q Who's that?

3 A Freddy.

4 Q Okay. Where were you living for most of the time when you
5 were living with your mom and David and Freddy?

6 A We were living in an apartment. An apartment.

7 Q And was that -- and do you know where that was about in town?

8 A No, I don't remember.

9 Q Okay. During the time that you were living with David and your
10 mom, your mom and David, your dad, were having just a basic relationship like
11 mom and father; is that correct?

12 A Yes.

13 Q And Freddy was just living with you?

14 A Yeah.

15 Q Was anybody else living with you at the time?

16 A No.

17 Q Okay. Had Freddy always lived with you?

18 A Yes.

19 Q And did Freddy know that, I mean, you were the son of Bianca
20 and your dad David?

21 A Yeah.

22 Q So he knew he was your uncle?

23 A Yes.

24 Q Okay. And during this period of time were things generally fine
25 between you and Freddy and your mom and your dad?

1 A Yeah.

2 Q After your mom and your dad broke up, where did -- did you stay

3 where you were living or did you go someplace else?

4 A We stayed where we were living.

5 Q Okay. Did the relationship between you and your mom and

6 Freddy continue kind of the same way?

7 A Yes.

8 Q Did there come a point in time in which you guys moved into like

9 a -- was it a mobile home?

10 A Yeah, we moved to a mobile home.

11 Q Where was that mobile home?

12 A It was on -- right here at -- like Lake Mead. I don't remember the

13 street name.

14 Q Was that here in Clark County?

15 A Yes.

16 Q All right. And who's mobile home was that?

17 A It was my mom's.

18 Q About how -- I'm sorry. And I don't know if I just asked you

19 this, about how long ago did you move into that mobile home?

20 A About two years. Two to three years.

21 Q Okay. How long after your mom and your dad broke up did you

22 live in -- or did it take to move into the mobile home?

23 A About a year.

24 Q Okay. When you moved into the mobile home, did Freddy move

25 with you?

1 A Yes.

2 Q During this period of time was Freddy working; do you

3 remember?

4 A Yeah, he was.

5 Q Was your mom also working?

6 A Yes.

7 Q What was she doing; do you know?

8 A She was a PCA.

9 Q What does that mean?

10 A She was home care for -- for old people.

11 Q Like a nurse?

12 A Yeah, she was like a nurse.

13 Q Okay. During the time that you were living in this mobile home

14 -- well, do you remember when it was that your mom began to see Jose', her

15 new boyfriend?

16 A Well, she saw him before, before we moved there.

17 Q But after your dad had moved out?

18 A Yeah. Like after my dad moved out, she began -- she began

19 going out.

20 Q So you knew that your mom was dating David -- or I'm sorry.

21 Jose'?

22 A Yeah.

23 Q Okay. And during the first period of time -- well, were there

24 ever periods of time in which your mom was living with Jose'?

25 A Yeah, sometimes.

1 Q You say "sometimes." She'd sometimes live with him --
2 A Yes, sometimes --
3 Q -- and then she'd come back?
4 A Yeah. She'll come back to the house, yeah.
5 Q Okay. Did there come a point in time that you and Freddy
6 maybe started didn't getting along very well?

7 MS. HAMERS: Judge, I'm going to object. Can we approach?

8 THE COURT: Yeah.

9 [Bench conference; not transcribed.]

10 THE COURT: Go ahead. Let's save some time. Did there come a time
11 when you and your mother and Freddy weren't all getting along so good, so
12 you and your mother moved out? Is that what happened?

13 THE WITNESS: Yeah, we moved out.

14 THE COURT: All right. Go ahead, Mr. Bateman.

15 MR. BATEMAN: Thank you.

16 BY MR. BATEMAN:

17 Q Where did you move to?

18 A We moved to Lamont where we lived before we moved to this
19 new apartment.

20 Q Lamont Street?

21 A Yeah, yeah, Lamont Street.

22 Q Was that fairly close to where the mobile home was?

23 A Yeah.

24 Q All right. About how long did it take you to get from the mobile
25 home to Lamont, the apartment on Lamont?

1 A It was like three -- three blocks away. Three to two.
2 Q And who did you move to that -- this Lamont apartment with?
3 A With Jose'.
4 Q And so I assume then that Freddy obviously didn't move with
5 you at that time?
6 A No, no.
7 Q Okay. How long -- directing your attention to August 16th. Do
8 you remember something happening that morning?
9 A August 16th?
10 Q Of last year.
11 A No.
12 Q Do you remember a time when your mom and Freddy ultimately
13 left in her car?
14 A Yeah, yeah, but I was asleep.
15 Q Okay. Do you remember whether that was August 16th?
16 A To tell you the truth --
17 Q You don't remember the exact date?
18 A I don't remember the exact date.
19 Q Okay. Do you remember calling 9-1-1 one morning?
20 A Yeah, yeah, I did.
21 Q Why did you call 9-1-1?
22 A Jose' told me that Freddy took off with my mom in the car, and
23 we went outside, but there was nobody there. So I got on the phone and
24 called the police.
25 Q Prior to that time when you called 9-1-1, how long had it been

1 that you and your mom had been living with Jose'; do you remember?

2 A About a -- about a year.

3 Q Was that off and on or the full time?

4 A No, it was -- it was off and on.

5 Q This white car -- your mom had a white car?

6 A Yeah, it was a Ford Focus.

7 Q And then basically when you came out and Jose' provided you
8 some information, that's when you called 9-1-1?

9 A Yeah.

10 Q Can you just -- generally during the period of time that you were
11 living with your mom and Freddy, how would you describe -- was your
12 relationship with Freddy like an uncle?

13 A Yeah.

14 Q Okay. And how was the relationship with your mom and
15 Freddy? Was it like brother and sister?

16 A Brother and sister.

17 MR. BATEMAN: Okay. Pass the witness, Judge.

18 THE COURT: Questions?

19 MS. HAMERS: Please, Judge.

20 **CROSS-EXAMINATION**

21 **BY MS. HAMERS:**

22 Q Good afternoon.

23 A Good afternoon.

24 Q I'm just trying to get this time frame down. I believe when you
25 first started testifying you said you'd been living with Jose' for three years as

1 of now?

2 A As of now, yeah. Like three to two years.

3 Q Two to three years?

4 A Yeah.

5 Q Okay. How long did you live in the mobile home with just
6 Freddy and your mom?

7 A About two years.

8 Q About two years?

9 A Yes.

10 Q So two years there, and then the last three years -- two to three
11 years with Jose'?

12 A Yeah.

13 Q All right. When you and your mom first move in -- moved in with
14 Jose', was there a family living there or just Jose'?

15 A Just him.

16 Q Just Jose'?

17 A Yeah.

18 Q And in August of 2006, was it the same situation? There wasn't
19 a family there; it was just you and Jose' and your mom?

20 A Yeah. Well, sometimes his mom came over that time. His mom
21 was over here, but she leaves. She doesn't come for a fully time.

22 Q Okay. Does she live in town and sometimes stay there; is that
23 what you're saying?

24 A No -- yeah, she comes here and stays with Jose', but then she
25 leaves.

1 Q Where does she live?

2 A She lives -- she lives in Mexico.

3 Q Okay. Do you know, was she staying there at the time in

4 August of 2006?

5 A Yeah -- no, no, she wasn't there in August, but she was there at

6 the same year, 2006. It was in December.

7 Q The day that you called the police, do you remember that?

8 A Yeah.

9 Q You didn't actually see anything yourself; right?

10 A No, I was asleep.

11 Q You called the police based on what Jose' had told you?

12 A Yes.

13 Q All right. Now, David is your father?

14 A Yeah.

15 Q Do you see him?

16 A No.

17 Q You don't see him?

18 A No. The last time I saw him was about two weeks ago.

19 Q Two weeks ago?

20 A Yeah.

21 Q Okay. Do you see him about every two weeks?

22 A Like, yeah, every Friday.

23 Q Every Friday?

24 A Yeah.

25 Q Do you know where he's living now?

1 A I don't know. He --
2 Q How long has it been since you don't know where he's living?
3 A Like a month.
4 Q A month?
5 A Yeah. He told me he was going to move out, but he never told
6 me with who.
7 Q Where was he living a month ago?
8 A He was living at the same mobile homes where we used to live.
9 Q Okay.
10 A Yeah.
11 Q Now, you said that Bianca, your mother, would live with Jose'
12 for a while and then would leave; is that correct?
13 A Yeah, like spend the night. Like a day and then come back the
14 next day.
15 Q Okay. So these weren't moves that you made with her? You
16 were living at the mobile home, and she'd sometimes stay somewhere else for
17 a night and come back?
18 A Yeah. I also go with her, too.
19 Q And sometimes you'd go with her?
20 A Yeah.
21 MS. HAMERS: I don't have any other questions. Thank you.
22 THE COURT: Okay. Thanks, Franklin. Appreciate your testimony.
23 You're excused. Call your next witness.
24 MR. BATEMAN: Call Jose' Quiroz, Your Honor.
25 THE COURT: Okay. Come on up here, sir.

1 THE CLERK: Please remain standing and raise your right hand.

2 ***JOSE' QUIROZ-CASTILLO,***

3 having been first duly sworn, through an interpreter testified as follows:

4 THE CLERK: Thank you. You may be seated.

5 THE COURT: Sir, am I to understand that you speak a little bit of
6 English, but you're much more comfortable speaking in Spanish?

7 THE WITNESS: Yes.

8 THE COURT: So you understood me, but to get everything right, you
9 would like to use this interpreter; is that right?

10 THE WITNESS: Okay. That's fine.

11 THE COURT: Okay. That's the way we'll do it. Sir, give us your
12 name, and spell your name, please.

13 THE WITNESS: [Through the Interpreter] Jose' Quiroz-Castillo, J-o-s-e,
14 Q-u-i-r-o-z, C-a-e-y-o [sic], Castillo.

15 THE COURT: Okay.

16 ***DIRECT EXAMINATION***

17 ***BY MR. BATEMAN:***

18 Q Sir, do you know someone by the name of Bianca Hernandez?

19 A [Through the Interpreter] Yes.

20 Q Who is Bianca Hernandez?

21 A That's my -- that's my --

22 THE COURT: Go slower. She's going to ask you in Spanish. You
23 don't listen to Mr. Bateman. You listen to her.

24 THE WITNESS: Okay.

25 THE COURT: Okay. Otherwise, we'll just -- it'll just be confusing

1 mess. Ask the question again.

2 BY MR. BATEMAN:

3 Q Do you know someone by the name of Bianca Hernandez?

4 A [Through the Interpreter]. Yes, she's my girlfriend.

5 Q How long has she been your girlfriend?

6 A For four years.

7 Q When did you -- how did you first meet Bianca Hernandez?

8 A I met her at a party at a friend -- a friend of mine had a party,
9 and I met her there.

10 Q Do you know someone by the name of Franklin Martinez?

11 A Yes, he's my stepson.

12 Q And when you say "stepson," are you currently married to Bianca
13 Hernandez or are you --

14 A Not yet, but we have plans.

15 THE COURT: Okay. Stay with me. Just listen to her. Don't listen to
16 him. You look at her and listen to her. Go ahead, Mr. Bateman.

17 BY MR. BATEMAN:

18 Q I'll ask the question again. Are you currently married to Bianca
19 Hernandez or are you just like in a boyfriend/girlfriend relationship?

20 A [Through the Interpreter] Just boyfriend/girlfriend.

21 Q Where are you currently living, sir?

22 A I don't know the address exactly. We just moved.

23 Q Okay. Where did you move from?

24 A From 1661 Lamont, Apartment 2.

25 Q Is that here in Las Vegas, Clark County?

1 A Yes.

2 Q How long were you living in that particular apartment?

3 A About one year, one year and a half.

4 Q Where were you living before that?

5 A Before there I lived on Lake Mead, but I don't remember exactly,

6 the exact address. I live there for about two years.

7 Q Did you immediately start up a relationship with Bianca

8 Hernandez right after you met her?

9 A Not immediately.

10 Q Okay. Did you immediately start to date?

11 A It was after one month. One month after I met her we began to

12 go out.

13 Q At the time do you know where Bianca Hernandez was living?

14 A Yes.

15 Q Where was that?

16 A She used to live in -- I don't remember exactly where it was.

17 Charleston. I don't remember. It was near Nellis, but I don't remember exactly

18 the address.

19 Q And during this period of time, would she come and sometimes

20 stay at your apartments or your residence?

21 A No. We had -- we had a dating relationship. We went out, and

22 we ate somewhere, but no.

23 Q Okay. Do you know who during the first part of your

24 relationship Bianca Hernandez was living with?

25 A She lived alone with her son.

1 Q Did you know whether she lived with someone by the name of
2 Freddy Martinez?

3 A No, because he was in jail when I met her.

4 THE COURT: Just strike that. Don't worry about whether he was in
5 jail or not. It has nothing to do with this case. Go ahead.

6 MR. BATEMAN: All right.

7 BY MR. BATEMAN:

8 Q Did there come a point in time during the relationship where
9 Bianca Hernandez moved into like a mobile home?

10 A [Through the Interpreter] Yes, she moved to a trailer.

11 Q Do you know if it was her trailer?

12 A No, I -- I'm not really sure. I think that she was renting one or
13 one apartment. I'm really not sure.

14 Q When she moved into the trailer, were you living at Lamont?

15 A She lived -- she lived on Lamont, but that was a long time ago
16 when I just met her.

17 Q But when you -- when she was living in the mobile home or the
18 trailer, where were you living?

19 A I lived on Lamont, and she bought a trailer.

20 Q Okay. So it was about the same time?

21 A Yes.

22 Q And during this part of the relationship would Bianca sometimes
23 come over and stay at the apartment on Lamont?

24 A Yes, she came because she had problems with one person, with
25 Freddy.

1 Q Okay. Did you know whether Freddy Martinez -- this Freddy
2 person was living in the trailer with Bianca?

3 A She rent a storage, and he was living in the storage. And he just
4 went in to take a shower and to eat there.

5 Q Okay. At the mobile home?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q Was she also living with her son Franklin Martinez in the mobile
10 home or the trailer?

11 A Yes.

12 Q And would Franklin sometimes come and stay at your apartment
13 on Lamont?

14 A Yes.

15 Q And throughout the entire -- kind of once you started dating, you
16 guys were -- was there ever a time when you weren't boyfriend and girlfriend
17 or were you consistently boyfriend and girlfriend from the time basically a
18 month after you met to August of last year?

19 A From one month after.

20 Q Okay. Are you still currently with Bianca?

21 A Yes.

22 Q Are you living with Bianca?

23 A Yes.

24 Q Is Franklin living with you and Bianca?

25 A Yes.

1 Q Have you ever met someone by the name of Freddy Martinez?

2 A Yes.

3 Q When did you first meet Freddy Martinez?

4 A More than two years ago.

5 Q Do you see Freddy Martinez in the courtroom today?

6 A No, no, I don't see him -- oh, yeah, he's the one with the white
7 shirt behind the computer.

8 MR. BATEMAN: It looks like there's an obstruction, Judge.

9 THE COURT: Yeah.

10 MR. BATEMAN: I don't know if we can either --

11 THE COURT: Let the record reflect that he's identified the Defendant
12 Freddy Martinez, and from his angle, the computer may sort of block that off,
13 so that's a fair initial inability. Go ahead.

14 BY MR. BATEMAN:

15 Q Let me direct your attention to August of last year. In August of
16 last year was Bianca and Franklin living at your apartment on Lamont?

17 A [Through the Interpreter] Yes.

18 Q Okay. And do you know about how -- if we go from the time
19 frame of August, about how long they had been living in your apartment with
20 you on Lamont?

21 A Well, but one year, but she was having problems with Freddy,
22 and that was when she came to my house.

23 Q Okay. So in August of 2006 was she living with you in your
24 apartment full time?

25 A Yes.

1 Q Now, I'm going to direct your attention for just a moment to
2 August 16th of 2006 in the morning. Was there occasion that morning that
3 Franklin Martinez called 9-1-1?

4 A Yes.

5 Q And is that based upon what you had seen happen that morning
6 between Bianca and Freddy Martinez?

7 A Yes.

8 Q Now, a day or two before that, had you had an opportunity to
9 see or come into contact with Freddy Martinez?

10 A Well, when we were -- when we were going to the store in the
11 afternoon, he just cut in front of us with a car.

12 MS. HAMERS: Judge, at this point I'm going to object.

13 THE COURT: What's the objection?

14 MS. HAMERS: Can we approach?

15 THE COURT: Sure.

16 [Bench conference; not transcribed.]

17 BY MR. BATEMAN:

18 Q After you came into contact with Freddy on this particular date,
19 did you and Bianca go back to your apartment on -- on Lamont?

20 THE COURT: Yes.

21 THE WITNESS: Yes.

22 BY MR. BATEMAN:

23 Q And is it the next time after that that you came into contact with
24 Freddy the morning of August 18th when -- I'm sorry. 16th when Franklin had
25 to call the police?

1 A [Through the Interpreter] Yes.

2 Q Now, on August 16th, what were you doing for a living?

3 A I was working in landscaping. I am the foreman.

4 Q Now, had you got -- what time -- in August of 2006 what were

5 your working hours; do you remember?

6 A 6:00 a.m. to 3:30 p.m.

7 Q Do you remember what Bianca's -- was she working that same

8 period of time?

9 A I went into work at 6:00, and she did at 6:30.

10 Q Okay. Did you have a car back in August of 2006?

11 A No, no, I don't drive.

12 Q Did Bianca have a car?

13 A Yes.

14 Q What kind of car was it?

15 A A 2001 Focus.

16 Q What color -- can you tell me what color it was?

17 A White.

18 Q Were you using that vehicle, you and Bianca, to get around?

19 A Yes.

20 Q Now, at about 5:30 on August 16th in the morning, were you and

21 Bianca both awake?

22 A That was the day that that happened?

23 Q Yes.

24 A Yes.

25 Q And how were you going to get to work that morning?

1 A Bianca always gave me a ride.

2 Q Now, that morning you said you'd come into contact with Freddy

3 Martinez; is that correct?

4 A Yes, yes, when that happened.

5 Q Okay. Well, tell me how is it you came into contact with Freddy

6 Martinez.

7 A We didn't exchange words. He just jumped the fence where he

8 was hidden, and he was pointing something. I was frightened because I

9 thought it was a gun, and I couldn't do anything at the moment. I tried to get

10 in contact -- I tried to call Bianca's son, so I could get him to go and talk to --

11 to him.

12 MR. BATEMAN: Does the Interpreter need some water?

13 THE INTERPRETER: I have some water.

14 THE COURT: She comes prepared. Ms. Interpreter?

15 THE INTERPRETER: Thank you.

16 BY MR. BATEMAN:

17 Q When you first saw Freddy, was he outside?

18 A [Through the Interpreter] He was hiding in a tree.

19 Q And was he actually in the tree or around a tree?

20 A He was on top of the tree.

21 Q And I think you said he jumped a fence?

22 A Yes. The tree was inside of the fence. He jumped.

23 Q Where was Bianca at this time?

24 A She was heating the car to move it.

25 Q So was she actually in the vehicle?

1 A Yes.

2 Q Okay. And where were you standing or where were you in
3 relation to Bianca when you first saw Freddy Martinez?

4 A I was going out because I was going to go to work with her.
5 That was when I saw that he jumped the fence. He was on top of the tree. I
6 saw that. And he pointed at me with something, and I didn't know what it
7 was. A gun or something.

8 Q And how did you feel when he pointed that something at you?

9 A I felt very bad. If it was a gun, I thought he was going to shoot
10 at me. That's why I couldn't do anything for Bianca --

11 Q After you --

12 A -- for that reason.

13 Q I'm sorry. After Freddy pointed the object at you, what did
14 Freddy do?

15 A He went inside very quickly, went inside of the car. She -- she
16 was not paying attention at the time, so she went -- he went inside of the car
17 very quickly, and he -- and he pointed something at her.

18 Q Where in relation to her body was this object?

19 THE INTERPRETER: Where in relation to her body?

20 MR. BATEMAN: Correct.

21 THE WITNESS: [Through the Interpreter] I just know -- I just could see
22 that he put his hand like this [indicating]. I don't know. He was --

23 BY MR. BATEMAN:

24 Q Placed it on the --

25 A Pointed on the neck.

1 MR. BATEMAN: He pointed to the right side of the neck.
2 THE COURT: Yes.
3 BY MR. BATEMAN:
4 Q So did Freddy get in the passenger side or the driver's side of the
5 vehicle?
6 A [Through the Interpreter] The passenger side.
7 Q And after Freddy pointed the object at Bianca's neck, what did --
8 what happened at that point?
9 A He made her move the car very quickly, and they left.
10 Q And do you know which direction they went?
11 A Going towards Owens and then Nellis.
12 Q At that point did you have a conversation with Franklin Martinez
13 about what had happened?
14 A Uh-huh.
15 Q Is that a yes or a no?
16 A Yes.
17 Q And at that point did Franklin Martinez call the police?
18 A Yes.
19 Q Okay. Now, sometime that same day, did you end up coming
20 back into contact with Bianca?
21 A That same day?
22 Q Uh-huh, yes.
23 A Yes. She called me, and she said that --
24 MR. PAULSON: Objection, Your Honor.
25 THE COURT: Don't tell us what she said. The question was, did you

1 come back into contact with Bianca, and your answer is, Yes, she called me.
2 Go ahead, Mr. Bateman.

3 BY MR. BATEMAN:

4 Q Where is it that you and Bianca met up?

5 A [Through the Interpreter] I went to pick her up at the hospital in
6 Mesquite where she was at.

7 MR. BATEMAN: Pass the witness, Judge.

8 THE COURT: Questions?

9 MS. HAMERS: Thanks, Judge.

10 **CROSS-EXAMINATION**

11 **BY MS. HAMERS:**

12 Q Good afternoon, Mr. Castillo.

13 A Good afternoon.

14 Q Are you doing okay sitting there?

15 A Yes.

16 Q All right. I'm trying to get some things straight as far as timing.
17 I believe you testified today Bianca had lived with you for one year in August of
18 2006, give or take; is that right?

19 A Yes.

20 Q And you two were together as boyfriend and girlfriend for how
21 long at that time?

22 A We had been together four years.

23 Q You had been boyfriend and girlfriend for four years in 2006?

24 A We had met each other about four years ago.

25 Q Were you boyfriend and girlfriend for four years?

1 A Yes.

2 Q Okay. On August 16th -- and just to be clear, I know the
3 Prosecutor told you that it was August 16th that this happened. Do you recall
4 that that's the correct date?

5 A I am not sure.

6 Q Do you remember if you gave a statement to the police that
7 same day?

8 A Yes. When Franklin -- Franklin called, they came to the house to
9 ask questions from me -- to me and Franklin.

10 Q Did they have you do a written statement?

11 A Yes.

12 Q And at some point did you actually do a recorded interview?

13 A I don't remember. Oh, in the hospital maybe. In the hospital.

14 Q Do you remember in that hospital talking to two police officers, a
15 Detective Chavez and a Detective Goddard?

16 A Yes.

17 Q And they sat you down, and they talked to you, and they told
18 you, We're going to record this statement? We're going to make an audio
19 recording of it?

20 A Yes.

21 Q And they were trying to find out some information, information
22 about what had happened to Bianca that day?

23 A Yes.

24 Q They asked you a number of questions about your relationship
25 with Bianca, about Freddy's relationship with Bianca?

1 A Yes.

2 Q And when they went through this interview with you, were you
3 honest with them?

4 A Not clearly because his brother -- oh, what's his name, his
5 brother? David, David Martinez, he was putting a lot of ideas in my head like
6 he had a lot of plans with her. A lot of things. So he put a lot of ideas in my
7 mind, and that's why I said a few things that I should've had said about her
8 because she's a good person.

9 Q So you think in that interview that you were -- there were things
10 you said about Bianca that you shouldn't have said?

11 A Uh-huh, yes, things about her, things that he put in my head that
12 were not true.

13 Q Okay. So when you talked to the police, you told them some
14 things that were not true?

15 A Not exactly I said things to them that were not true. There was
16 a -- there was a conversation with one of the officers -- I don't know if he was
17 Chavez or the other one -- because David Martinez and I were speaking to the
18 officer. David had said a lot of things bad about him, that he was going to get
19 out and kill him.

20 THE COURT: Time out.

21 THE INTERPRETER: Okay.

22 THE COURT: Let me stop you there. Ask another question.

23 MS. HAMERS: Thank you, Judge.

24 BY MS. HAMERS:

25 Q The things that you said to the officer that you're saying -- you're

1 maybe regretting saying now, it sounds like you're saying, were those things
2 about Bianca's relationship with Freddy?

3 A [Through the Interpreter] Yes. I don't remember exactly what
4 was it I told him that day because he -- he put a lot of things in my head. He
5 said that he knew how I was feeling --

6 MS. HAMERS: I understand. You may need to stop him.

7 THE COURT: It's going to be all or nothing on the relationship with
8 Freddy, so you decide.

9 BY MS. HAMERS:

10 Q You told the officers that you thought that Bianca and Freddy
11 had some sort of relationship going on?

12 A [Through the Interpreter] Yes.

13 Q You guessed he wasn't being honest with you about that
14 relationship?

15 A Yes, yes.

16 Q You thought something weird was going on there and that she
17 was not being honest with you not telling you about it?

18 A Uh-huh.

19 Q You told police that you had gone by Freddy's house and seen
20 Bianca there with Freddy talking to him in her car?

21 A I saw them -- I saw them talking that day in the morning, and I
22 went to talk to Bianca when she was talking with him, and I told her that I was
23 waiting for her in the -- in the house because I wanted to know what was
24 happening, the reason why he was there. They were not inside the house.
25 They were on the street.

1 Q Okay. Let me stop you there. And when you were dating
2 Bianca and she was living in the mobile home, Freddy wasn't living there? He
3 was actually living in storage?
4 A He was living in the storage, and he was having problems with
5 Franklin because of --
6 Q Let me stop you there. Let me stop you there.
7 THE COURT: Okay.
8 BY MS. HAMERS:
9 Q He was living in storage; is that right?
10 A [Through the Interpreter] Yes.
11 Q And that was based on what Bianca was telling you?
12 A Yes. I know that is true what she told me.
13 Q Okay. But my point was, you didn't live there? The information
14 you had was coming from Bianca?
15 A Uh-huh, yes.
16 Q Okay. On this day where you see Freddy in the car with Bianca,
17 today you testified you saw him come from the top of a tree over a fence;
18 right?
19 A Yes.
20 Q And then over to the car?
21 A Yes.
22 Q He gets in the car?
23 A Yes.
24 Q How long is he in the car before the car drives off?
25 A Seconds.

1 Q Seconds. So you saw the car drive off?
2 A Yes.
3 Q Do you remember telling the police that you went inside, came
4 out, and that's when the car was gone?
5 A Yes, yes, uh-huh.
6 Q So help me understand. Is it -- were they in the car a while?
7 Because what I'm trying to understand is, if they were in the car, you went
8 inside, came back out and the car was gone --
9 A No, it was a question of seconds, seconds.
10 Q So he just got in the car, and they took off?
11 A Yes.
12 Q And you said you saw an object held close to Bianca?
13 A Yes.
14 Q And Bianca was in the driver's side of the car?
15 A Yes.
16 Q Freddy is in the passenger side?
17 A Yes.
18 Q What side of the car are you on?
19 A I was on the passenger side because -- I was on the right.
20 Q And you see --
21 A See, the car was parked outside, and I was inside.
22 Q So you're on the passenger side of the vehicle, the same side as
23 Freddy?
24 A Yes, the passenger side.
25 Q And across the street?

1 A Yes.

2 Q Or are you on the same side of the street?

3 A Crossing the street.

4 Q You're on the other side of the street?

5 A Yes.

6 Q And you see an object held -- I believe today you pointed toward

7 your neck. I wasn't real clear on that. Where do you see this object held in

8 relation to Bianca?

9 A Yes, yes. It was here [indicating], pointing her neck.

10 Q Okay. Can you show me again here.

11 A [Indicating] Right here. Right here.

12 MS. HAMERS: Okay. Let the record reflect in between the neck and

13 the shoulder.

14 THE WITNESS: [Through the Interpreter] Right here. Right here.

15 BY MS. HAMERS:

16 Q And could -- and how far away are you?

17 A About 50 feet or less.

18 Q But you can see this object next to her neck?

19 A Yes, I -- my sight is good.

20 Q But you couldn't tell what the object was?

21 A I cannot testify what type of object it was. It was early in the

22 morning. I didn't see clearly.

23 Q So you couldn't tell what it was at the time?

24 A No.

25 MS. HAMERS: Court's indulgence.

1 BY MS. HAMERS:

2 Q Is it your understanding that Bianca and Freddy never lived
3 together?

4 MR. BATEMAN: Judge, I'm going to object to hearsay unless he has
5 personal knowledge.

6 THE COURT: I'm not sure how he would know. Overruled.

7 MS. HAMERS: Well, it's --

8 THE COURT: No, I'm going to -- you know, I'm not -- I'm not sure Mr.
9 Bateman is right, so I'm going to give you the benefit of the doubt.

10 THE WITNESS: [Through the Interpreter] They lived together. She
11 lived with him. When he came from Honduras, he was a young person. He
12 was like her son or brother.

13 BY MS. HAMERS:

14 Q But just when he was young?

15 A When he was 15, 16 years old.

16 Q When her and David were still together?

17 A All of them were living together. It was him and his brother, her
18 son.

19 Q When she was still with David?

20 A Yes, yes.

21 THE COURT: Is that it?

22 MS. HAMERS: Court's indulgence. Yes, Judge, that's it.

23 THE COURT: Anything else of this witness?

24 MR. BATEMAN: Just one -- one area, Your Honor.

25 **REDIRECT EXAMINATION**

1 **BY MR. BATEMAN:**

2 Q You were just asked questions about coming into contact with
3 Bianca and Freddy during the morning when they were talking. Do you
4 remember that question?

5 A [Through the Interpreter] Yes. She told me that they were talking
6 about --

7 MS. HAMERS: I'm going to object as to hearsay.

8 THE COURT: Okay. The answer is yes. Go ahead, Mr. Bateman.

9 **BY MR. BATEMAN:**

10 Q When you had this contact with him, was this the same morning
11 that Freddy came over with the object or was it a different morning?

12 A [Through the Interpreter] No, that day -- no, that day when he
13 was talking with her, it was the same day when he was cutting across --

14 Q Let me see if I -- let me see if I can clarify.

15 THE COURT: Well, he's going to say that was the day that they saw
16 him in the car.

17 MR. BATEMAN: Okay.

18 THE COURT: It was a couple days earlier.

19 **BY MR. BATEMAN:**

20 Q So it wasn't the same morning that you had Franklin call 9-1-1?

21 A [Through the Interpreter] No, he -- Franklin called that day when
22 he did what he did.

23 Q Okay. And as far as the object you saw in his hand, can you tell
24 me what color it was?

25 A I couldn't see it. Something was covering it. I didn't know what

1 it was covering it.

2 MR. BATEMAN: Nothing else, Your Honor.

3 THE COURT: Okay. You're excused.

4 THE CLERK: Could I get a clarification on the spelling of his last name.

5 THE COURT: Can he spell his last name again.

6 THE WITNESS: Yes.

7 THE INTERPRETER: Judge, may the Interpreter say something?

8 THE COURT: Yes.

9 THE INTERPRETER: The way that he spelled his last name, Castillo,
10 was not the correct way. Castillo is spelled --

11 THE COURT: He uses a Y instead of two L's; right?

12 THE INTERPRETER: Yeah. Do you want me to spell Castillo for you the
13 interpreter way? Let me verify with him.

14 THE CLERK: Okay.

15 THE INTERPRETER: Okay. I just interpreted what he said, but the
16 correct way is C-a-s-t-i-l-l-o.

17 THE CLERK: Thank you.

18 THE COURT: Okay. Thanks. You're excused. Call your next witness.

19 MS. NYICOS: The State calls Bianca Hernandez.

20 THE COURT: Come on up, ma'am. Please stand and raise your right
21 hand.

22 THE CLERK: Please remain standing, and raise your right hand.

23 **BIANCA HERNANDEZ,**

24 having been first duly sworn, through an interpreter testified as follows:

25 THE CLERK: Thank you. You may be seated.

1 THE COURT: Ms. Hernandez, do you speak a little bit of English?

2 THE WITNESS: Yes.

3 THE COURT: But your first language is Spanish?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Would you be more comfortable if we asked the
6 questions through the use of an interpreter?

7 THE WITNESS: Okay. [Through the Interpreter] Yes.

8 THE COURT: You're entitled to do that, and we'll do that. To make it
9 easy on everybody, so don't listen to the question. You listen to the question
10 in Spanish from the Interpreter and tell her back in Spanish the answer, and
11 she'll take it from there. Okay?

12 THE WITNESS: Okay.

13 THE COURT: State your name, and spell your name for the court
14 reporter, please.

15 THE WITNESS: Bianca Hernandez, Bianca Hernandez, B-i-a-n-c-a,
16 H-e-r-d-e-z [sic].

17 THE COURT: I assume it's H-e-r-n-a-n-d-e-z; right?

18 THE INTERPRETER: Yes, Judge. That's what it is.

19 THE COURT: Okay. Go ahead.

20 ***DIRECT EXAMINATION***

21 ***BY MS. NYICOS:***

22 Q Bianca, do you know a person by the name of David?

23 A [Through an Interpreter] Martinez?

24 Q Yes.

25 A Yes.

1 Q Who is David?
2 A David is my ex-companion, the father of my son.
3 Q And what's your son's name?
4 A Franklin Martinez.
5 Q And how old is Franklin?
6 A 16.
7 Q Oh, my. Bianca, how long were you with David?
8 A About ten years.
9 Q Do you know a person by the name of Freddy Martinez?
10 A Yes.
11 Q Who is Freddy?
12 A Well, right now he's my ex-brother-in-law.
13 Q Do you see Freddy in the courtroom today?
14 A Yes.
15 Q Could you please point to him and describe something that he's
16 wearing.
17 MS. HAMERS: Judge, we'll stipulate to the identification of Mr.
18 Martinez.
19 THE COURT: Okay.
20 MS. NYICOS: Thank you.
21 THE COURT: The record will reflect the identification of the Defendant
22 Freddy Martinez. Go ahead.
23 BY MS. NYICOS:
24 Q Bianca, did there come a point in time where Freddy Martinez
25 came to live with you and David and your son?

1 A [Through an Interpreter] Yes.

2 Q Do you recall when that was?

3 A About ten years -- about ten years ago. Right now 16 years.

4 16 years together.

5 Q He lived with you for 16 years; is that what you're saying?

6 A Yes. We lived together with my ex, and then we separated. I

7 separated from my ex, and he stayed there. We lived together with him.

8 Q How old was Freddy when he first came to live with you?

9 A I think he was about 15, 16 years old. I don't remember very

10 well, but he was young.

11 Q So is he David's younger brother?

12 A There's another one, but he is younger than David.

13 Q Okay. Now, you said that you split up with David, and Freddy

14 still lived with you?

15 A Yes.

16 Q Why is that?

17 A I don't know. He always wanted to stay with us. He never

18 wanted to leave.

19 Q When you split up with David, where did David go?

20 A I don't know. He simply left the apartment.

21 Q Now, Bianca, sometime in 2006 did there come a point in time

22 when you stopped living with Freddy?

23 A How? In what way?

24 Q Okay. Let me ask you a different question.

25 THE COURT: I'm going to give you a little leeway to lead her because

1 of the language issue. Kind of lead her through this until we get to the key
2 stuff and then stop leading her.

3 MS. NYICOS: Thank you, Your Honor.

4 BY MS. NYICOS:

5 Q Were you living with Freddy and Franklin in a trailer here in Las
6 Vegas, Nevada?

7 A [Through an Interpreter] Yes.

8 Q And then you moved out of that trailer and moved in with
9 someone named Jose'?

10 A Yes.

11 Q Who's Jose'?

12 A Jose' is my boyfriend.

13 Q And how long has Jose' been your boyfriend?

14 A About four years.

15 Q When you moved out of the trailer, were you and Freddy on good
16 terms?

17 THE COURT: Yes or no.

18 THE WITNESS: Yes.

19 BY MS. NYICOS:

20 Q Okay. And did you tell Freddy where you were moving to?

21 A [Through an Interpreter] No. I simply told him that I was going
22 to go to another place.

23 Q And this other place you went to with Jose', was that on Lamont
24 Street?

25 A Yes.

1 Q Now, I want to talk about August 2006. Were you living on
2 Lamont Street at that time?

3 A Yes.

4 Q And were you seeing Freddy around that time?

5 THE COURT: Seeing in the sense of occasionally running into him --

6 MS. NYICOS: Yes. I apologize.

7 THE COURT: -- or in the sense of dating?

8 MS. NYICOS: Not dating.

9 THE COURT: Ask it in a more clear fashion.

10 MS. NYICOS: Okay.

11 BY MS. NYICOS:

12 Q Were you still talking to Freddy in August of 2006?

13 A [Through an Interpreter] Yes, I always talk normally with him.

14 We never were angry to each other.

15 Q Okay. And was Freddy still living in the trailer?

16 A Yes.

17 Q And who's trailer was that?

18 A Mine.

19 Q Now, did there come a point in time in August of 2006 that
20 something happened, and you wound up in Mesquite?

21 A Yes.

22 Q What happened?

23 A Freddy Martinez came to the apartment where I was living with
24 Jose' approximately at 5:30 a.m.

25 Q Now, at 5:30 in the morning, what were you doing at that time?

1 A I got up to take Jose' to work.
2 Q Were you working at that time as well?
3 A Yes, but on those days I was laid up from work because I didn't
4 have a car to go to work.
5 Q Did you own a car at that point in time?
6 A Yes.
7 Q What type of car did you own?
8 A It was -- it was a 2003 or 2004 Ford Focus.
9 MS. NYICOS: Judge, may I approach the witness?
10 THE COURT: Sure.
11 BY MS. NYICOS:
12 Q Bianca, I'm showing you State's Proposed Exhibits 15 -- I mean,
13 16, 17 and 18. Do you recognize those pictures?
14 A [Through an Interpreter] Yes.
15 Q What are those pictures of?
16 A My car.
17 Q Okay. I'll do my best with the language barrier. Are those
18 pictures a fair and accurate --
19 MS. HAMERS: We'll stipulate to those.
20 MS. NYICOS: Thank you. Move to admit, Judge.
21 THE COURT: Okay. Any objection?
22 MR. PAULSON: No objection.
23 THE COURT: 16, 17 and 18 will be admitted.
24 [State's 16, 17 and 18 were admitted.]
25 THE COURT: What that means, ladies and gentlemen, is under the

1 rules, this is a fair piece of evidence for you to consider. They may well pass
2 them around or show them on the screen. At the very least, you will have
3 them to take back with you to jury room to look at them. Okay.

4 MS. NYICOS: Thank you.

5 BY MS. NYICOS:

6 Q Now, Bianca, on the morning of August -- that morning in August
7 that we're talking about, were you in your car that morning?

8 A [Through an Interpreter] Yes.

9 Q Okay. And was Jose' in the car with you?

10 A No.

11 Q Where was Jose'?

12 A Jose' was inside the apartment, and I walked out to turn the
13 engine on of the car to heat it up.

14 Q Were you in the driver's seat?

15 A Yes.

16 Q Then what happens?

17 A I didn't see Freddy when he crossed the street. Jose' is saying
18 that --

19 Q That's okay. We're not going to talk about what Jose' said.
20 When did you first see Freddy?

21 THE COURT: When did you first see Freddy? That was a good
22 question. I couldn't say it better myself.

23 THE WITNESS: [Through an Interpreter] That day in the morning when
24 that happened.

25 BY MS. NYICOS:

1 Q Okay. What did you see Freddy do?

2 A He opened the door of the car, of my car, with a knife in his

3 hand. He told me to turn on the car and -- and to go. And I ask him what was

4 happening, what did he have in mind, what's going on? Let's talk. And he told

5 me to move the car, and with the knife, he stabbed me in the leg.

6 Q Where in the leg did he stab you?

7 THE COURT: Stand up.

8 THE WITNESS: The right side.

9 THE COURT: Stand up and kind of point to it for the jury, please.

10 THE WITNESS: Over here on this side.

11 THE COURT: Okay. Thanks.

12 MS. NYICOS: For the record, it's the right thigh on the outside.

13 THE COURT: Yeah.

14 BY MS. NYICOS:

15 Q Now, Bianca, before he told you to move -- move the car, did he

16 do anything else with the knife?

17 A [Through an Interpreter] Yes, he continued with the knife until I

18 moved the car to a stop.

19 Q Okay. Where did you stop the car?

20 A Okay. When we came out of that stop, we continue on Owens,

21 and before we got to Nellis, he told me to stop.

22 Q And you said he continued with the knife. How long was he

23 stabbing you in the leg with the knife?

24 A He just stabbed me the first time, but he was holding the knife in

25 his hand all the time.

1 Q And you said you got to Owens, and he told you to stop?

2 A Yes, and he put me in the backseat. He pulled my hair and put

3 me in the backseat.

4 Q In the backseat of the car?

5 A Uh-huh.

6 Q And where did he go from there? When he put you in the

7 backseat, what did he do?

8 A He just grabbed the car and left.

9 Q Did he drive?

10 A Yes.

11 Q While you're in the backseat, where did he drive to at that point?

12 A He drove about three more blocks from where we were. He

13 stopped again, and then he forced me again to go back to the front seat.

14 Q You said he forced you. How did he force you?

15 A Well, he grabbed me by the hair and pulled me to the front seat.

16 Q Was he saying anything to you when he grabbed you by your

17 hair and pulled you in the front seat?

18 A He just told me to be quiet and not to speak.

19 Q And what happened next?

20 A He continued driving. He went off of Nellis before he got to Las

21 Vegas Boulevard. He was driving, and in front of our car, there was another

22 car, and in front of that car, there was a police car. I went -- I saw police. I

23 tried to honk, and he got very upset. I tried to drive -- to get the steering wheel

24 going to the right, but he went to the left.

25 Q Why did you try to honk?

1 A I wanted the police to see.

2 Q Were you able to get the police's attention?

3 A No, I don't think the police saw what was happening because if
4 he would have seen what was happening, if he could have seen that the car
5 was doing a strange movement, he would have done something.

6 Q After you tried to get the police officer's attention, you said
7 Freddy hit you?

8 A Yes. And when he saw the police was in front of us, he moved
9 the car to the left, and he went inside of a trailer park.

10 Q Did Freddy say anything to you?

11 A Yes, yes. I told him to get out of there, and that was when he
12 hit me on the face, and he said, Be quiet. If you don't be quiet, I will hit you.

13 Q I'm sorry. I what?

14 THE COURT: Hit you.

15 THE INTERPRETER: Hit you.

16 BY MS. NYICOS:

17 Q What happened next?

18 A [Through an Interpreter] And then he continue. He took Las
19 Vegas Boulevard all the way to Nellis and to that freeway. I don't know what -
20 - what street is that.

21 Q That's okay. He got on a freeway?

22 A Yes.

23 Q Do you know what direction you were going?

24 A I just know that he took the freeway going to Mesquite.

25 Q Okay. Did he say anything to you on the freeway?

**PLEADING
CONTINUES
IN NEXT
VOLUME**

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 25 2011 02:03 p.m.
Tracie K. Lindeman

FREDDY MARTINEZ,
Appellant(s),
vs.

STATE OF NEVADA,
Respondent(s),

} Case No: 06C226586
} SC No: 57197
}

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
FREDDY MARTINEZ # 1003276
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT
DAVID ROGER, ESQ.
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

06C226586

STATE OF NEVADA VS.
FREDDY MARTINEZ

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SEP 29 12 05 PM '06

Shirley E. Pangloss
CLERK

1 IND
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 NOREEN C. NYIKOS
6 Deputy District Attorney
7 Nevada Bar #008213
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff
12
13
14
15
16
17

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 FREDDY MARTINEZ, aka,
14 Fredys A. Martinez,
15 #1361243)

16 Defendant(s).)

Case No. C226586
Dept. No. VII

INDICTMENT

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

20 The Defendant(s) above named, FREDDY MARTINEZ, aka, Fredys A. Martinez,
21 accused by the Clark County Grand Jury of the crimes of BURGLARY WHILE IN
22 POSSESSION OF A DEADLY WEAPON (Felony NRS 205.060); BATTERY WITH USE
23 OF A DEADLY WEAPON (Felony - NRS 200.481); FIRST DEGREE KIDNAPPING
24 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); and
25 SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364,
26 200.366, 193.165), committed at and within the County of Clark, State of Nevada, on or
27 about the 16th day of August, 2006, as follows:

28 // RECEIVED

SEP 29 2006

COUNTY CLERK

1 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
3 deadly weapon, to-wit: a knife, and with intent to commit kidnapping, that certain 2003
4 Ford Focus, bearing Nevada License No. 308TRL, owned by BIANCA HERNANDEZ.

5 COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON

6 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
7 person of another, to-wit: BIANCA HERNANDEZ, with use of a deadly weapon, to-wit: a
8 knife, by cutting the said BIANCA HERNANDEZ in the thigh with said knife.

9 COUNT 3 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

10 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
11 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away BIANCA HERNANDEZ, a
12 human being, with the intent to hold or detain the said BIANCA HERNANDEZ against her
13 will, and without her consent, for the purpose of committing sexual assault, said Defendant
14 using a deadly weapon, to-wit: a knife, during the commission of said crime.

15 COUNT 4 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
17 BIANCA HERNANDEZ, a female person, to sexual penetration, to-wit: sexual intercourse,
18 by placing his penis into the genital opening of the said BIANCA HERNANDEZ, against
19 her will: Defendant using a deadly weapon, to-wit: a knife, during the commission of said
20 crime.

21 DATED this 28 day of September, 2006.

22 DAVID ROGER
23 DISTRICT ATTORNEY
Nevada Bar #002781

24 BY Nyikos
25 NOREEN C. NYIKOS
26 Deputy District Attorney
Nevada Bar #008213

27 ENDORSEMENT: A True Bill

28 [Signature]
Foreperson, Clark County Grand Jury

1 Names of witnesses testifying before the Grand Jury:
2 HERNANDEZ, BIANCA, c/o District Attorney, 200 Lewis Ave., LVN 89155
3 Additional witnesses known to the District Attorney at the time of filing this Indictment:
4 CHAVEZ, ARTURO, LVMPD P#4048
5 GODDARD, BLAKE, LVMPD P#5975
6 KASTILLO, JOSE, c/o District Attorney, 200 Lewis Ave., LVN 89155
7 PHEERS, WILLIAM, 2300 E. GLENDALE RD., MOAPA, NV 89025
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25 05BGJ145X/06F15924X/dd
26 LVMPD EV#0608160637
27 BURG W/WPN; BWDW;
28 1ST DEG KIDNAP W/WPN;
SEX ASSLT W/WPN - F

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16

WARR

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

SEP 29 12 05 PM '06

THE STATE OF NEVADA,

Plaintiff,

-vs-

Freddy Martinez, aka Fredys A. Martinez
ID#1361243

Defendant.

CASE NO: C226586 *Shirley E. Ruggins*
DEPT NO: VII CLERK

WARRANT FOR ARREST

INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 29th day of September, 2006, in the above entitled Court, charging Defendant Freddy Martinez, above named, with the crime(s) of: (1) COUNT - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON; (1) COUNT - BATTERY WITH USE OF A DEADLY WEAPON; (1) COUNT - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; and (1) COUNT - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON.

YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 500,000.00 *(MNC)*.

I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night

GIVEN under my hand this 29 day of September, 2006.

DAVID ROGER
District Attorney
Nevada Bar #002781

BY

Nyikos
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213

Kathy A. Hardcastle
DISTRICT JUDGE
KATHY A. HARDCASTLE, CHIEF
BAIL \$ 500,000.00

DA#05BGJ145X/06F15924X/dd
LVMPD EV#060816-0637/
05/28/1969; RECEIVED SS#: 545-21-6395
(TK)

SEP 29 2006

COUNTY CLERK

S8

114
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213
200 South Third Street
Las Vegas, NV 89155-2211
(702) 455-4711
Attorney for Plaintiff

FILED

OCT 3 8 56 AM '06

Shirley J. Higgins
CLF

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

Freddy Martinez,
ID#1361243

Defendant.

CASE NO:
DEPT NO:

C226586
VII

INDICTMENT WARRANT RETURN

An Indictment having heretofore been found on the 29th day of September, 2006, in the above entitled Court, charging Defendant Freddy Martinez, above named, with the crimes of: (1) COUNT - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON; (1) COUNT - BATTERY WITH USE OF A DEADLY WEAPON; (1) COUNT - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; and (1) COUNT - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, and upon finding the said Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Indictment Warrant and served the same by arresting the within Defendant on the 29th day of Sept 2006.



BILL YOUNG, Sheriff, Clark County, Nevada

BY

Deputy

JW760

COUNTY CLERK

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OCT 3 2006

514

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

SEP 29 12 06 PM '06

THE STATE OF NEVADA,

Plaintiff,

-VS-

Freddy Martinez, aka Fredys A. Martinez
ID#1361243

Defendant.

CASE NO:

DEPT NO:

WARRANT FOR ARREST

CLERK

INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 29th day of September, 2006, in the above entitled Court, charging Defendant Freddy Martinez, above named, with the crime(s) of: (1) COUNT - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON; (1) COUNT - BATTERY WITH USE OF A DEADLY WEAPON; (1) COUNT - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; and (1) COUNT - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON.

YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 500,000.00 (MNC).

I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night

GIVEN under my hand this 29 day of September, 2006.

DAVID ROGER
District Attorney
Nevada Bar #002781

BY

Noreen C. Nyikos
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213

ENCLOSURE IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Kathy A. Hardcastle
DISTRICT JUDGE
KATHY A. HARDCASTLE, CHIEF
BAIL \$ 500,000.00

2006 SEP 29 P 12:25

DA#05BGJ145X/06F15924X/dd
LVMPD EV#060816-0637/
05/28/1969; H/M/A; SS#: 545-21-6395
(TK)

CLERK

WARR

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

SEP 29 12 06 PM '06

THE STATE OF NEVADA,

Plaintiff,

-VS-

Freddy Martinez, aka Fredys A. Martinez
ID#1361243

Defendant.

CASE NO:

DEPT NO:

WARRANT FOR ARREST

0226586
Shirley E. Haraguan
CLERK

INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 29th day of September, 2006, in the above entitled Court, charging Defendant Freddy Martinez, above named, with the crime(s) of: (1) COUNT - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON; (1) COUNT - BATTERY WITH USE OF A DEADLY WEAPON; (1) COUNT - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; and (1) COUNT - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON.

YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 500,000.00 *(MNC)*

I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night

GIVEN under my hand this 29 day of September, 2006.

DAVID ROGER
District Attorney
Nevada Bar #002781

BY

Noreen C. Nyikos
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213

TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Kathy A. Hardcastle
DISTRICT JUDGE
KATHY A. HARDCASTLE, CHIEF
BAIL \$ 500,000.00

2006 SEP 29 P 12:25

DA#05BGJ145X/06F15924X/dd
LVMPD EV#060816-0637/
05/28/1969; H/M/A; SS#: 545-21-6395
(TK)

Shirley E. Haraguan
CLERK

WARR

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

SEP 29 12 07 PM '06

THE STATE OF NEVADA,

Plaintiff,

-vs-

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CLERK

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DAVID ROGER
District Attorney
Nevada Bar #002781

BY

Noreen C. Nyikos
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213

Kathy A. Hardcastle
DISTRICT JUDGE
KATHY A. HARDCASTLE, CHIEF
BAIL \$ 500,000.00

DA#05BGJ145X/06F15924X/dd
LVMPD EV#060816-0637/
05/28/1969; H/M/A; SS#: 545-21-6395
(TK)

DATE OF ARREST: 0751

INTEK NAME (AKA, ALIAS, ETC.) Last First Middle
 Martinez, Freddy A

ADDRESS NUMBER & STREET BLDG/APT. # CITY STATE ZIP
 5042 1st Avenue, Kilauea W/ 300-3101 300-3400 300-0000

DATE OF BIRTH RACE SEX HEIGHT WEIGHT HAIR EYES SOCIAL SECURITY #
 5042 1st Avenue, Kilauea W/ 300-3101 300-3400 300-0000

LOCATION OF CRIME (# - Street - City - State - Zip) CHARGE ORD / NRS # M GM F ARR TYPE EVENT NUMBER WARR / NCIC NUMBER COURT LV JC DC OTHER
 5042 1st Avenue, Kilauea W/ 300-3101 300-3400 300-0000

ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GJI - GRAND JURY IND. OTHER COURT:
 5042 1st Avenue, Kilauea W/ 300-3101 300-3400 300-0000

ARRESTING OFFICER'S SIGNATURE (Print Name) P # Agency APPROVAL CONTROL # FOR ADDITIONAL CHARGES:
 5042 1st Avenue, Kilauea W/ 300-3101 300-3400 300-0000

TRANSPORTING OFFICER'S SIGNATURE (Print Name) P # Agency
 5042 1st Avenue, Kilauea W/ 300-3101 300-3400 300-0000

Time Stamp at BOOKING
 RECEIVED

FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.

BENCH WARRANT SERVED ON

WARRANT SERVED ON

GRAND JURY INDICTMENT SERVED ON

RECEIVED

OCT - 2 2006

FIRST APPEARANCE: DATE: TIME:

COURT JUSTICE MUNICIPAL JUVENILE

STANDARD BAIL O.R. RELEASE PROBABLE CAUSE

JUDGE:

I.A.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED

2006 OCT 11 A 8:27

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

CLERK

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDDY MARTINEZ aka

Fredys A. Martinez,

Defendant.

Case No. 05BGJ145X

C 226586

Taken at Las Vegas, Nevada

Thursday, September 21, 2006

3:00 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 1

Reported by: LISA BRENSKE, CCR No. 186

025

10-15

GRAND JURORS PRESENT ON SEPTEMBER 21, 2006:

LAVERN RATZLAFF, Foreperson

CATHERINE WARNING, Assistant Foreperson

NANCY COATSWORTH, Secretary

JIMMIE BEATY

VERONA SUE GARBAT

BOBI LEE GREEN

BERNICE JOYNER

LINDA REED

JUDITH SCHILL

UWE SCHREIBER

DEVENDRA SINGH

JIL TILLMON

AURORA YGUICO

Also present at the request of the Grand Jury:

Noreen Nyikos,
Deputy District Attorney

David Barker,
Chief Deputy District Attorney

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INDEX OF WITNESSES

EXAMINED

BIANCA HERNANDEZ

8

INDEX OF EXHIBITSGrand Jury ExhibitsIdentified

2 - photograph

8

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 14, 2006

2 * * * * *

3
4
5 LISA BRENSKE,

6 having been first duly sworn to faithfully
7 and accurately transcribe the following
8 proceedings to the best of her ability.
9

10 MS. NYIKOS: Good afternoon, ladies and
11 gentlemen. We are here to present the case of the State of
12 Nevada versus Freddy Martinez. I'm Noreen Nyikos, this is
13 chief deputy district attorney Dave Barker with me.

14 We are here to present case number 05BGJ145X
15 charged on or about the 16th day of August 2006 Freddy
16 Martinez committed the following crimes: Burglary while in
17 possession of a deadly weapon, battery with use of a deadly
18 weapon, first degree kidnapping with use of a deadly weapon
19 and sexual assault with use of a deadly weapon.

20 By law I am supposed to instruct you regarding
21 the elements of these offenses. Burglary is any person who
22 by day or night enters any vehicle with the intent to commit
23 an assault or battery or any felony therein is guilty of
24 burglary.

25 Battery with use of a deadly weapon is any

1 willful and unlawful use of force or violence upon the
2 person of another with use of a deadly weapon.

3 Deadly weapon means any instrument which, if
4 used in the ordinary manner contemplated by its design, will
5 likely cause substantial bodily harm or death.

6 First degree kidnapping is defined as any
7 person who wilfully seizes, confines, inveigles, entices,
8 destroys, abducts, conceals, kidnaps or carries away any
9 person by any means whatsoever with the intent to hold or
10 detain that person for ransom or reward, or for the purpose
11 of committing sexual assault, extortion or robbery upon that
12 person or for the purpose of killing that person is guilty
13 of kidnapping in the first degree.

14 Sexual assault is defined as follows: A person
15 who subjects another person to sexual penetration against
16 the victim's will or under conditions in which the
17 perpetrator knows or should have known that the victim is
18 mentally or physically incapable of resisting or
19 understanding the nature of the conduct is guilty of sexual
20 assault.

21 Do you guys have any questions regarding these
22 instructions? My first witness is Bianca Hernandez.

23 Do I have the Grand Jury's permission to use
24 the assistance of the interpreter?

25 THE FOREPERSON: Yes, and I'd like to swear in

1 the interpreter, please.

2 (Interpreter sworn.)

3 THE FOREPERSON: Would you please state your
4 name and spell it.

5 THE INTERPRETER: Mario Torres, T-o-r-r-e-s.

6 THE FOREPERSON: I'd like to swear the witness
7 in, if you'd ask her to stand.

8 You do solemnly swear that the testimony that
9 you are about to give upon the investigation now pending
10 before this Grand Jury shall be the truth, the whole truth
11 and nothing but the truth so help you God.

12 MS. HERNANDEZ: I do.

13 THE FOREPERSON: You are advised that you are
14 here today to give testimony in the investigation pertaining
15 to the offenses of burglary while in possession of a deadly
16 weapon, battery with use of a deadly weapon, first degree
17 kidnapping with use of a deadly weapon, sexual assault with
18 use of a deadly weapon involving Freddy Martinez.

19 Do you understand this advisement?

20 MS. HERNANDEZ: Yes.

21 THE FOREPERSON: Please state your first and
22 last name and spell them for the record.

23 MS. HERNANDEZ: Fred's name or mine?

24 THE FOREPERSON: Her name.

25 THE WITNESS: Bianca Hernandez, B-i-a-n-c-a,

1 H-e-r-n-a-n-d-e-z.

2
3 BIANCA HERNANDEZ,

4 having been first duly sworn by the Foreperson of the Grand
5 Jury to testify to the truth, the whole truth and nothing
6 but the truth, testified as follows:

7
8 EXAMINATION

9
10 BY MS. NYIKOS:

11 Q Bianca, I am going to show you Grand Jury
12 Exhibit 2. Do you recognize the person in that photograph?

13 A Yes.

14 Q Who is that person?

15 A My brother-in-law.

16 Q What is his name?

17 A Freddy Martinez.

18 Q Bianca, how do you know Freddy?

19 A Freddy arrived to his brother house when he was
20 about 15 years old. He was at my house through that time
21 and I got all the way to see him as a brother. And so he
22 was with us up until the time of this problem.

23 And I separated from his brother about four
24 years ago. And then I move from the trailer because I have
25 bought mobile home, and then we were at that mobile home,

1 him, myself and my son, and as of late he was behaving
2 badly, like very jealous.

3 MS. NYIKOS: I am going to ask the Grand Jury
4 to disregard that at this time.

5 Q Bianca, on August 16th of this year did you see
6 Freddy that day?

7 A On the day that he kidnapped me?

8 Q Yes.

9 A Yes.

10 Q Where were you when you first saw him?

11 A On that day I took my boyfriend to work about
12 five in the morning. I didn't notice him coming out of
13 property that is right across.

14 Q Were you at your boyfriend's house?

15 A Yes.

16 Q And is that 1661 North Lamont Street?

17 A Yes.

18 Q Is that here in Clark County, Nevada?

19 A Yes.

20 Q I want to take this really slow. Had you left
21 yet to take your boyfriend to work?

22 A No.

23 Q Where were you?

24 A I was outside and then I came back. I turned
25 the engine on in the car and then I turned the radio on.

2 1 Q Now, the car, is that a 2003 Ford Focus?

2 A Yes.

3 Q Is the license plate a Nevada plate?

4 A Yes.

5 Q 308TRL?

6 A Yes.

7 Q Whose car is that?

8 A Mine.

9 Q Was your boyfriend in the car with you?

10 A No.

11 Q Were you in the driver's seat or the passenger

12 seat?

13 A At that time in the driver's seat.

14 Q What happened next?

15 A I didn't notice that he jumped the fence from

16 the street because I was looking down and when I least

17 expect it I turned around and notice it was Freddy. And he

18 opened the door and he had a knife in his hand. He forced

19 me to drive and he poked me three times in my leg.

20 Q Which door did Freddy open?

21 A The passenger.

22 Q Did Freddy get in the car with you?

23 A Yes.

24 Q When you said he poked you three times, where

25 did he poke you?

2 1 A Inside the car. The car was still there,
2 2 standing there.

3 3 Q Where on your body did he poke you?

4 4 A Right leg.

5 5 Q What did he poke you with?

6 6 A It was like some kind of knife. It was not a
7 7 knife, but some type of it.

8 8 Q Some type of knife. Can you describe it?

9 9 A Yeah, it's like a knife of this size that
10 10 folds.

11 11 Q This size?

12 12 A No, I don't recall exactly because I become
13 13 very nervous. But, yeah, it was like that.

14 14 Q So that was about six inches?

15 15 A I think so.

16 16 Q And he used that knife to poke you?

17 17 A Yes.

18 18 Q And did he say anything when he was poking you?

19 19 A Yes, to drive and to keep quiet.

20 20 Q And did you drive?

21 21 A Yes. I wanted to get out of the car but he
22 22 grabbed my hand.

23 23 Q Did he say anything when he grabbed your hand?

24 24 A Yes. To drive and that I was not coming back
25 25 anymore to Las Vegas.

2 1 Q How did that make you feel?

2 A Very afraid, panicked.

3 Q Where did you drive?

4 A When I got away from the area where I live he
5 made me stop like half a block away from Nellis. And then
6 he grabbed me by my hair and he threw me back so that he
7 could drive.

8 Q When you said Nellis, do you mean Nellis Air
9 Force Base?

10 A No, the street.

11 Q That's still here in Clark County, Nevada?

12 A Yes.

13 Q What happened when he grabbed your hair?

14 A He threw me to the back seat and then a few
15 minutes later he told me get back in the front seat. I
16 wanted to exit through the back door to request some
17 assistance but I couldn't. Then he drove all the way on
18 Owens and then he made a turn somewhere to get into Las
19 Vegas Boulevard.

20 Q What happened next?

21 A And then about three blocks -- before three
22 blocks getting to Las Vegas Boulevard there was a car ahead
23 of us and in front of that car was a police car. I wanted
24 to blow the horn so that to call the officer's attention to
25 get help. When I tried to blow the horn I wanted to get the

2 1 wheel so that the car could swing back and forth. And then
2 to draw his attention. And then I struggled with him a lot
3 to do that, but then he made a turn and he got into a
4 parking lot for a trailer park. And then he hit me again in
5 the face so that I can constrain myself.

6 THE INTERPRETER: The interpreter's correction,
7 she meant to say restrain myself.

8 THE WITNESS: Waited a few minutes so that he
9 could come back to wait until the police car went away so he
10 could get back on the road.

11 BY MS. NYIKOS:

12 Q How long did that take?

13 A Approximately since the time that I left the
14 house to the time we got there about 15 minutes.

15 Q What happened next?

16 A And then he took the road to Mesquite.

17 Q Which road is that?

18 A I don't know which is the freeway that goes
19 there.

20 Q It's a highway, though?

21 A Yes. It's all the way on Las Vegas Boulevard
22 and then he made a turn to get onto the freeway.

23 Q Once you got on the freeway what happened?

24 A I was crying very nervous because I notice that
25 he was under the influence of drugs. I begged him a lot to

2 1 take me back and I told him Freddy, please, take me back
3 2 home, my son is alone. He told me no, you're never coming
4 3 back to Las Vegas. Forget everything, forget your son and
5 4 the father of your child. And he told me to forget it, that
6 5 I was not coming back and he didn't care about anything.

6 Q Did there come a time when he stopped?

7 A Yes. He got to the shoulder of the freeway.

8 Q What happened on the shoulder of the freeway?

9 A He got out in a desert area. I asked him
10 Freddy, why are you getting me here, and he said to me don't
11 say anything. And then he went into a lot, he parked, he
12 grabbed me by the hand. I asked him what was he thinking of
13 doing and he told me that if I was not going to be for him,
14 I was not going to be for anybody else. He opened the rear
15 side door, he removed my clothes and he did to me what he
16 was meant to do.

17 Q What did he do to you?

18 A He removed my clothes and to me that's a rape.

19 Q Did any part of his body touch your body?

20 A Yes.

21 Q What part of his body?

22 A His penis.

23 Q And what part of your body?

24 A My vagina.

25 Q Did his penis go inside your vagina?

3 1 A Yes.

2 Q When that happened did he still have a knife?

3 A Yes.

4 Q Did you want Freddy to have sex with you?

5 A No.

6 Q Bianca, what happened after that?

7 A He got out of me, he told me to dress again, my
8 shorts, because it was my shorts. He pulled up my blouse.
9 I told him Freddy, please take me back home. And he told me
10 no, you're not going back anymore so get into the front
11 seat, and then he left the deserted area and he got on the
12 freeway again.

13 Q The same freeway you were on before?

14 A Yes.

15 Q Now, Bianca, when he had stopped on the
16 deserted area had you gotten to Mesquite yet?

17 A There was still a way to get there.

18 Q When he got back on the freeway did he continue
19 driving the same direction?

20 A Yes. He got out on -- well, I don't know that
21 area. He got out to get some gas.

22 Q When he went to get gas were you able to get
23 out of the car?

24 A No. I remain inside the car because I know if
25 I run, he would.

3

1 Q And what happened after he got gas?

2 A He kept driving until he reach Mesquite.

3 Q When you got to Mesquite did he stop there?

4 A Yes. In some apartment complex.

5 Q Did he tell you why he went to this apartment
6 complex?

7 A Yes. He was going to look for some friends
8 because he used to work there.

9 Q When you got to this apartment complex were you
10 able to get out of the car?

11 A Yes. I remained there seated for a few
12 minutes. I was looking around because there were some
13 people doing some cleaning work. There was someone there
14 who I wanted to talk to but they didn't pay any more
15 attention. So there was this young lady walking by. Then
16 at that moment Freddy got out of the car I told her, I said
17 help me because you know I've been kidnapped and he raped me
18 and he brought me here. So I asked her not to look directly
19 to my face so that won't make him think that I was asking
20 for help.

21 So Freddy saw me talking to her and he came
22 back. And then Freddy asked me is everything okay? And I
23 said to him yes, Freddy, everything is all right. But I
24 wanted him to go to see his friends so that I can get out of
25 the car. I had the opportunity because he gave me the keys

3 1 of getting into the car and coming back, but I didn't do it
2 because I was afraid that if he would come back he was going
3 to be there and he could come back.

4 Q Did the police eventually come?

5 A Yes.

6 Q How long did that take?

7 A I don't recall, but during the whole thing it
8 was approximately a couple hours.

9 Q By the whole thing do you mean from the time he
10 took you from the house on Lamont Street until the police
11 finally came?

12 A Yes.

13 Q Bianca, did you want to go with Freddy?

14 A No. No.

15 MS. NYIKOS: I have no further questions of
16 this witness. Does any member of the Grand Jury have any
17 questions?

18 THE FOREPERSON: I'd like to admonish the
19 witness by law these proceedings are secret and you're
20 prohibited from disclosing to anyone anything that
21 transpired before us, including evidence and statements
22 presented to the Grand Jury, any event occurring or
23 statement made in the presence of the Grand Jury and
24 information obtained by the Grand Jury.

25 Failure to comply with this admonition is a

3 1 gross misdemeanor punishable by a year in the Clark County
2 Detention Center and a two thousand dollar fine. And in
3 addition you may be held in contempt of court punishable by
4 an additional five hundred dollar fine and 25 days in the
5 Clark County Detention Center.

6 Do you understand this?

7 THE WITNESS: Yes.

8 THE FOREPERSON: Thank you. You may be
9 excused.

10 MS. NYIKOS: Ladies and gentlemen of the Grand
11 Jury, I did have two additional witnesses but after this
12 testimony I actually believe that --

13 MR. BARKER: We don't need to present those
14 witnesses.

15 MS. NYIKOS: So I will see you guys next week.

16
17 (Proceedings concluded.)

18 --oOo--
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK

I, Lisa Brenske, C.C.R. 186, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, September 26, 2006.


Lisa Brenske, C.C.R. No. 186

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EIGHTH JUDICIAL DISTRICT COURT

FILED

ORIGINAL

CLARK COUNTY, NEVADA

2006 OCT 13 A 11:17

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

CLERK

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDDY MARTINEZ, aka

Fredys A. Martinez,

Defendant.

Case No. 05BGJ145X

C 226584

Taken at Las Vegas, Nevada

Thursday, September 28, 2006

9:29 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

075

GRAND JURORS PRESENT ON SEPTEMBER 28, 2006:

- LAVERN RATZLAFF, Foreperson
- CATHERINE WARNING, Deputy Foreperson
- NANCY COATSWORTH, Secretary
- VERONA SUE GARBAT, Assistant Secretary
- JIMMIE BEATY
- BOBI LEE GREEN
- BERNICE JOYNER
- MARYLAN FREDERICK-MARSH
- JOAN MCSWEENEY
- LINDA REED
- JUDITH SCHILL
- UWE SCHREIBER
- DEVENDRA SINGH
- ANDREW URBAN
- AURORA YGUICO

Also present at the request of the Grand Jury:
Noreen Nyikos,
Deputy District Attorney

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 28, 2006

2 * * * * *

3
4 DANETTE L. ANTONACCI,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 THE FOREPERSON: Let the record reflect that I
10 have canvassed the waiting area and no one is present in
11 response to Notice of Intent to Seek Indictment.

12 MS. NYIKOS: Good morning ladies and
13 gentlemen. We're back on the record in 05BGJ145X, State of
14 Nevada versus Freddy Martinez. State has no more witnesses
15 to present. I will leave you to your deliberation.

16 (At this time, all persons, other than
17 members of the Grand Jury, exit the room at 9:30 a.m. and
18 return at 9:31 a.m.)

19 THE FOREPERSON: Miss District Attorney, by a
20 vote of twelve or more Grand Jurors a true bill has been
21 returned against defendant Freddy Martinez, also known as
22 Fredys A. Martinez, charging the crime of burglary while in
23 possession of a deadly weapon, battery with use of a deadly
24 weapon, first degree kidnapping with use of a deadly weapon
25 and sexual assault with use of a deadly weapon, in Grand

DANETTE L. ANTONACCI, C.C.R. 222 (702) 361-1947

1 Jury case number 05BGJ145X. We instruct you to prepare an
2 Indictment in conformance with the proposed Indictment
3 previously submitted to us.

4 (Proceedings concluded.)

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6 --ooOoo--
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : ss
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript constitutes a
full, true and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, October 9, 2006.


Danette L. Antonacci, C.C.R. No. 222

16
1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

7
FILED

2006 NOV 17 11A 8:50

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

[Signature]
CLERK

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 FREDDY A. MARTINEZ,

14 Defendant.

CASE NO. C226586X

DEPT. NO. VII

DATE: November 30, 2006

TIME: 8:30 a.m.

15 MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE

16 COMES NOW, the Defendant, FREDDY A. MARTINEZ, by and through
17 KATHLEEN M. HAMERS, Deputy Public Defender and hereby requests that pursuant to Brady v.
18 Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), this Court order the State to produce any and all
19 exculpatory evidence in its actual or constructive possession.

20 This Motion is made and based upon all the papers and pleadings on file herein, the
21 attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

22 DATED this 17 day of November, 2006.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

25 By *[Signature]*
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

100

RECEIVED
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COUNTY CLERK

DECLARATION

KATHLEEN M. HAMERS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 17 day of November, 2006.


KATHLEEN M. HAMERS

STATEMENT OF FACTS

The State has charged Mr. Martinez with sex assault with use of a deadly weapon, first degree kidnapping with use of a deadly weapon, burglary with use of a deadly weapon and battery with intent to commit sexual assault. The State alleges that Mr. Martinez got into a car with Bianca Hernandez, ordered Hernandez to drive to Mesquite, then stopped off of Highway I-15 and sexually assaulted Hernandez.

Initially, Mesquite police responded to a call by Millie Tara that a domestic battery had occurred. Mesquite police interviewed Hernandez and she then alleged a kidnapping, battery and sexual assault with the use of a knife. Hernandez was then taken to the hospital and interviewed by the Las Vegas Metropolitan Police Department. LVMPD conducted interviews of Hernandez, a witness Castillo, and of the Defendant, Mr. Martinez.

The State then arraigned Mr. Martinez on the above charges in Justice Court on August 16, 2006 in case 06F15924X. That case was dismissed on October 2, 2006. The State filed the instant case by way of grand jury indictment and Mr. Martinez was arraigned and entered a not guilty plea on October 5, 2006.

ARGUMENT

Prior to trial, the State must provide to the defense any and all exculpatory evidence in its actual or constructive possession. Failure to do so violates the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995). Hereinafter this type of exculpatory evidence will be referred to as "Brady material." The State's duty to provide Brady material to the defense applies regardless of how the State has chosen to structure its overall discovery process. Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936 (1999).

Brady material is evidence which is (1) material, (2) relevant to guilt or punishment, (3) favorable to the accused, and (4) within the actual or constructive possession of anyone acting on behalf of the State. Brady, *supra*.

1. Materiality

1 When the defense makes a specific request for Brady material and the State does not
2 provide such material, the Nevada Supreme Court has held that there are grounds for reversal of a
3 conviction "...if there exists a reasonable possibility that the claimed evidence would have
4 affected the judgment of the trier of fact." Roberts v. State, 110 Nev. 1121 (1994); Jiminez v.
5 State, 112 Nev. 610 (1996); State v. Bennett, 119 Nev. 589 (2003).

6 Even if a specific request has not been made, reversal is warranted "...if there exists a
7 reasonable probability that, had the evidence been disclosed, the result of the proceeding would
8 have been different." U.S. v. Bagley, 473 U.S. 667 (1985), Pennsylvania v. Ritchie, 480 U.S. 39
9 (1986). A "reasonable probability" is a probability sufficient to undermine confidence in the
10 outcome of the proceeding. Bagley at 682.

11 Therefore, where, as here, a specific request for certain evidence is made, the evidence is
12 considered "material" if there is a reasonable possibility that it could affect the factfinder's
13 judgment.

14 *II. Relevancy to guilt or punishment*

15 Brady material encompasses not only evidence which might affect the defendant's guilt,
16 but also includes evidence which could serve to mitigate a defendant's sentence upon conviction.
17 Jimenez v. State, 112 Nev. 610 (1996).

18 An example of this kind of evidence might be where the victim of a robbery who identified
19 the defendant as one of two people who robbed him, also indicated that the defendant tried to keep
20 the co-defendant from further injuring him. Although the victim's statements would actually help
21 establish the defendant's guilt for the charged offense, they would also be Brady material, since
22 they could help mitigate the defendant's sentence. Essentially, anything which could convince the
23 Court to impose something less than a maximum sentence, or rebut alleged aggravating
24 circumstances, would be relevant to punishment, and must be provided to the defense pursuant to
25 Brady v. Maryland.

26 *III. Favorability to the accused*

27
28

1 The Nevada Supreme Court has defined what evidence is considered "favorable to the
2 accused" and therefore proper Brady material. In Mazzan v. Warden, 116 Nev. 48 (2000), the
3 Court stated:

4 Due process does not require simply the disclosure of "exculpatory"
5 evidence. Evidence also must be disclosed if it provides grounds for the
6 defense to attack the reliability, thoroughness, and good faith of the police
7 investigation, to impeach the credibility of the state's witnesses, or to bolster
8 the defense case against prosecutorial attacks. Furthermore, "discovery in a
9 criminal case is not limited to investigative leads or reports that are
10 admissible in evidence." Evidence "need not have been independently
11 admissible to have been material." Mazzan at 67. (citations omitted)

12 Therefore, Brady material under this standard, would include, but not be limited to, the
13 following examples: forensic testing which was ordered, but not done, or which was completed but
14 did not inculcate the defendant; criminal records or other evidence concerning State's witnesses
15 which might show their bias (e.g., civil litigation), or otherwise impeach their credibility; evidence
16 that the alleged victim has been the alleged victim of an unusual number of crimes; investigative
17 leads or ordinarily appropriate investigation which were not followed-up on or completed by law
18 enforcement; and, of course, anything which is inconsistent with any prior or present statements of
19 a State's witness, including the failure to previously make a statement which is later made or
20 testified to. Of course, traditionally exculpatory evidence such as that which could show that
21 someone else committed the charged crime or that no crime occurred, would also be included as
22 Brady material.

23 *IV. Actual or constructive possession of the State*

24 It is anticipated that the prosecution may assert that it has an "open file" policy, and that if
25 the requested material is not available in its file, the State is under no obligation to produce it.
26 This argument is unavailing. In Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936 (1999), the
27 United States Supreme Court explicitly held that a prosecutor's open file policy does not in any
28 way substitute for or diminish the State's obligation to turn over Brady material. The Nevada
Supreme Court is in accord. "It is a violation of due process for the prosecutor to withhold

1 exculpatory evidence, and his motive for doing so is immaterial.” Jimenez v. State, 112 Nev. 610,
2 618 (1996).

3 Furthermore, “...even if the detectives withheld their reports without the prosecutor’s
4 knowledge, ‘the state attorney is charged with constructive knowledge and possession of evidence
5 withheld by other state agents, such as law enforcement officers.’” Id., 112 Nev. at 620 (citation
6 omitted) (emphasis added). Defendant would submit that other state agents, such as probation and
7 parole officers, welfare workers, employees of Child Protective Services, jail personnel, and
8 similar agents of the State are also State agents from whom the prosecution must affirmatively
9 collect Brady material.

10 In Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995), the United States Supreme
11 Court made it clear that the prosecutor has an affirmative obligation to obtain Brady material and
12 provide it to the defense, even if the prosecutor is initially unaware of its existence. In so finding,
13 the Supreme Court noted that “[t]he prosecution’s affirmative duty to disclose evidence favorable
14 to a defendant can trace its origins to early 20th century strictures against misrepresentation and is
15 of course most prominently associated with this Court’s decision in Brady v. Maryland. . .” Id. at
16 432. The Kyles Court also made clear that this obligation exists even where the defense does not
17 make a request for such evidence. Id.

18 The Kyles Court additionally made the following observations in finding that the State had
19 breached its duty to Kyles and discussing the prosecutor’s obligations.

20 This in turn means that the individual prosecutor has a duty to learn
21 of any favorable evidence known to the others acting on the govern-
22 ment’s behalf in the case, including the police. But whether the
23 prosecutor succeeds or fails in meeting this obligation (whether, that
24 is, a failure to disclose is in good faith or bad faith), the prosecution’s
responsibility for failing to disclose known, favorable evidence rising
to a material level of importance is inescapable.

25 The State of Louisiana would prefer an even more lenient rule. It pleads
26 that some of the favorable evidence in issue here was not disclosed
27 even to the prosecutor until after trial, and it suggested below that it
28 should not be held accountable under Bagley and Brady for evidence
known only to police investigators and not to the prosecutor. To
accommodate the State in this manner would, however, amount to a
serious change of course from the Brady line of cases. In the State’s

1 favor it may be said that no one doubts that police investigators some-
times fail to inform a prosecutor of all they know.

2 But neither is there any serious doubt that "procedures and
3 regulations can be established to carry [the prosecutor's] burden
4 and to insure communication of all relevant information on each
5 case to every lawyer who deals with it." Since then, the prosecutor
6 has the means to discharge the government's Brady responsibility
7 if he will, any argument for excusing a prosecutor from disclosing
8 what he does not happen to know about boils down to a plea to
substitute the police for the prosecutor, and even for the courts
themselves, as the final arbiter's of the government's obligation to
ensure fair trials. Kyles at 437-438 (citations omitted).

9 There can be little question, therefore, that despite its "open file policy," the prosecution
10 has an affirmative duty to seek out the previously discussed Brady material, regardless of whether
11 such material is in the hands of the prosecutor or in the hands of some other entity acting on behalf
12 of the State.

13 *V. Brady requests*


14 Based on the foregoing law and analysis, the Defendant requests that the following Brady
15 material be produced by the State:

- 16 1. Disclosures of any and all compensation, express or implied promises of
17 favorable treatment or leniency, or any other benefit that any of the State's
18 witnesses received in exchange for their cooperation with this prosecution,
19 including, but not limited to, any express or implied promise made to any
20 witness to provide counseling and/or treatment.
- 21 2. Complete criminal histories of all State witnesses, including, but not limited to,
22 out-of-state arrests and convictions, outstanding arrest warrants or bench
23 warrants, and cases which were dismissed or not pursued by the prosecuting
24 agency.
- 25 3. Disclosures of any and all statements made by any State witness, or any other
26 person, at any time that are in any manner inconsistent with the written and/or
27 recorded statements previously provided to the defense. Including, but not
28 limited to, any statements made by the Defendant to police and the initial report
to mesquite police by Millie Tara.

1 4. Requests for and/or results of any and all crime scene analysis and/or testing
2 performed on any of the physical or biological evidence in this case, including,
3 but not limited to, the results of any DNA comparisons and/or medical
4 examinations performed on the complaining witness.
5

6
7 DATED this 17 day of November, 2006.

8 PHILIP J. KOHN
9 CLARK COUNTY PUBLIC DEFENDER

10 By 
11 KATHLEEN M. HAMERS, #9049
12 Deputy Public Defender
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 30th day of November, 2006, at 8:30 a.m..

DATED this 17 day of November, 2006.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By (Kathleen M. Hamers)
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion to Compel Disclosure of Exculpatory Evidence is hereby acknowledged this 17th day of November, 2006.

CLARK COUNTY DISTRICT ATTORNEY

By Carly Pannuki

17
ORIGINAL

1 NOTC

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 NOREEN C. NYIKOS
6 Deputy District Attorney
7 Nevada Bar #008213
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

Nov 20 3 29 PM '06

Shirley B. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 FREDDY MARTINEZ, aka)

13 Fredys A. Martinez, #1361243)

14 Defendant.)

CASE NO: C226586

DEPT NO: VII

15 NOTICE OF EXPERT WITNESSES
16 [NRS 174.234(2)]

17 TO: FREDDY MARTINEZ, aka Fredys A. Martinez, Defendant; and

18 TO: PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21 1. FULLER, Clayton, M. D., 2915 Charleston Blvd., #10, Las Vegas, Nevada, or
22 Designee: He is the attending physician for the victim in this case and will testify as to the
23 injuries inflicted upon the victim, and prognosis thereof.

24 2. KRUGER, Linda, T. P#1471, Director of Laboratory Services, Las Vegas
25 Metropolitan Police Department, or Designee: She is an expert in the area DNA technology
26 and will give scientific opinions related thereto. She is expected to testify regarding the
27 DNA profiling analysis and related procedures he performed in this case.

28 ///

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1 3. PAULETTE, Kristina, P#8805, Criminalist I, Las Vegas Metropolitan Police
2 Department, or Designee: She is an expert in the area DNA technology and will give
3 scientific opinions related thereto. She is expected to testify regarding the DNA profiling
4 analysis and related procedures he performed in this case.

5 4. YOUNG, Debbie, South West SANE, PO BOX 91093, St. George, UT, or
6 Designee: She will testify regarding the sexual assault examinations and the results thereof
7 performed on the victim in this case.

8 The substance of each expert witness' testimony and a copy of all reports made by or
9 at the direction of the expert witness has been provided in discovery.

10 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

11
12 DAVID ROGER
13 DISTRICT ATTORNEY
14 Nevada Bar #002781

15 BY


16 NOREEN C. NYIKOS
17 DEPUTY DISTRICT ATTORNEY
18 Nevada Bar #008213

19 CERTIFICATE OF FACSIMILE TRANSMISSION

20
21 I hereby certify that service of Notice of Expert Witness, was made this 20TH day of
22 November, 2006, by facsimile transmission to:

23 PUBLIC DEFENDER

24 455-5112

25 BY: D. Jason

26 Employee of the District Attorney's Office
27
28

05/18/2006 07:01

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CLAYTON FULLER

PAGE 24/25

Curriculum Vitae

Clayton G. Fuller, M.D.

Home Address1278 NW Baswell Drive
Bend, OR 977012259 Cascade Canyon Dr.
St George UT 84770

nm: 435 986-8154

541-342-6600
541-390-2594 and cgfuller@bibleheaven.net

Fax (435) 674-1766

Personal Statistics

Date of Birth
Birthplace
Spouse
Children
Languages
Religion

October 12, 1958
Mesa, Arizona
Marybeth Fuller
Landon (21), Matthew (15), Anna (13), Peter (10)
Fluent Dutch, some Spanish (mostly medical).
Church of Jesus Christ of Latter-day Saints

Undergraduate Training

Central State University
Edmond, Oklahoma
Magna Cum Laude, Bachelor of Science, 1982

Medical School

University of Oklahoma College of Medicine
Oklahoma City, Oklahoma
Doctor of Medicine, 1986

Internship

University of Southern California - PIH Family Practice Residency Program
Los Angeles County General Hospital
Los Angeles, California
June 1986 - July 1987, Peter Lee, M.D., Director

Residency

University of Southern California - PIH Family Practice Residency Program
Presbyterian Intercommunity Hospital
Whittier, California
July 1987 - July 1989, Theodore Zwemex, M.D., Director

**Work Experience
Emergency Medicine**

Northwest Emergency Physicians
Pioneer Memorial Hospital, Prineville, Oregon
St. Charles Medical Center - Rainier, Rainier, Oregon
January 2000 - present

Canine Valley Hospital, Arlington, Washington
Hennrich Memorial Hospital, Enumclaw, Washington
March 1997 - December 1999

Coastal Emergency Services
Sawyer Hospital, Moses Lake, Washington
December 1994 - March 1997
Valley General Hospital, Monroe, Washington
February 1993 - October 1994

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CLAYTON FULLER

PAGE 01/05

Covina Valley Community Hospital, Covina, California
December 1990 - May, 1991

Work Experience
Administrative

Emergency Department Medical Director
Primer Memorial Hospital, Prineville, Oregon
October, 2002 - present

Work Experience
Family Practice

Family Medicine of Redmond
Redmond, Washington
July 1996 - March 2000

Pacific Medical Clinic at Totem Lake
Kirkland, Washington
July 7, 1992 - July 1996

Clytus G. Fuller, M.D. A Medical Corporation
Glendon, California
July 1989 - June 30, 1992

State Licensure

California, G60872, issued 8/3/87 (inactive)
Washington, MD00029623, issued 4/23/92 (inactive)
Oregon, MD22269, issued 4/21/00 (active)

Specialty
Certifications

Diplomat, American Board of Family Practice, July 1989 - December 2010

Board Eligible, American Association of Physician Specialists - Emergency Medicine, November 2004

Additional
Certifications

Advanced Cardiac Life Support Provider, 11/03 - 11/05
Advanced Trauma Life Support Provider, 11/01 - 11/05
Pediatric Advanced Life Support Provider, 11/03 - 11/05

Faculty Position

Clinical Assistant Professor of Family Medicine, University of Southern California, School of Medicine, 1990-1992

Publications

Extracapsular Localization of Testicular-Stage MDX in Design Cystic Testisoma, Fuller C, Leonard JC, Clin Nucl Med, 11(8):574-6 (Aug 86).

Demonstration of Azygous Vein Collateral Flow, Leonard JC, Fuller C, Lowe A, Clin Nucl Med, 11(10):738-9 (Oct 86).

Curriculum vitae Clayton G. Fuller, M.D. page -2-

Statement of Qualifications
 Name: Linda T. Errichetto
 Page: 2

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
 FORENSIC LABORATORY
 STATEMENT OF QUALIFICATIONS**

Date: 4-16-03

Name: Linda T. Errichetto P#: 1471 Classification: Director of Laboratory Services

Current Discipline of Assignment: Management/Administrative

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks		Breath Alcohol	
Trace Evidence - hairs	X	Arson Analysis	
Toxicology	X	Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Thiel College, Greenville, PA	9/72 → 5/76	Chemistry	BA
University of Pittsburgh	9/76 → 6/77	Forensic Chemistry	MS
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
Northeast Association of Forensic Scientists	New York	10/76	
Beckman Infrared Seminar	Las Vegas	8/75	

Statement
Name:
Page: 2

of
Linda T. Errichetto

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
American Academy of Forensic Sciences	San Diego	2/77
American Academy of Forensic Sciences	Las Vegas	2/85, 2/89
American Academy of Forensic Sciences	Anaheim	2/91
American Academy of Forensic Sciences	Seattle	2/95
American Academy of Forensic Sciences	Reno, NV	2/00
California Association of Criminalists	Irvine	10/87
Toxicology Workshop	Orange County Sheriff's Office	5/80
Semen Identification Course	Serological Research Institute Emeryville, CA	10/85
Rofin Polilight Training	Las Vegas	4/91
Isoelectric Focusing	Analytical Genetic Testing Center, Inc. Denver, CO	3/92
American Society of Crime Lab Directors	FBI FSRTC, Quantico, VA	9/93, 9/95, 9/96
CA Association Crime Lab Directors	Las Vegas	4/96
CA Association of Crime Lab Directors	San Diego, CA	4/97
American Society of Crime Lab Directors	San Antonio, TX	9/97
American Society of Crime Lab Directors	Memphis, TN	9/98
American Society of Crime Lab Directors	Buffalo, NY	9/00
American Society of Crime Lab Directors	Phoenix, AZ	12/01
American Society of Crime Lab Directors	Tampa, FL	10/02
The National Forensic Science Technology Center Laboratory Auditing Course	Las Vegas, NV	6/99
American Academy of Forensic Science	Seattle, WA	2/01
Convicted Offender Statute Meeting	Reno, NV	5/02
Daubert Seminar sponsored by the American Board of Forensic Document Examiners	Las Vegas, NV	6/02
US Dept. of Justice / FBI / 30 th Annual Symposium		

Statement
Name:
Page: 2

of
Linda T. Errichetto
Qualifications

ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
on Crime Laboratory Development	St. Louis, MO	9/02
Why Things Go Right, Why Things Go Wrong; Ethical Decision Making	Las Vegas, NV	10/02
Employee Performance Support System	Las Vegas, NV	11/02
Executive Development - LVMPD	Las Vegas / Mesquite, NV	01/03
Forensic Approaches to Mass Disasters / CAC/NWAFS Meeting	Reno, NV	04/03

COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Clark County District Court	All above disciplines	*
Justice Court of Las Vegas Township, Clark County, Nevada	All above disciplines	*
Municipal Court of Las Vegas	Blood Alcohol, Controlled Substances	*
Municipal Court of Henderson	Blood Alcohol	*
Municipal Court of Boulder City	Blood Alcohol	*
Justice Court of Beatty, Nye County, Nevada	Blood Alcohol, Controlled Substances and Serology	*
Nye County District Court	Controlled Substances	*
United States Federal Court	Blood Alcohol , Controlled Substances and Serology	*
Nellis A.F.B. Adjutant General's Office	Serology, Controlled Substances	*
		*Qualified as an Expert Witness over 300 times.

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Criminalist	8/77 → 8/93
Las Vegas Metropolitan Police Department	Director of Lab Services	8/93 → present
University of Nevada at Las Vegas	guest lecturer/instructor	88 → 95
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>		<i>Date(s)</i>
American Society of Crime Lab Directors		94 → present
California Association of Crime Lab Directors		95 → present
American Academy of Forensic Sciences		86 → present
California Association of Criminalists		87 → present
Northwest Association of Forensic Scientists		96 → present
PUBLICATIONS / PRESENTATIONS:		
"Detection of Drugs in Bloodstains, II: Morphine" <i>Journal of Forensic Science</i> , Vol 25, No. 2, April 1980.		
"Victims, Suspects, and Aids" California Association of Crime Lab Directors 1/1990		
"DNA: Meaningful - Not Magical" Western States Sexual Assault Seminar, May, 1991.		
OTHER QUALIFICATIONS:		
Governor's Committee on Testing for Intoxication, member, 1984, 1993 → present		
Technical Working Group on Education and Training in Forensic Sciences, member, July 01 - August 02		
American Society of Crime Lab Directors, Management Survey, Committee Member (97) - Nominating Committee Member (99) - Membership Committee (99)		
American Society of Crime Lab Directors, Board of Directors, September 2000 - present		

Curriculum Vitae

KRISTINA PAULETTE

Las Vegas Metropolitan Police Department
Forensic Laboratory
5606 W. Badura, Suite 120B
Las Vegas, NV 89118
(702) 229-3949
k8805p@lvmpd.com

EMPLOYMENT

July 2005 - Present

Las Vegas Metropolitan Police Department Forensic Laboratory, Las Vegas, Nevada
Criminalist I, Forensic Casework

Performs serological screening, conducts PCR analysis of forensic casework, interprets data from forensic casework, generates reports, and provides court testimony.

February 2004 –
July 2005

Mitochondrial DNA Sequencing
Orchid Cellmark Dallas, Dallas, Texas
Forensic DNA Analyst II

- Served as the mitochondrial analyst for each of the Orchid labs (Forensics/Genetics/Paternity).
- Specialized in the testing of compromised/difficult samples including hair without roots, bone, and ancient DNA
- Assisted with research and development of Y-STR sting/databasing

August 2003 –
January 2004

Contract Casework
Orchid Cellmark Dallas, Dallas, Texas
Forensic DNA Analyst II

Performed serological screening, conducted PCR analysis of forensic casework, interpreted data from forensic casework, and generated reports.

Fort Worth PD, Supporting Analyst, Suspect and no-suspect casework
Louisiana, Supporting Analyst, No-suspect casework

KRISTINA PAULETTE
Curriculum Vitae
Page -1 -

EDUCATION

2003 M.S. Forensic Science, The University of Alabama at
Birmingham, Birmingham, AL,

2000 B.A. Biology, The University of Texas, Austin, TX,

TRAINING

2004 Mitochondrial Analyst Qualified — Orchid Cellmark
Forensics, Dallas, TX

2003 Forensic Analyst Qualified — Orchid Cellmark Forensics,
Dallas, TX

LABORATORY EXPERIENCE

May 2002 – Present	DNA Extractions
May 2002 – Present	Amplification
May 2002 – Present	Analysis
September 2003 – Present	Reports
August 2002 – July 2005	Mitochondrial Sequencing
August 2002 – July 2005	Mitochondrial Analysis

PROFESSIONAL ASSOCIATIONS

February 2007 American Academy of Forensic Sciences – Student
Member, Applicant for Trainee Affiliate – to be approved

CONTINUED EDUCATION/TRAINING

October 9, 2006 Workshop: Advanced Topics in Statistics — Nashville, TN

October 9-12, 2006 Promega Corporation's 17th International Symposium on Human
Identification – Nashville, TN

August 29-31, 2006 Complex Mixture Interpretation Training — Lakewood, CO

July 25-26, 2006 FBI Audit Training — Fredericksburg, VA

February 23, 2006 Seminar: Racial Profiling SNPs — Seattle, WA

February 22, 2006 Seminar: The Atypical Serial Killer — Seattle, WA

February 21, 2006 Workshop: Sexual Homicide – Fantasy Becomes a Reality —
Seattle, WA

February 21, 2006 Seminar: Bioterrorism Mass Disasters — Seattle, WA

KRISTINA PAULETTE
Curriculum Vitae
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February 20, 2006	Workshop: Advanced Topics in STR DNA Analysis — Seattle, WA
February 20-25, 2006	American Academy of Forensic Sciences Annual Meeting — Seattle, WA
September 30, 2005	Accommodating the Demands of Increasing Volume: A Workshop for Public and Private, DNA Profiling Laboratories — Dallas, TX
September 29, 2005	Workshop: Implementing Automation in the Lab — Dallas, TX
September 26, 2005	Workshop: Presenting DNA Evidence in Court — Dallas, TX
September 26-30, 2005	Promega Corporation's 16 th International Symposium on Human Identification — Dallas, TX
September 25, 2005	Scientific Working Group on DNA Analysis Methods Annual Meeting — Dallas, TX
February 16, 2004	Workshop: Mitochondrial DNA — Dallas, TX
February 16-21, 2004	American Academy of Forensic Sciences Annual Meeting — Dallas, TX
February 17-22, 2003	American Academy of Forensic Sciences Annual Meeting — Chicago, IL
May 29-31, 2002	North Carolina State University Summer Institute of Statistical Genetics — Raleigh, NC
February 12, 2002	Young Forensic Scientists Forum — Atlanta, GA
February 11-16, 2002	American Academy of Forensic Sciences Annual Meeting — Atlanta, GA

KRISTINA PAULETTE
Curriculum Vitae
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Curriculum Vitae

Deborah B. Young
South West SANE
PO Box 910193
St. George, Utah 84791-0193
Pager 1-435-755-4645
southwestsane@hotmail.com

Education

December 1989 Utah Valley State College, Orem, Utah
 -Licensed Practical Nurse Certificate

May 1991 Utah Valley State College, Orem, Utah
 -Associate of Science in Nursing

May 2006 Southern Utah University, Cedar City, Utah
 -Bachelor of Science in Nursing

Additional Education and Training

November 2002 Sexual Assault Nurse Examiner (SANE) Training Course,
 Provo, Utah, November 18-22, 2002. Received 42 contact hours.

April 2004 Sexual Assault Nurse Examiner Training Course, Salt Lake City,
 Utah, April 13-14, 2004. Received 23 contact hours.

May 2005 Domestic Violence Forensic Wound Identification and
 Documentation Workshop, Provo, Utah, May 20, 2005. Received
 7.7 contact hours.

Sept 2005 Attended the 13th annual International Association of Forensic
 Nurses Scientific Assembly, September 21-25, Washington D.C.
 Received 24 contact hours. Examples of classes attended:
 "Predictors of Injury with Rape", "Role of Forensic Nursing",
 "Genital Modifications", and "Peer Reviewed Case Review and
 Slide Night". Also attended pre-conference workshop, "Pediatric
 Sexual Assault Exam".

April 2006 Forensic Wound Identification, Peer review Case and Slide
 Review, Cedar City, Utah, April 8, 2006. Received 1.8 contact

hours.

September 2006

Attended the 14th annual International Association of Forensic Nurses Scientific Assembly, Vancouver, BC, September 26-October 1. Received 24.3 contact hours. Examples of classes "Child Pornography on the Internet", "Genital examinations: Variations On a Theme", "In the Event of Death..Forensic Aspects Of Care", "Injury Documentation, Do's & Don'ts", "Peer Review Case and Slide Review".

Licenses

Registered Nurse in Utah and Nevada

Employment and Work Experience

2000-present

Intermountain Healthcare, Dixie Regional Medical Center
Emergency Department (ED), St. George, Utah

Charge nurse and staff RN in ED

- Duties and Responsibilities include implementing nursing process
- In taking care of pediatric and adult patients in emergent, traumatic, and critical situations
- Have assisted ED doctor with >1000 pelvic exams
- Manage staff nurses, ED techs, and overall flow of the ED in a charge nurse role

2005-present

Mesa View Regional Hospital Emergency Department, Mesquite, Nevada

Staff RN in Emergency Department

2005-present

South West SANE, Inc., St. George, Utah

- Co-founder of South West SANE, Inc., and Executive Director
- Manage day to day operation of South West SANE
- SANE for adolescent and adult victims of acute sexual assault and collection of forensic evidence for law enforcement
- To date, have performed >50 sexual assault exams since 2002
- Active participant in the sexual assault response team (SART) Model in Washington and Iron Counties in Utah and Mesquite, Nevada

p. 2

435-634-0386
11/20/2006 01:08PM * Pg 2/4

To: Noreen Nyikos at 702-477-2998

Received Successfully
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- 2002-2005 Independent SANF for adolescent and adult victims of acute sexual assault and collection of forensic evidence for law enforcement
- Active participant in the SART in Washington and Iron Counties in Utah
- 1999-2000 Intermountain Healthcare, Utah Valley Regional Medical Center, Cardiovascular Unit, Provo, Utah
- Staff RN on Cardiovascular Unit
- Implemented nursing process-examples of patients on unit: patients requiring telemetry, low dose cardiovascular drips, and post open heart surgical patients
- 1996-1999 Intermountain Healthcare, Utah Valley Regional Medical Center, Medical/Oncology Unit, Provo, Utah
- Staff RN on Medical/Oncology Unit
- Implemented nursing process-examples of patients on unit: cancer/chemotherapy patients, respiratory, neuro, and GI patients
- 1996-2001 Applegate Home Health, American Fork and St. George, Utah
- Case manager of home bound patients
- Managed RN's and certified nursing assistants (CNA) 1997-1999
- 1995-1996 Intermountain Healthcare, American Fork Hospital, Transitional Care Unit, American Fork, Utah
- Staff RN on Transitional Care Unit
- 1990-1995 Crestview Convalescent Center, Provo, Utah
- Charge Nurse in Skilled Nursing Facility

Professional Associations

Member of:

Emergency Nurses Association (ENA)
International Association of Forensic Nurses (IAFN)

Current Chapter President (2006-2008) of the Utah Chapter of International Association of Forensic Nurses (UIAFN)

Certifications

2004 SANE-A certification, expires 10-2007

Also hold certifications in:

Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), Trauma Nursing Core Course (TNCC), Advanced Trauma Course for Nurses (ATCN), and Emergency Nursing Pediatric Course (ENPC)

p. 4

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To: Noreen Myikos at 702-477-2998

Received Successfully
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*** TX REPORT ***

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TX/RX NO 3872
CONNECTION TEL 4555112
SUBADDRESS
CONNECTION ID
ST. TIME 11/20 16:26
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1 NOTC

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 NOREEN C. NYIKOS
6 Deputy District Attorney
7 Nevada Bar #008213
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

CASE NO: C226586

11 -vs-)

DEPT NO: VII

12 FREDDY MARTINEZ, aka)

13 Fredys A. Martinez, #1361243)

14 Defendant.)

15 NOTICE OF EXPERT WITNESSES
16 [NRS 174.234(2)]

17 TO: FREDDY MARTINEZ, aka Fredys A. Martinez, Defendant; and

18 TO: PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

Shirley Blanton
CLERK

NOTC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213
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-

FREDDY MARTINEZ, aka
Fredys A. Martinez, #1361243
Defendant.

CASE NO: C226586

DEPT NO: VII

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: FREDDY MARTINEZ, aka Fredys A. Martinez, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
BARR, L.	Mesquite PD
BRIGGS, M. L.	LVMPD #8503
CHARLES, S.	Mesquite PD
CUSTODIAN OF RECORDS or Designee	LVMPD Communications
CUSTODIAN OF RECORDS or Designee	LVMPD Records
CUSTODIAN OF RECORDS or Designee	MESA VIEW HOSPITAL, Mesquite, NV
CUSTODIAN OF RECORDS or Designee	Mesquite PD Communications

1 CUSTODIAN OF RECORDS or Designee Mesquite PD Records
2 FULLER, Dr. Clayton 2915 W. Charleston Bl., LV, NV
3 GIVENS, T. D. LVMPD #5914
4 GROVER, B. C. LVMPD #4934
5 KAVON, S. J. LVMPD #4131
6 KRUGER, L. T. LVMPD #1471
7 LARSEN, C.J. Mesquite PD
8 MARTINEZ, Franklin 1661 N. Lamont St., LV, NV
9 RICHMOND, R. Mesquite PD
10 TARA, Millie 890 Kittyhawk Dr., #8, Mesquite, NV
11 TOMAINO, C. D. . LVMPD #4671
12 YOUNG, Debbie 1299 Bertha Howe Ave., Mesquite, NV

13 These witnesses are in addition to those witnesses endorsed on the Information and
14 any other witness for which a separate Notice has been filed.
15
16

17 BY



18 DAVID ROGER
19 DISTRICT ATTORNEY
Nevada Bar #002781

20 CERTIFICATE OF FACSIMILE TRANSMISSION

21 I hereby certify that service of Notice of Witnesses, was made this 20th day of
22 November, 2006, by facsimile transmission to:

23 PUBLIC DEFENDER

24 455-5112

25 BY: D. Jason

26 Employee of the District Attorney's Office
27
28

23
● ORIGINAL ●

FILED

Nov 28 4 29 PM '06

Livingston
CLERK

1 EXPT

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 NOREEN C. NYIKOS
6 Deputy District Attorney
7 Nevada Bar #008213
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 FREDDY MARTINEZ, aka)
13 Fredys A. Martinez, #1361243)

14 Defendant.)

Case No. C226586

Dept No. VII

16 EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS

17 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
18 NOREEN C. NYIKOS, Deputy District Attorney, and moves this Honorable Court for an
19 Order Releasing evidence being held by MESA VIEW HOSPITAL, located at 1299 Bertha
20 Howe Avenue, Mesquite, NV, consisting of medical records for patient: BIANCA
21 HERNANDEZ, DOB: 09/23/1965, admitted on or about the 16th day of August, 2006, to be
22 released to a representative of the DISTRICT ATTORNEY'S OFFICE for the purpose of
23 prosecuting the above referenced case. These records are necessary to establish the degree
24 and substance of the injuries inflicted upon the said BIANCA HERNANDEZ.

25 ///

26 ///

27 ///

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RECEIVED
NOV 28 2006
COUNTY CLERK

1 Movant represents that the information sought is relevant and material to a legitimate
2 law enforcement inquiry; that the request is specific and limited in scope to the extent
3 reasonably practicable in light of the purpose for which the information is sought; and that
4 identified information could not reasonably be used.

5
6
7 DATED this 20th day of November, 2006.

8 DAVID ROGER
9 Clark County District Attorney
Nevada Bar #002781

10 BY 

11 NOREEN C. NYIKOS
12 Deputy District Attorney
13 Nevada Bar #008213
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Nov 28 4 30 PM '06

Lucy F. Ruggione
CLERK

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213
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-

FREDDY MARTINEZ, aka
Fredys A. Martinez, #1361243
Defendant.

Case No. C226586

Dept No. VII

ORDER RELEASING MEDICAL RECORDS

Upon the ex parte application and representation of DAVID ROGER, Clark County District Attorney, by and through NOREEN C. NYIKOS, Deputy District Attorney, that certain evidence in Case No.C226586, held in the custody of MESA VIEW HOSPITAL, located at 1299 Bertha Howe Avenue, Mesquite, NV, needs to be released to a representative of the DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case. These records are necessary to establish the degree and substance of the injuries inflicted upon the said BIANCA HERNANDEZ.

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RECEIVED

NOV 28 2006

CLERK

1 IT IS HEREBY ORDERED that the evidence in the custody of the MESA VIEW
2 HOSPITAL, located at 1299 Bertha Howe Avenue, Mesquite, NV, consisting of medical
3 records for patient: BIANCA HERNANDEZ, DOB: 09/23/1965, admitted on or about the
4 16th day of August, 2006, be released to a representative of the DISTRICT ATTORNEY'S
5 OFFICE.

6 DATED this 28 day of November, 2006.

7
8 
DISTRICT JUDGE

9
10 DAVID ROGER
11 DISTRICT ATTORNEY
12 002781

13 BY


14 NOREEN C. NYIKOS
15 Deputy District Attorney
16 Nevada Bar #008213
17
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27
28


CLERK

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
NOREEN C. NYIKOS
Deputy District Attorney
Nevada Bar #008213
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-)
)
FREDDY MARTINEZ,)
#1361243)
)
Defendant.)

CASE NO: C226586
DEPT NO: VII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL
EXCULPATORY EVIDENCE
DATE OF HEARING: 11-30-2006
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
NOREEN C. NYIKOS, Deputy District Attorney, and hereby submits the attached Points
and Authorities in Opposition to Defendant's Motion to Compel Exculpatory Evidence.

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.

///
///
///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 Defendant was charged by way of Grand Jury Indictment filed on September 29, 2006
4 with Burglary with Use of a Deadly Weapon, Battery with Use of a Deadly Weapon, First
5 Degree Kidnapping with Use of a Deadly Weapon, and Sexual Assault with Use of a Deadly
6 Weapon. Defendant was arraigned and pled not guilty on October 5, 2006. Defendant
7 invoked his right to speedy trial on that date as well.

8 Trial was originally set to begin on November 13, 2006. Defendant moved for a
9 continuance on November 9, 2006 and the trial was reset for December 4, 2006.

10 Defendant filed the instant motion on November 17, 2006.

11 ARGUMENT

12 The State concedes that its obligation to Defendant in this and every other case is to provide
13 discovery pursuant to the provisions of NRS 174.235 et seq., together with any exculpatory
14 material pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) and its progeny.

15 NRS 174.235 states:

16 1. Except as otherwise provided in NRS 174.233 to NRS 174.295
17 inclusive, at the request of a defendant, the prosecuting attorney
shall permit Defendant to inspect and to copy or photograph any:

18 (a) Written or recorded statements or confessions made by
19 Defendant, or any written or recorded statements made by a
20 witness the prosecuting attorney intends to call during the case in
chief of the state, or copies thereof, within the possession,
custody or control of the state, the existence of which is known,
or by the exercise of due diligence may become known, to the
prosecuting attorney;

21 (b) Results or reports of physical or mental examinations,
22 scientific tests or scientific experiments made in connection with
the particular case, or copies thereof, within the possession,
custody or control of the state, the existence of which is known,
or by the exercise of due diligence may become known, to the
prosecuting attorney; and

23 (c) Books, papers, documents, tangible objects, or copies thereof,
24 which the prosecuting attorney intends to introduce during the
case in chief of the state and which are within the possession,
custody or control of the state, the existence of which is known,
or by the exercise of due diligence may become known, to the
prosecuting attorney.

25 2. Defendant is not entitled, pursuant to the provisions of this
26 section, to the discovery or inspection of:
27
28

1 (a) An internal report, document or memorandum that is
2 prepared by or on behalf of the prosecuting attorney in
connection with the investigation or prosecution of the case.

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

6 3. The provisions of this section are not intended to affect any
7 obligation placed upon the prosecuting attorney by the
8 constitution of this state or the Constitution of the United States
to disclose exculpatory evidence to Defendant.

9 In the case of Riddle v. State, 96 Nev. 589, 613 P.2d 1031 (Nev. 1980) the Nevada Supreme
10 Court reaffirmed the strictures of the provisions of our discovery statutes by making the
11 following statement:

12 The trial court is vested with the authority to order the discovery
13 and inspection of materials in the possession of the State. The
14 exercise of the court's discretion however is predicated on a
showing that the evidence sought is material to the presentation
15 of the defense and the existence of the evidence is known or, by
the exercise of due diligence may become known to the District
Attorney.

16 Id. at 390.

17 In his attempt to justify his acquisition of the requested items, Defendant relies on
18 Mazzan v. Warden, 116 Nev. 48, 993 P.2d 25 (2000) by stating on page 5 of the instant
19 motion: "The Nevada Supreme Court has spoken directly to what is considered 'favorable to
20 the accused' and therefore proper Brady material." Defendant then goes on to quote a
21 section of Mazzan to support his contention.

22 At first blush, Mazzan appears to give the defense a blank check for acquiring any
23 and all things that exist. However, a closer reading of this case reveals that it did not remove
24 the other requirements of materiality pursuant to Brady and its progeny:

25 Brady and its progeny require a prosecutor to disclose evidence
26 favorable to the defense when that evidence is **material** either to
guilt or to punishment. See Jimenez v. State, 112 Nev. 610, 618-
27 19, 918 P.2d 687, 692 (1996).

28 In other words, evidence is material if there is a reasonable
probability that the result would have been different if the
evidence had been disclosed. Id.

1 Id. at 66, 36 (emphasis added).

2 In determining its materiality, the undisclosed evidence must be
3 considered collectively, not item by item. Kyles v. Whitley, 514
4 U.S. at 436, 115 S.Ct. 1555. "[T]he character of a piece of
evidence as favorable will often turn on the context of the
existing or potential evidentiary record." Id. at 439, 1555.

5 Id. at 66-67, 36.

6 In sum, there are three components to a Brady violation: the
7 evidence at issue is favorable to the accused; the evidence was
8 withheld by the state, either intentionally or inadvertently; and
prejudice ensued, i.e., the evidence was **material**. Strickler v.
Greene, 527 U.S. 263, 119 S.Ct. 1936, 1948, (1999).

9 Id. at 67, 37 (emphasis added).

10 There will only be a Brady violation if the prosecution fails to provide material
11 evidence. As stated in Mazzan, evidence is material if there is a reasonable probability that
12 the result would have been different if the evidence had been disclosed. A reasonable
13 probability is shown when the nondisclosure undermines confidence in the outcome of the
14 trial.

15 Obviously, Mazzan and the majority of the cases that discuss Brady violations are
16 post-conviction proceedings. However, in those cases, it was required that it be shown that
17 the excluded evidence was material in that it might have changed the outcome of the case.
18 Because Defendant is asking for items which he contends are possibly exculpatory under the
19 blanket of Mazzan and consequently Brady, it is the State's position that Defendant should
20 have to show materiality to obtain them.

21 **Requested Item Number One (1):**

22 Defendant is requesting "disclosures of any and all compensation, express or implied
23 promises of favorable treatment or leniency, or any other benefit that any of the State's
24 witnesses received in exchange for their cooperation with this prosecution, *included but not*
25 *limited to, any express or implied promise made to any witness to provide counseling and/or*
26 *treatment.*"

27 As of this date, no promises of leniency, special treatment or compensation have been
28 made to any witness in exchange for his or her testimony in this case. Likewise, no such

1 promises are foreseeable; however, the State will gladly disclose any future promises of
2 leniency or other benefits made to witnesses in exchange for testimony should they arise.

3 The State, however, contends with Defendant's request for disclosure of promises to
4 provide counseling or treatment services. Defendant is not entitled to this information. Any
5 benefits or assistance given by the Victim Witness Assistance Center (VWAC) to State
6 witnesses certainly cannot be construed to fall under the same umbrella as inducements
7 offered by the District Attorney for their testimony. Moreover, Defendant has shown no
8 justification, relevance or materiality for this request and it should be summarily denied.

9 **Requested Item Number Two (2)**

10 Defendant next requests complete criminal histories of all witnesses, "including but
11 not limited to, out-of-state arrests and convictions, outstanding arrest warrants or bench
12 warrants, and cases which were dismissed or not pursued by the prosecuting agency."

13 As a user of the National Crime Information Center (NCIC) database, the State is
14 prohibited from disseminating criminal history information to non-criminal justice agencies
15 as defined by Title 28 Code of Federal Regulations (CFR)§ 20.3, which describes a criminal
16 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which
17 performs the administration of criminal justice pursuant to a statute or executive order, and
18 which allocates a substantial part of its annual budget to the administration of criminal
19 justice. Unless specifically authorized by federal law, access to the NCIC/III for non-
20 criminal justice purposes is prohibited.

21 A 1989 United States Supreme Court case looked at this issue from the standpoint of
22 an invasion of privacy and ruled accordingly:

23 Accordingly, we hold as a categorical matter that a third party's
24 request for law enforcement records or information about a
25 private citizen can reasonably be expected to invade that citizen's
26 privacy, and that when the request seeks no "official
information" about a Government agency, but merely records
that the Government happens to be storing, the invasion of
privacy is "unwarranted."

27 United States Department of Justice v. the Reporters Committee for Freedom of the Press,
28 109 S.Ct. 1468, 1485 (1989).

1 Criminal defense attorneys, public or private, are not within the definition of
2 "criminal justice agency," nor is the criminal defense function considered a "criminal justice
3 purpose." See NRS 179A.020 and 179A.030. Therefore, Defendant is not entitled to the
4 criminal history information he seeks.

5 However, if the State learns that any witness the State intends to call at trial has a
6 prior felony conviction within the last ten (10) years, which would be admissible for
7 impeachment purposes under NRS 50.095, the State will disclose that information to the
8 defense immediately.

9 **Requested Items Three (3) and Four (4)**

10 The State will provide the requested items that have not already been provided and
11 will provide others as they become available to the State.

12 Defendant is on a fishing expedition disguised as a request for exculpatory evidence
13 and is attempting to use the mandates of Brady as a tool for discovery. Moreover, Defendant
14 is attempting to use the mandates of Brady and its progeny as a standard to ascertain if the
15 requested items may impact his ability to prepare for trial or conduct his defense. The
16 United States Supreme Court in United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976)
17 has stated that this standard is unacceptable:

18 The proper standard of materiality must reflect our overriding concern with the
19 justice of the finding of guilt.^{FN20}

20 FN20. It has been argued that the standard should focus on the
21 impact of the undisclosed evidence on Defendant's ability to
22 prepare for trial, rather than the materiality of the evidence to the
23 issue of guilt or innocence. See Note, The Prosecutor's
24 Constitutional Duty to Reveal Evidence to the Defense, 74 Yale
25 L.J. 136 (1964). Such a standard would be unacceptable for
26 determining the materiality of what has been generally
27 recognized as "Brady material" for two reasons. First, that
28 standard would necessarily encompass incriminating evidence as
well as exculpatory evidence, since knowledge of the
prosecutor's entire case would always be useful in planning the
defense. Second, such an approach would primarily involve an
analysis of the adequacy of the notice given to Defendant by the
State, and it has always been the Court's view that the notice
component of due process refers to the charge rather than the
evidentiary support for the charge.

Id. at 112-113, 2401-2402.

1 Absent any explanation as to the relevance, reasonableness or materiality of any
2 evidence requested, the State objects to Defendant's overbroad motion. The State believes it
3 has given the defense all items in its possession that are discoverable. However, as stated
4 above, should the State come into possession of anything further, it will be turned over to the
5 defense immediately.

6 **CONCLUSION**

7 Based on the foregoing, Defendant's Motion for Discovery should be denied.

8 DATED this 28th day of November, 2006.

9 Respectfully submitted,

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

13
14 BY /s/ Noreen C. Nyikos
15 NOREEN C. NYIKOS
16 Deputy District Attorney
Nevada Bar #008213

17 **CERTIFICATE OF FACSIMILE TRANSMISSION**

18 I hereby certify that service of State's Opposition to Defendant's Motion to Compel
19 Exculpatory Evidence, was made this 28th day of November, 2006, by facsimile transmission
20 to:

21 **PUBLIC DEFENDER**

22 455-5112

23 BY: D. Jason

24 Employee of the District Attorney's Office
25
26
27
28

ORIGINAL

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2006 DEC 23 A 11:13

DISTRICT COURT

CLARK COUNTY, NEVADA

[Signature]
CLERK

IN THE MATTER OF THE)
TRIAL SCHEDULE OF DEPT. XXIV)
OF THE EIGHTH JUDICIAL)
DISTRICT COURT)

C 226586

New Trial Date: 01/29/07
Calendar Call: 01/25/07

ORDER RE-SETTING CRIMINAL JURY TRIALS PRESENTLY
SCHEDULED ON JANUARY 25, 2007 IN DEPT. XXIV

Commencing January 2, 2007, the Chief Judge has assigned Department XXIV as a "half civil/half criminal" department. To accommodate the civil trial stacks, the trial dates for some criminal cases heretofore set must be adjusted slightly as follows:

This order applies to those cases referenced below:

C198344 STATE V. ADOLPH MOORE

C 223025 STATE V. ERIC FIEBERG

C 224015 STATE V. LUIS ESPINOZA

C 226586 STATE V. FREDDY MARTINEZ

C 222822 STATE V. JOSE A. PEREZ

C 150278 STATE V. IVAN G. JIMENEZ

MCI

DEC 22 2006
COUNTY CLERK

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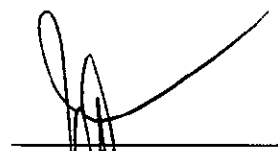
1 C 206238 STATE V. ARMANDO RAMIREZ, JR.
2 C 208712 STATE V. FRANCIS HELLAND
3 C 212038 STATE V. CHASTITY PACE
4 C 224953 STATE V. FERNANDO QUINONES-PEREZ
5 C 227505 STATE V. ANTHONY J. LAFRANCE
6 C 227537 STATE V. KEITH BOOKMAN
7
8
9

10 DATED this 22nd day of December, 2006.

11
12 
13 DISTRICT COURT JUDGE
14
15
16
17
18

19 CERTIFICATE OF SERVICE
20
21

22 The undersigned hereby certifies that on the date of the filing hereof, she
23 placed a copy of the foregoing Order was placed in the folders in the Clerk's Office
24 for each of the attorneys of record in the above-entitled matter.
25
26
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29 
30 Tatyana Ristic, Judicial Secretary
31 District Court, Dept XXIV
32
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FILED

2007 JAN 18 P 1:52

CR
SR
CLERK OF THE COURT

1 NOTC
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

«DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 v.)

10 FREDDY A. MARTINEZ,)

11 Defendant.)
12

CASE NO. C226586X

DEPT. NO. XXIV

13 **DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234**

14 TO: CLARK COUNTY DISTRICT ATTORNEY:

15 You, and each of you, will please take notice that the Defendant, FREDDY A.
16 MARTINEZ, intends to call the following witness in his case in chief:

17 Gregorio David Martinez-Matamoros
18 4615 E. Lake Mead #59
19 Las Vegas, Nevada

Investigator Naomi Conaway
309 S. Third St.
Las Vegas, Nevada

20 Maria Diaz
21 4615 E. Lake Mead #70
22 Las Vegas, Nevada

23 The Defense additionally hereby incorporates any and all witnesses noticed by the State in this
24 notice of witnesses.

25 DATED this 18 of January, 2007.

26 PHILIP J. KOHN
27 CLARK COUNTY PUBLIC DEFENDER

28 By *Kathleen M. Hamers*
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

MC

SS

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this

18 day of January, 2007.

CLARK COUNTY DISTRICT ATTORNEY

By

Judy Olney

Case Name: Freddy A. Martinez

Case No.: C226586X

Dcpt. No.: XXIV

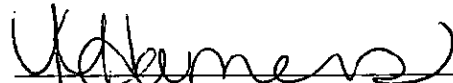
AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding pleading, DEFENDANT'S
NOTICE OF WITNESSES, filed in District Court Case No. C226586X, does not contain the
social security number of any person.

DATED: this 18th day of January, 2007.

CLARK COUNTY PUBLIC DEFENDER

By:


Kathleen M. Hamers, #9049
Deputy Public Defender

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ORIGINAL

FILED IN OPEN COURT

APR 11 2007

CHARLES J. SHORT
CLERK OF THE COURT

BY

TINA HURD

DEPUTY

JURL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff(s),

-vs-

FREDDY MARTINEZ,

Defendant(s).

CASE NO. C226586

DEPT. NO. VII

JURY

1. JEFFREY SHAWL

8. DAYNA PEDEN

2. RUTH OCHOA

9. SAYURI PEREZ

3. ERIN DAWSON

10. JAMES EAGAN

4. DANIEL ALLEN

11. LAURA RODRIGUEZ

5. PATRICIA L. AUSTIN

12. BARBARA GALIZIA

6. JOHN FRAGOSO

13. SHEILA EVARISTO

7. YU LEE

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JURL

ORIGINAL

FILED IN OPEN COURT
APR 12 2007

20/1.52am

CHARLES J. SHORT
CLERK OF THE COURT

BY

TINA HURD

DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

CASE NO. C226586

Plaintiff(s),

DEPT. NO. VII

-VS-

FREDDY MARTINEZ,

Defendant(s).

AMENDED

JURY

1. JEFFREY SHAWL

8. DAYNA PEDEN

2. RUTH OCHOA

9. SAYURI PEREZ

3. ERIN DAWSON

10. JAMES EAGAN

4. DANIEL ALLEN

5. PATRICIA L. AUSTIN

12. BARBARA GALIZIA

6. JOHN FRAGOSO

13. SHEILA EVARISTO

7. YU LEE

ALTERNATE

11. LAURA RODRIGUEZ

ORIGINAL

INST

FILED IN OPEN COURT

APR 12 2007

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CHARLES J. SHORT
CLERK OF THE COURT

BY

DEPUTY

TINA HURD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDDY MARTINEZ,

Defendant.

CASE NO: C226586

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.

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INSTRUCTION NO. 2

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.

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

In this case, it is charged in an Indictment that on or about the 16th day of August, 2006, the Defendant committed the offenses of BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Felony NRS 205.060); BATTERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.481); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); and SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364, 200.366, 193.165), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, in the manner following, to-wit: that the said Defendant,

COUNT 1 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: a knife, and with intent to commit kidnapping, that certain 2003 Ford Focus, bearing Nevada License No. 308TRL, owned by BIANCA HERNANDEZ.

COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: BIANCA HERNANDEZ, with use of a deadly weapon, to-wit: a knife, by cutting the said BIANCA HERNANDEZ in the thigh with said knife.

COUNT 3 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

did wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away BIANCA HERNANDEZ, a human being, with the intent to hold or detain the said BIANCA HERNANDEZ against her will, and without her consent, for the purpose of committing sexual assault, said Defendant using a deadly weapon, to-wit: a knife, during the commission of said crime.

COUNT 4 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously sexually assault and subject

1 BIANCA HERNANDEZ, a female person, to sexual penetration, to-wit: sexual intercourse,
2 by placing his penis into the genital opening of the said BIANCA HERNANDEZ, against
3 her will: Defendant using a deadly weapon, to-wit: a knife, during the commission of said
4 crime.

INSTRUCTION NO. 4

Every person who, by day or night, enters any vehicle, with the intent to commit a kidnapping therein is guilty of Burglary.

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INSTRUCTION NO. 5

It is not necessary that the State prove the defendant actually committed a felony inside the vehicle after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the vehicle with the intent to commit a kidnapping regardless of whether or not that crime occurred.

INSTRUCTION NO. 6

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit a kidnapping therein.

INSTRUCTION NO. 7

The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

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INSTRUCTION NO. 8

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the vehicle, or upon leaving the vehicle, is guilty of burglary while in possession of a weapon.

INSTRUCTION NO. 9

A Battery With a Deadly Weapon is any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon.

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Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person:

- 1) for ransom, or reward; or
- 2) for the purpose of committing sexual assault, extortion or robbery upon or from the person; or
- 3) for the purpose of killing the person or inflicting substantial bodily harm upon him; or
- 4) to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, is guilty of Kidnapping in the First Degree.

Kidnapping is of two degrees: First Degree Kidnapping and Second Degree Kidnapping. Second Degree Kidnapping is a lesser included offense of First Degree Kidnapping.

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing robbery upon or from the person, or to exact from relatives, friends, or other persons any money or valuable thing for the return or disposition of such kidnapped person is guilty of Kidnapping in the First Degree.

Every person who willfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the state, or for the purpose of conveying the person out of the state without authority of law, or in any manner held to service or detained against his will, is guilty of Kidnapping in the Second Degree.

It is the fact, not the distance, of forcible movement of the victim that constitutes kidnapping. However, a charge of kidnapping and an associated offense will lie only where movement of the victim is over and above that required to complete the associated crime charged.

INSTRUCTION NO. 12

False imprisonment is the unlawful violation of the personal liberty of another. False imprisonment means there must be an intentional and unlawful restraint, confinement or detention which compels a person to stay or go somewhere against his/her will.

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2 You are instructed that if you find that the State has established that the defendant has
3 committed first degree kidnapping you shall select first degree kidnapping as your verdict. The
4 crime of first degree kidnapping may include the crime of second degree kidnapping. You shall
5 find the defendant guilty of second degree kidnapping if:

6 (1) Some of you are not convinced beyond a reasonable doubt that the defendant is guilty
7 of first degree kidnapping, and

8 (2) All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of
9 the crime of second degree kidnapping.

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

14 You shall find the defendant guilty of false imprisonment if:

15 (1) Some of you are not convinced beyond a reasonable doubt that the defendant is guilty
16 of kidnapping, and

17 (2) All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of
18 the crime of false imprisonment.
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2 In order for you to find the defendant guilty of kidnapping and an associated offense
3 of sexual assault, you must also find beyond a reasonable doubt either:

- 4 (1) That any movement of the victim was not incidental to the sexual assault;
5 (2) That any incidental movement of the victim substantially increased the risk of harm to
6 the victim over and above that necessarily present in the sexual assault;
7 (3) That any incidental movement of the victim substantially exceeded that required to
8 complete the sexual assault;
9 (4) That the victim was physically restrained and such restraint substantially increased the
10 risk of harm to the victim; or
11 (5) The movement or restraint had an independent purpose or significance.

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13 "Physically restrained" includes but is not limited to tying, binding, or taping.
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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 fellatio, or any intrusion,
7 however slight, of any part of a person's body or any object manipulated or inserted by a
8 person into 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.

11 Fellatio means the male penis entering the mouth of another person. Any penetration
12 of the penis into the mouth, however slight, is sufficient to complete the crime of sexual
13 assault if done against the victim's will; evidence of emission is not necessary.

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INSTRUCTION NO. 16

There is no requirement that the testimony of a victim of sexual assault be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

Physical force is not necessary in the commission of sexual assault. The crucial question is not whether a person was physically forced to engage in a sexual assault but whether the act was committed without his/her consent or under conditions in which the defendant knew or should have known, the person was incapable of giving his/her consent or understanding the nature of the act. There is no consent where a person is induced to submit to the sexual act through fear of death or serious bodily injury.

A person is not required to do more than his/her age, strength, surrounding facts and attending circumstances make it reasonable for him/her to do to manifest opposition to a sexual assault.

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2 It is a defense to the charge of sexual assault that the defendant entertained a
3 reasonable and good faith belief that the alleged victim consented to engage in sexual
4 intercourse. If you find such reasonable, good faith belief, even if mistaken, you must give
5 the defendant the benefit of the doubt and find him not guilty of sexual assault. A belief that
6 is based upon ambiguous conduct by the alleged victim that is the product of force, violence,
7 duress, menace, or fear of immediate and unlawful bodily injury on the person of another is
8 not a reasonable and good faith belief.
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2 You must also determine whether or not a deadly weapon was used in the commission
3 of all crimes charged.

4 "Deadly weapon" means any instrument which, if used in the ordinary manner
5 contemplated by its design and construction, will or is likely to cause substantial bodily harm
6 or death; any weapon, device, instrument, material or substance which, under the
7 circumstances in which it is used, attempted to be used or threatened to be used, is readily
8 capable of causing substantial bodily harm or death; or a dangerous or deadly weapon
9 specifically described as an explosive or incendiary device, a dirk, dagger or switchblade
10 knife, a nunchaku or trefoil, a blackjack or billy club or metal knuckles; a gun, pistol, spring
11 pistol, revolver or other firearm; any dirk, dirk-knife, sword, sword cane, or any knife which
12 is made an integral part of a belt buckle or any instrument or weapon of the kind commonly
13 known as a slung shot, sand club, sandbag or machete.

INSTRUCTION NO. 20

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

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2 When a person is accused of committing a particular crime and at the same time and
3 by the same conduct may have committed another offense of lesser grade or degree, the
4 latter is with respect to the former, a lesser related offense.

5 If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the
6 offense charged, he may, however, be found guilty of any lesser related offense, if the
7 evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

8 The offense of Battery With Use of a Deadly Weapon necessarily includes the lesser
9 offense of Battery.
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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.

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2 Intent and motive are different concepts and should never be confused. Motive is
3 what prompts a person to act or fail to act. Intent refers only to the state of mind with which
4 the act is done or omitted.

5 Personal advancement and financial gain, for example, are two well-recognized
6 motives for much of human conduct. These praiseworthy motives, however, may prompt
7 one person to do voluntary acts of good while prompting another person to do voluntary acts
8 of crime.

9 Good motive alone is never a defense where the act done or omitted is a crime. The
10 motive of the defendant is, therefore, immaterial except insofar as evidence of motive may
11 aid in the determination of state of mind or the intent of the defendant.

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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
7 a doubt as would govern or control a person in the more weighty affairs of life. If the minds
8 of 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 merely 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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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 26

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

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It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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2 In deciding what the facts are, you may have to decide what testimony you believe
3 and what testimony you do not believe. You may believe all of what a witness said, or only
4 part of it, or none of it.

5 In deciding what testimony to believe, consider the witness' intelligence, the
6 opportunity the witness had to have seen or heard the things testified about, the witness'
7 memory, any motives that witness may have for testifying a certain way, the manner of the
8 witness while testifying, whether that witness said something different at an earlier time, the
9 general reasonableness of the testimony, and the extent to which the testimony is consistent
10 with any other evidence that you believe.
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2 The credibility or believability of a witness should be determined by his/her manner
3 upon the stand, his/her relationship to the parties, his/her fears, motives, interests or feelings,
4 his/her opportunity to have observed the matter to which he/she testified, the reasonableness
5 of his/her statements and the strength or weakness of his/her 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/her 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. 32

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State has proved the charges beyond a reasonable doubt.

INSTRUCTION NO. 33

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

INSTRUCTION NO. 34

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

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

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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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 counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a playback, you must carefully describe the testimony to
9 be played back so that the court recorder can arrange his/her notes. Remember, the court is
10 not at liberty to supplement the evidence.

INSTRUCTION NO. 36

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

APR 12 2007