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CHARLES J. SHORT
CLERK OF THE COURT

BY

TINA HURD

DEPUTY

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 FREDDY MARTINEZ,

11 Defendant.

CASE NO: C226586

DEPT NO: VII

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant FREDDY MARTINEZ, as
15 follows:

16 **COUNT 1** – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

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

18 ☒ Guilty of Burglary While In Possession of a Weapon

19 ☐ Burglary Without Possession of a Weapon

20 ☐ Not Guilty

21
22 We, the jury in the above entitled case, find the Defendant FREDDY MARTINEZ, as
23 follows:

24 **COUNT 2** – BATTERY WITH USE OF A DEADLY WEAPON

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

26 ☒ Guilty of Battery With Use of a Deadly Weapon

27 ☐ Battery Without Use of a Deadly Weapon

28 ☐ Not Guilty

JUDGMENT ENTERED

23 2007

CE-05

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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.

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23 JIM EAGAN
24 FOREPERSON
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JOC

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FILED

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Chaf Shin
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.

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

49
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

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 24 DAY OF MAY, 2007.

By: ~~Fredys Martinez~~
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 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 31 2007

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2007 JUN -6 A 11:42

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff(s),

vs.

FREDDY MARTINEZ aka FREDYS A.

MARTINEZ,

Defendant(s),

Case No: C226586

Dept No: VII

CASE APPEAL STATEMENT

1. Appellant(s): FREDDY MARTINEZ aka FREDYS A. MARTINEZ

2. Judge: STEWART BELL

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), FREDDY MARTINEZ aka FREDYS A. MARTINEZ

4. All Parties, Appeal:

Appellant(s), FREDDY MARTINEZ aka FREDYS A. MARTINEZ

Respondent, THE STATE OF NEVADA

5. Appellate Counsel:

Appellant/Proper Person
Freddy Martinez # 136243
330 South Casino Center
Las Vegas, NV 89101

Respondent
David Roger, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

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

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

FILED

JUN 19 9 58 AM '07

Clayton
CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C226586X
13 v.) DEPT. NO. VII
14 FREDDY A. MARTINEZ,)
15)
16 Defendant.)
17)
18)
19)
20)
21)
22)
23)
24)

25 CASE APPEAL STATEMENT

26 1. Appellant filing this case appeal statement:
27 Freddy A. Martinez.

28 2. Judge issuing the decision, judgment, or order
29 appealed from: Stewart L. Bell.

30 3. All parties to the proceedings in the district
31 court (the use of et al. To denote parties is prohibited): The
32 State of Nevada, Plaintiff; Freddy A. Martinez, Defendant.

33 4. All parties involved in this appeal (the use of et.
34 al. to denote parties is prohibited): Freddy A. Martinez,
35 Appellant; The State of Nevada, Respondent.

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CLERK OF THE COURT

1 5. Name, law firm, address, and telephone number of
2 all counsel on appeal and party or parties whom they represent:

3 PHILIP J. KOHN
4 Clark County Public Defender
5 309 South Third Street, #226
6 Las Vegas, Nevada 89155-2610

DAVID ROGER
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

7 Attorney for Appellant

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

8 Counsel for Respondent

9
10 6. Whether appellant was represented by appointed or
11 retained counsel in the district court: Appointed.

12 7. Whether appellant is represented by appointed or
13 retained counsel on appeal: Appointed.

14 8. Whether appellant was granted leave to proceed in
15 forma pauperis, and the date of entry of the district court order
16 granting such leave: N/A.

17 9. Date proceedings commenced in the district court
18 (e.g., date complaint, indictment, information, or petition was
19 filed): Grand jury indictment filed 09/29/06.

20 DATED this 18th day of June, 2007.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: 
24 KEDRIC A. BASSETT, #4214
25 Deputy Public Defender
26 309 S. Third Street, Ste. 226
27 Las Vegas, Nevada 89155
28 (702) 455-4685

1 RECEIPT OF COPY of the foregoing Case Appeal Statement
2 is hereby acknowledged this 19 day of June, 2007.

3 DAVID ROGER
4 CLARK COUNTY DISTRICT ATTORNEY

5
6 By: Margie English
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CLERK OF THE COURT

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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR No. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

FREDDY A. MARTINEZ,

Defendant.

CASE NO. C226586X

DEPT. NO. VII

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

DAVID ROGER, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
DEPARTMENT NO. VII OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Freddy A.
Martinez, presently incarcerated in the Nevada State Prison,
appeals to the Supreme Court of the State of Nevada from the
judgment entered against said Defendant on the 31st day of May,
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

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:


KEDRIC A. BASSETT, #4214
Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

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DISTRICT COURT 2007 JUN 28 P 1:44

CLARK COUNTY, NEVADA
CLERK OF THE COURT

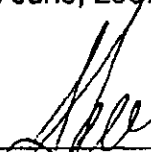
STATE OF NEVADA,)
)
 Plaintiff,)
)
 vs.)
)
 FREDDY MARTINEZ,)
)
 Defendant.)

CASE NO. C226586
DEPT. NO. VII

ORDER APPOINTING APPELLANT COUNSEL

Pursuant to Order of the Nevada Supreme Court,
IT IS HEREBY ORDERED that the Clark County Public Defender's
Office is hereby appointed as appellant counsel to represent the above-
named Defendant.

DATED this 27th day of June, 2007.


STEWART L. BELL
DISTRICT COURT JUDGE

RECEIVED
JUN 28 2007
CLERK OF THE COURT

STEWART L. BELL
DISTRICT JUDGE
DEPARTMENT SEVEN
LAS VEGAS, NEVADA 89155

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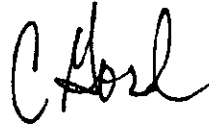
CERTIFICATE OF SERVICE

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 8-226586
DOES NOT contain the social security number of any person.

STEWART L. BELL

District Judge

Date 6-27-07

STEWART L. BELL
DISTRICT JUDGE
DEPARTMENT SEVEN
LAS VEGAS, NEVADA 89155

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Clerk of the Court

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

FREDDY MARTINEZ, aka,
FREDYS A. MARTINEZ,

Defendant.

CASE NO. C226586

DEPT. VII

ARRAIGNMENT HELD IN DEPT. LLA

BEFORE THE HONORABLE KEVIN V. WILLIAMS, DISTRICT COURT
ARRAIGNMENT MASTER

THURSDAY, OCTOBER 5, 2006

RECORDER'S TRANSCRIPT OF HEARING RE:
ARRAIGNMENT

APPEARANCES:

For the State:

SUSAN BENEDICT, ESQ.,
Deputy District Attorney

For the Defendant:

KATHLEEN M. HAMERS, ESQ.,
Deputy Public Defender

Also Present:

VERONICA PELAS,
Court Interpreter

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

CLERK OF THE COURT
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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.

13

14



Kiara Schmidt, Court Recorder/Transcriber

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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', is written over a horizontal line.

KIARA SCHMIDT, Court Recorder/Transcriber

Date: 7/17/07

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C. Landis
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

CLERK OF THE COURT

JUL 25 2007

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NELSON & NELSON
Certified Court Reporters

702.360.4677
Fax 360.2844

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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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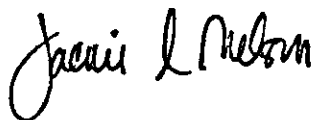
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3 **CERTIFICATE**
4
5
67 STATE OF NEVADA)
8) ss.
9 CLARK COUNTY)
10
1112 I, JACKIE NELSON, RPR, CCR 809, do hereby
13 certify that I reported the foregoing proceedings;
14 that the same is true and correct as reflected by my
15 original machine shorthand 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

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	
A	I	S	
agreement [2] - 2:11, 13 APPEARANCES [1] - 1:20 Attorney [1] - 1:22	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	
B	J	T	
Bixler [2] - 1:15, 4:16 BY [1] - 1:25	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	THE [7] - 1:6, 2:5, 16, 21, 24-25, 3:2 THURSDAY [2] - 1:17, 2:1 TRAN [1] - 1:1 Transcript [1] - 1:18 trial [2] - 3:1 true [1] - 4:14 Tuesday [3] - 2:18, 23, 25	
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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

15 Before the Hon. James M. Bixler
16 Regional Justice Center

17 TUESDAY, JANUARY 30, 2007
18 Reporter's Transcript of Proceedings

19
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
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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.)

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(Proceedings resumed.)

THE COURT: Recalling Freddy Martinez.
(Court Interpreter provided for Defendant.)

MS. HAMERS: Judge, Mr. Martinez had a few
changes of heart today.

I'm really not comfortable with him making
a decision one way or the other considering the
consequences of our conversation today.

And, Judge, if I could have a couple days
to speak to him some more, other than in court.

THE COURT: You want to pass it a week?

MS. HAMERS: That's fine with me if it's
okay with the State.

MR. BAUM: That's fine, your Honor.

As long as it's off the trial calendar.

MS. HAMERS: Yes. The trial's been
vacated.

THE COURT: We're not going to take his
plea. We're going to go back to ground zero, except
we are vacating the trial.

MS. HAMERS: We did that last week.

THE COURT: Oh, okay.

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.)

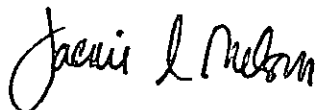
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CERTIFICATE

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

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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

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11 THE STATE OF NEVADA,
Plaintiff,

12 v.
FREDDY A. MARTINEZ,
Defendant.

Case No. C-226586-X
Dept. XXIV

13 _____/
14
15 TRANSCRIPT OF PROCEEDINGS

16 Calendar Call

17 COURTHOUSE

18 April 5, 2007

19 Las Vegas, Nevada

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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.
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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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1718 No other appearances.
1920 *****
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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 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, if he qualifies for
14 overflow, we are already kind of jammed so --

15 THE CLERK: And they can't go to overflow because
16 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
21 or not we can get them there in the time frame.

22 So what my suggestion would be is to go ahead,
23 send it 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 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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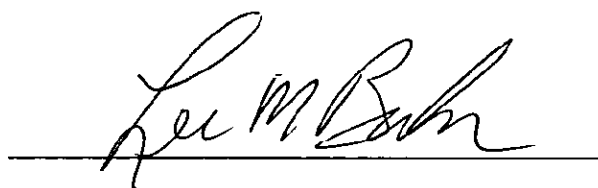
STATE OF NEVADA)

) 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.



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.

1 [Jury exits the courtroom.]

2 [A short break was taken at 11:15 a.m.]

3 [The jury returns to the courtroom.]

4 THE COURT: Okay. Back on the record in Case Number C226586,
5 State of Nevada versus Freddy Martinez. Let the record reflect the presence of
6 Mr. Martinez with his counsel; counsel for the State. All ladies and gentlemen
7 of the jury are back in the box. We're missing someone. No?

8 THE BAILIFF: No.

9 THE COURT: We've got them. Okay. State, your opening
10 statement.

11 ***STATE'S OPENING STATEMENT***

12 MS. NYICOS: Thank you, Judge. Counsel. Good morning, ladies and
13 gentlemen. We're here today to try State of Nevada versus Freddy Martinez.
14 You're going to hear from 11 witnesses from the State. I know I read about
15 30. You're going to hear from 11. Maybe ten.

16 What these witnesses are going to tell you is that on the morning
17 of August 16th, 2006, the Defendant, Freddy Martinez, showed up at the home
18 of Bianca Hernandez shared with her boyfriend, Jose' Quiroz-Castillo, and her
19 son, 16-year-old Franklin Martinez. You're going to hear that on that morning,
20 he had a knife, a small folding knife.

21 You're going to hear that that morning, it was around 5:30, 6:00
22 o'clock in the morning, Bianca was taking Jose' to work. She was outside in
23 the car waiting for him. That as Jose' steps outside the front door, he sees the
24 Defendant cross the street with something in his hand. Jose' is going to tell
25 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?

**PLEADING
CONTINUES
IN NEXT
VOLUME**

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 01 2011 03:40 p.m.
Tracie K. Lindeman

FREDDY MARTINEZ,
Appellant(s),
vs.

STATE OF NEVADA,
Respondent(s),

} Case No: 06C226586
} SC No: 58023
}

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
FREDDY MARTINEZ # 1003276
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

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. Ruggione
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 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,)

15 Plaintiff,)

16 -vs-)

17 FREDDY MARTINEZ, aka,)
18 Fredys A. Martinez,)
19 #1361243)

20 Defendant(s).)

Case No. C226586
Dept. No. VII

INDICTMENT

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

23 The Defendant(s) above named, FREDDY MARTINEZ, aka, Fredys A. Martinez,
24 accused by the Clark County Grand Jury of the crimes of BURGLARY WHILE IN
25 POSSESSION OF A DEADLY WEAPON (Felony NRS 205.060); BATTERY WITH USE
26 OF A DEADLY WEAPON (Felony - NRS 200.481); FIRST DEGREE KIDNAPPING
27 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); and
28 SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364,
200.366, 193.165), committed at and within the County of Clark, State of Nevada, on or
about the 16th day of August, 2006, as follows:

// RECEIVED

SEP 29 2006

COUNTY CLERK

98

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. Rungius*
CLERK

DEPT NO: VII

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 *unc.*

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

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 A. Anglin
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

JN760

COUNTY CLERK

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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

0226586
CLERK

VII

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 *OK*

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

DOCKETED
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
VII
Shirley S. Langston
CLERK

INDICTMENT WARRANT

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05/28/1969; H/M/A; SS#: 545-21-6395
(TK)

Shirley S. Langston
CLERK

WARR

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

SEP 29 12 07 PM '06

THE STATE OF NEVADA,

Plaintiff,

-vs-

Freddy Martinez, aka Fredys A. Martinez
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Defendant.

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CLERK

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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

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 TIME OF ARREST: 0751 I.D. ESTAB. BY: _____

INTAKE NAME (AKA, ALIAS, ETC.): Mathinez, Freddy Last First Middle
 ADDRESS: Mathinez, Freddy BLDG/APT. # _____ CITY: Mathinez, Freddy STATE: A ZIP: _____

DATE OF BIRTH: 5/2/69 RACE: H SEX: M HEIGHT: 5'08" WEIGHT: 130 HAIR: BLK EYES: BRN SOCIAL SECURITY #: 545-21-10395 Speak English? Yes ☐ No ☐ PLACE OF BIRTH: Honduras PCN #: _____

LOCATION OF CRIME (# - Street - City - State - Zip): Indictment 1000000000 LV ☐ CC ☐ Citizen Arrest ☐ Y ☐ N

BKG. CODE	CHARGE ORD / NRS #	M	GM	F	ARR TYPE	EVENT NUMBER	WARR / NCIC NUMBER	LV	JC	DC	OTHER
5000	Burg. w/ poss DWI				6511		022105810	☐	☐	☐	☐
5005	Base w/ DWI				6511		022105810	☐	☐	☐	☐
5042	1st degree Kidnap w/ DWI				6511		022105810	☐	☐	☐	☐
5044	Sexual Assault w/ DWI				6511		022105810	☐	☐	☐	☐
	Texas Base #							☐	☐	☐	☐
	500,000 -							☐	☐	☐	☐

ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GJ - GRAND JURY IND.

Arresting Officer's Signature: [Signature] (Print Name) 10 AS 01004 717 10000 P # _____ Agency _____

Transporting Officer's Signature: _____ (Print Name) _____ P # _____ Agency _____

APPROVAL CONTROL # FOR ADDITIONAL CHARGES: _____

Time Stamp at BOOKING: 0759

FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.

COURT: ☐ STANDARD BAIL ☐ JUSTICE ☐ O.R. RELEASE ☐ PROBABLE CAUSE ☐ JUVENILE ☐ I.A.D.

RECEIVED

OCT - 2 2006

COLUMBIA CLERK

31000 0307100004 FB #0

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED

2006 OCT 11 A 8:27

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

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

02S

CE15

1 1 GRAND JURORS PRESENT ON SEPTEMBER 21, 2006:

2

3

LAVERN RATZLAFF, Foreperson

4

CATHERINE WARNING, Assistant Foreperson

5

NANCY COATSWORTH, Secretary

6

JIMMIE BEATY

7

VERONA SUE GARBAT

8

BOBI LEE GREEN

9

BERNICE JOYNER

10

LINDA REED

11

JUDITH SCHILL

12

UWE SCHREIBER

13

DEVENDRA SINGH

14

JIL TILLMON

15

AURORA YGUICO

16

17

18

Also present at the request of the Grand Jury:

19

Noreen Nyikos,
Deputy District Attorney

20

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,

H-e-r-n-a-n-d-e-z.

BIANCA HERNANDEZ,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

BY MS. NYIKOS:

Q Bianca, I am going to show you Grand Jury Exhibit 2. Do you recognize the person in that photograph?

A Yes.

Q Who is that person?

A My brother-in-law.

Q What is his name?

A Freddy Martinez.

Q Bianca, how do you know Freddy?

A Freddy arrived to his brother house when he was about 15 years old. He was at my house through that time and I got all the way to see him as a brother. And so he was with us up until the time of this problem.

And I separated from his brother about four years ago. And then I move from the trailer because I have 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.)

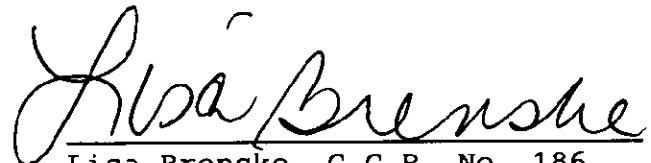
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REPORTER'S CERTIFICATE

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 *Linda L. Quinn*
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

07S

1 GRAND JURORS PRESENT ON SEPTEMBER 28, 2006:

2
3 LAVERN RATZLAFF, Foreperson

4 CATHERINE WARNING, Deputy Foreperson

5 NANCY COATSWORTH, Secretary

6 VERONA SUE GARBAT, Assistant Secretary

7 JIMMIE BEATY

8 BOBI LEE GREEN

9 BERNICE JOYNER

10 MARYLAN FREDERICK-MARSH

11 JOAN MCSWEENEY

12 LINDA REED

13 JUDITH SCHILL

14 UWE SCHREIBER

15 DEVENDRA SINGH

16 ANDREW URBAN

17 AURORA YGUICO

18
19 Also present at the request of the Grand Jury:
20 Noreen Nyikos,
21 Deputy District Attorney
22
23
24
25

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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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

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley A. Phipps
CLERK

7 THE STATE OF NEVADA,
8
9 Plaintiff,
10
11 v.
12 FREDDY A. MARTINEZ,
13
14 Defendant.

CASE NO. C226586X
DEPT. NO. VII
DATE: November 30, 2006
TIME: 8:30 a.m.

MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE

COMES NOW, the Defendant, FREDDY A. MARTINEZ, by and through KATHLEEN M. HAMERS, Deputy Public Defender and hereby requests that pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), this Court order the State to produce any and all exculpatory evidence in its actual or constructive possession.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

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



RECEIVED
NOV 17 2006
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

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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
25 responsibility for failing to disclose known, favorable evidence rising
26 to a material level of importance is inescapable.

27 The State of Louisiana would prefer an even more lenient rule. It pleads
28 that some of the favorable evidence in issue here was not disclosed
even to the prosecutor until after trial, and it suggested below that it
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, #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 

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

3
FILED

Nov 20 3 29 PM '06

Linda B. Augustine
CLERK

7 **DISTRICT COURT**
8 **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

05/12/2004 07:01

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CLAYTON FULLER

PAGE 04/00

Curriculum Vitae

Clayton G. Fuller, M.D.

Home Address

1278 NW Basswell Drive
Bend, OR 97701
541-342-6600
541-390-2594 cell

2259 Cascade Canyon Dr.
St George UT 84770

nm: 435 986-8154

541-342-0032
cgfuller@earthlink.net

Fax (435) 674-1766

Personal Statistics

Date of Birth October 12, 1956
Birthplace Mesa, Arizona
Spouse Marybeth Fuller
Children London (21), Matthew (15), Anna (13), Peter (10)
Languages Fluent Dutch, some Spanish (mostly medical).
Religion 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 Zwemmer, M.D., Director

Work Experience Emergency Medicine

Northwest Emergency Physicians
Pioneer Memorial Hospital, Prineville, Oregon
St. Charles Medical Center - Rainier, Redmond, Oregon
January 2000 - present

Canoe Valley Hospital, Arlington, Washington
Emmuel Memorial Hospital, Emmuel, Washington
March 1997 - December 1999

Coastal Emergency Services
Sanerika Hospital, Moses Lake, Washington
December 1994 - March 1997
Valley General Hospital, Monroe, Washington
February 1993 - October 1994

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CLAYTON FULLER

PAGE 09/05

Covina Valley Community Hospital, Covina, California
December 1990 - May, 1991

Work Experience
Administration

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

Chrysis 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

Diplomate, American Board of Family Practice, July 1989 - December 2016

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

Extracerebral Localization of Technetium-99m MDP in Benign Cystic Teratoma, Fuller C, Leonard JC, Clin Nucl Med, 11(9):574-6 (Aug 86).

Demonstration of Azygos Vein Collateral Flow, Leonard JC, Fuller C, Lowe A, Clin Nucl Med, 11(10):738-9 (Oct 86).

Continued above Clayton G. Fuller, M.D. page -1-

**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

Qualifications
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 of Qualifications
 Name: Linda T. Errichetto
 Page: 2

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
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		
Court	Discipline	Number of Times
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 17 th 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
Page -2 -

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
Page -3 -

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

- 2002-2005 Independent SANH 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)

p. 3

11/20/2006 01:08PM • pg 3/4
435-634-0388

To: Noreen Myikos at 702-477-2998

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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: Horeen Nyikos at 702-477-2998

Received Successfully
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*** TX REPORT ***

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RESULT OK

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

DISTRICT COURT
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

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

DISTRICT COURT
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.)

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

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	<u>NAME</u>	<u>ADDRESS</u>
22	BARR, L.	Mesquite PD
23	BRIGGS, M. L.	LVMPD #8503
24	CHARLES, S.	Mesquite PD
25	CUSTODIAN OF RECORDS or Designee	LVMPD Communications
26	CUSTODIAN OF RECORDS or Designee	LVMPD Records
27	CUSTODIAN OF RECORDS or Designee	MESA VIEW HOSPITAL, Mesquite, NV
28	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


DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

18
19
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

Living & Learning
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
11 Plaintiff,

12 -vs-

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

15 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 ///

28 ///

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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Lisa J. 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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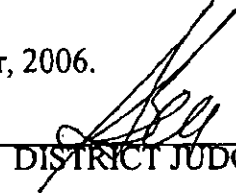
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COUNTY CLERK

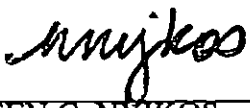
1 IT IS HEREBY ORDERED that the evidence in the custody of the MESA VIEW
2 HOSPITAL, located at 1299 Bertha Howe Avenue, Mesquite, NV, consisting of medical
3 records for patient: BIANCA HERNANDEZ, DOB: 09/23/1965, admitted on or about the
4 16th day of August, 2006, be released to a representative of 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
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19


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.

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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
18 shall permit Defendant to inspect and to copy or photograph any:
19 (a) Written or recorded statements or confessions made by
20 Defendant, or any written or recorded statements made by a
21 witness the prosecuting attorney intends to call during the case in
22 chief of the state, or copies thereof, within the possession,
23 custody or control of the state, the existence of which is known,
24 or by the exercise of due diligence may become known, to the
25 prosecuting attorney;
26 (b) Results or reports of physical or mental examinations,
27 scientific tests or scientific experiments made in connection with
28 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
(c) Books, papers, documents, tangible objects, or copies thereof,
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.
2. Defendant is not entitled, pursuant to the provisions of this
section, to the discovery or inspection of:

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^{FN20} must reflect our overriding concern with the
19 justice of the finding of guilt.

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

FILED

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2006 DEC 23 A 11:12

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

MC1

DEC 22 2006
COUNTY CLERK

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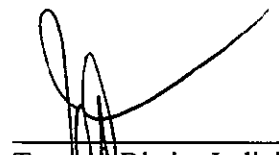
1 C 206238 STATE V. ARMANDO RAMIREZ, JR.
2 C 208712 STATE V. FRANCIS HELLAND
3 C 212038 STATE V. CHASTITY PACE
4 C 224953 STATE V. FERNANDO QUINONES-PEREZ
5 C 227505 STATE V. ANTHONY J. LAFRANCE
6 C 227537 STATE V. KEITH BOOKMAN
7
8
9

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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28

29 
30 Tatyana Ristic, Judicial Secretary
31 District Court, Dept XXIV
32
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38

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FILED

2007 JAN 18 P 1:52

CH [Signature]
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.)

CASE NO. C226586X

DEPT. NO. XXIV

12
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 [Signature]
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

MC

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



Case Name: Freddy A. Martinez

Case No.: C226586X

Dept. No.: XXIV

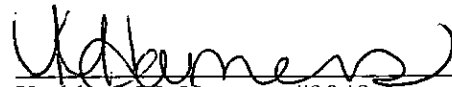
AFFIRMATION
Pursuant to NRS 239B.030

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

36

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,

Plaintiff(s),

CASE NO. C226586

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

1 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

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 FREDDY MARTINEZ,

12 Defendant.

CASE NO: C226586

DEPT NO: VII

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

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

\$15

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.

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

4 In this case, it is charged in an Indictment that on or about the 16th day of August,
5 2006, the Defendant committed the offenses of BURGLARY WHILE IN POSSESSION OF
6 A DEADLY WEAPON (Felony NRS 205.060); BATTERY WITH USE OF A DEADLY
7 WEAPON (Felony - NRS 200.481); FIRST DEGREE KIDNAPPING WITH USE OF A
8 DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); and SEXUAL ASSAULT
9 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364, 200.366, 193.165), within
10 the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in
11 such cases made and provided, and against the peace and dignity of the State of Nevada, in
12 the manner following, to-wit: that the said Defendant,

13 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

14 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
15 deadly weapon, to-wit: a knife, and with intent to commit kidnapping, that certain 2003
16 Ford Focus, bearing Nevada License No. 308TRL, owned by BIANCA HERNANDEZ.

17 COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON

18 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
19 person of another, to-wit: BIANCA HERNANDEZ, with use of a deadly weapon, to-wit: a
20 knife, by cutting the said BIANCA HERNANDEZ in the thigh with said knife.

21 COUNT 3 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

22 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
23 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away BIANCA HERNANDEZ, a
24 human being, with the intent to hold or detain the said BIANCA HERNANDEZ against her
25 will, and without her consent, for the purpose of committing sexual assault, said Defendant
26 using a deadly weapon, to-wit: a knife, during the commission of said crime.

27 COUNT 4 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

28 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.

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.

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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.

1
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.

1
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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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.

1
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.

1
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.

INSTRUCTION NO. 23

Intent and motive are different concepts and should never be confused. Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

Personal advancement and financial gain, for example, are two well-recognized motives for much of human conduct. These praiseworthy motives, however, may prompt one person to do voluntary acts of good while prompting another person to do voluntary acts of crime.

Good motive alone is never a defense where the act done or omitted is a crime. The motive of the defendant is, therefore, immaterial except insofar as evidence of motive may aid in the determination of state of mind or the intent of the defendant.

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

6 A reasonable doubt is one based on reason. It is not mere possible doubt, but is such
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.

1
2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

1
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.

The credibility or believability of a witness should be determined by his/her manner upon the stand, his/her relationship to the parties, his/her fears, motives, interests or feelings, his/her opportunity to have observed the matter to which he/she testified, the reasonableness of his/her statements and the strength or weakness of his/her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his/her testimony which is not proved by other evidence.

1
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.

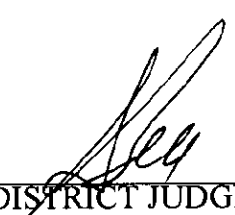
1
2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the 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

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FILED

2007 APR 12 P 3:57

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

DEFT'S

INSTRUCTION NO. A

1
2 If you State has failed to prove beyond a reasonable doubt that the Defendant entered a
3 vehicle with the intent to commit a kidnapping, he is not guilty of burglary.
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DOFT'S

INSTRUCTION NO. B

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.

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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.

DEF 715

INSTRUCTION NO. D

1
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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