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Electronically Filed  
Feb 23 2015 11:41 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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Respondent.

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### Counsel for Respondent

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**Case No. 65935**

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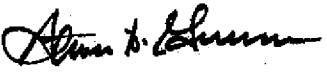
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

STEVEN DALE FARMER,

Defendant.

CASE NO. C245739

DEPT. V

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE KEVIN V. WILLIAMS, HEARING MASTER  
TUESDAY, JULY 08, 2008

**RECORDER'S TRANSCRIPT OF HEARING RE:  
ARRAIGNMENT**

**APPEARANCES:**

For the State:

BART G. PACE, ESQ.,  
Chief Deputy District Attorney

For the Defendant:

STACEY ROUNDTREE, ESQ.,  
Deputy Public Defender

Also Present:

GREGORY COYER, ESQ.

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 TUESDAY, JULY 08, 2008

2 \* \* \* \* \*

3 P R O C E E D I N G S  
4

5 THE COURT: Case Number C245739, Farmer.

6 THE MARSHAL: Farmer.

7 MR. COYER: Your Honor, we have another attorney speaking with him right  
8 now. If we could just trail this for a couple minutes.

9 THE COURT: Okay, we'll trail that for a couple minutes. If you need more  
10 time, Ms. Roundtree, you can take more time. No, he doesn't.

11 MR. COYER: Okay.

12 THE COURT: He seems to be ready.

13 MS. ROUNDTREE: Good morning, your Honor. Good afternoon.

14 THE COURT: Good afternoon, Ms. Roundtree.

15 MS. ROUNDTREE: Long day.

16 THE COURT: Long day. All right, Ms. Roundtree, what's going on here  
17 today?

18 MS. ROUNDTREE: Your Honor, Mr. Farmer is ready for his arraignment.

19 THE COURT: All right. It's going to be a not-guilty plea?

20 MS. ROUNDTREE: It is going to be.

21 THE COURT: Okay. Have a copy of the Information and waive its reading?

22 MS. ROUNDTREE: Yes, your Honor.

23 THE COURT: What's your true name?

24 THE DEFENDANT: Steven Farmer.

25 THE COURT: How old are you?

1 THE DEFENDANT: Fifty-six.  
2 THE COURT: How far did you go in school?  
3 THE DEFENDANT: High school.  
4 THE COURT: Read, write, and understand the English language?  
5 THE DEFENDANT: Yes, sir.  
6 THE COURT: Understand what you're charged with?  
7 THE DEFENDANT: Yes, sir.  
8 THE COURT: What is your plea?  
9 THE DEFENDANT: Not guilty.  
10 THE COURT: You have a right to a speedy trial within 60 days. Do you want  
11 a speedy trial?  
12 THE DEFENDANT: Yes, sir.  
13 THE COURT: Speedy trial.  
14 THE CLERK: Calendar call, August 27<sup>th</sup> at 8:30 a.m. Jury trial, September  
15 the 2<sup>nd</sup>, at 1:30 p.m., Department 20.  
16 MS. ROUNDTREE: Thank you, Judge.  
17 THE COURT: Uh-huh.

18 (Whereupon, the proceedings concluded.)

19 \* \* \* \* \*

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
21 audio/video proceedings in the above-entitled case to the best of my ability.

22 

23 Kiara Schmidt, Court Recorder/Transcriber  
24  
25

1  
*Alan D. Shuman*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
PLAINTIFF,  
vs.  
STEVEN DALE FARMER,  
DEFENDANT.

ORIGINAL

Case No.: C245739  
Dept No.: XX

REPORTER'S TRANSCRIPT

Held before the Honorable David T. Wall

On August 18, 2008

At the Regional Justice Center

200 Lewis Avenue

Las Vegas, Nevada

A P P E A R A N C E S:

For the State: AARON NANCE, ESQ.

For the Defendant: GREGORY COYER, ESQ.

Reported by: Julie M. Lever, RPR, CCR 582

1 THE COURT: Top of seven, State of  
2 Nevada versus Steven Farmer. C245739.

3 Where is Mr. Farmer? Are you  
4 Mr. Farmer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Let the record reflect the  
7 presence of the defendant in custody; Mr. Coyer  
8 is here on his behalf.

9 Why are we resetting?

10 MR. COYER: I believe that there has  
11 been a new charge and/or victim or case filed in  
12 this matter. I think the DA is still attempting  
13 to consolidate all those.

14 MR. NANCE: I've been out the last  
15 week. Beyond that I don't know a whole lot more  
16 than that, Your Honor. I think there is a new  
17 case that may be set for preliminary.

18 MR. COYER: Maybe we can pass it until  
19 Ms. Roundtree is present.

20 THE CLERK: August 20th at 8:30.

21 THE COURT: All right. We'll be in  
22 recess.

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CERTIFICATE OF REPORTER

STATE OF NEVADA )  
COUNTY OF CLARK )

I, Julie M. Lever, Certified Court  
Reporter, do hereby certify:

That I reported in shorthand  
(Stenotype) the proceedings had in the  
above-entitled matter at the place and date  
indicated.

That I thereafter transcribed my said  
shorthand notes into typewriting, and that the  
typewritten transcript is a complete, true and  
accurate transcription of my said shorthand  
notes.

IN WITNESS WHEREOF, I have set my hand  
in my office in the County of Clark, State of  
Nevada, this 20th day of August, 2014.

*Julie M. Lever RPR, CCR 582*  
JULIE M. LEVER, RPR, CCR NO.: 582

1

*Steven D. Quinn*

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
PLAINTIFF,

vs.

STEVEN DALE FARMER,  
DEFENDANT.

ORIGINAL

Case No.: C245739  
Dept No.: XX

REPORTER'S TRANSCRIPT

Held before the Honorable David T. Wall

On August 20, 2008

At the Regional Justice Center

200 Lewis Avenue

Las Vegas, Nevada

A P P E A R A N C E S:

For the State: AARON NANCE, ESQ.

For the Defendant: STACY ROUNDTREE, ESQ.

Reported by: Julie M. Lever, RPR, CCR 582



1 THE COURT: Page 17, State of Nevada  
2 versus Steven Farmer. Case No. C245739.

3 Mr. Farmer is present in custody;  
4 Ms. Roundtree on his behalf. Mr. Nance on behalf  
5 of the State.

6 It's on to reset the jury trial.

7 MS. ROUNDTREE: Your Honor, this is a  
8 defense request. This simply because of my trial  
9 schedule and the time that it is going to take to  
10 prepare Mr. Farmer for trial. I believe he may  
11 have initially invoked --

12 THE COURT: In July, I think.

13 MS. ROUNDTREE: Yes. And so he is  
14 going to waive his right to a speedy trial. There  
15 is actually a new case that has come about, so we  
16 would ask to reset it in your ordinary case.

17 THE COURT: Mr. Farmer, you had  
18 previously invoked your right to have a trial  
19 within 60 days; is that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In order for me to postpone  
22 the trial, I would ordinarily ask if you wanted  
23 to waive that right. Ms. Roundtree says that you  
24 are willing to do that; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. When are we  
2 talking about? There is a new case --

3 MS. ROUNDTREE: That's set for  
4 preliminary hearing, I believe, September 2, but  
5 is there a February?

6 THE COURT: Yes.

7 MS. ROUNDTREE: The only day in February  
8 is the third week of February 23. I have a trial  
9 that day.

10 THE COURT: All right. We will set it  
11 for trial on February 9 at 1:30. Calendar call  
12 is February 4 at 8:30. The August 27 calendar  
13 call, September 2 trial date are vacated.

14 MS. ROUNDTREE: Thank you, Judge.

15 -oOo-

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CERTIFICATE OF REPORTER

STATE OF NEVADA )  
COUNTY OF CLARK )

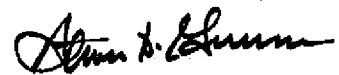
I, Julie M. Lever, Certified Court  
Reporter, do hereby certify:

That I reported in shorthand  
(Stenotype) the proceedings had in the  
above-entitled matter at the place and date  
indicated.

That I thereafter transcribed my said  
shorthand notes into typewriting, and that the  
typewritten transcript is a complete, true and  
accurate transcription of my said shorthand  
notes.

IN WITNESS WHEREOF, I have set my hand  
in my office in the County of Clark, State of  
Nevada, this 10th day of August, 2014.

*Julie M. Lever RPR, CCR 582*  
JULIE M. LEVER, RPR, CCR NO.: 582



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

STEVEN DALE FARMER,

Defendant.

CASE NO. 08C249693

DEPT. IV

BEFORE THE HONORABLE KATHY A. HARDCASTLE,  
CHIEF DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 19, 2008

RECORDER'S TRANSCRIPT RE:  
GRAND JURY INDICTMENT RETURN

APPEARANCES:

For the State:

CHRISTOPHER J. LAURENT, ESQ.,  
Chief Deputy District Attorney

For the Defendant:

No Appearance

Also Present:

WALTER OLENDERSKI,  
Grand Jury Foreperson

RECORDED BY: KRISTEN LUNKWITZ, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 19, 2008, 11:34:33 A.M.

2 \* \* \* \* \*

3 MR. LAURENT: Judge, yesterday Grand Jury met in Grand Jury Case  
4 Number 08AGJ078X, and by a vote of 12 or more returned a true bill against Steven  
5 Dale Farmer on two counts of sexual assault, three counts of open or gross  
6 lewdness, and one count of indecent exposure. If I can approach with those  
7 documents?

8 THE COURT: You may.

9 Mr. Foreperson, did at least 12 members of the Grand Jury  
10 concur in returning a true bill on each of these charges listed in this Indictment  
11 against this individual named in this Indictment?

12 THE FOREPERSON: Yes, your Honor.

13 THE COURT: Then we'll receive the Indictment, assign it Case  
14 Number C249693, assign it to Department XII. You're asking a warrant?

15 MR. LAURENT: We're asking for a warrant in this matter, Judge, and  
16 we'd ask that it be sent to the District Court. This defendant was the nurse that  
17 everyone's heard about on the news who was sexually assaulting patients. He's got  
18 a case that's currently set for trial in February where he's being held at \$200,000  
19 bail. He is in custody. This victim was a later reporter because she's prone to  
20 epileptic seizures or seizures, and when she has these seizures, she's hospitalized  
21 and could not report. And so we finally got her in, put the case on, and we're  
22 asking, Judge, for a hundred thousand dollars bail total on this one, and that -- with  
23 a one-week return date in the department if possible.

24 THE COURT: Why do we need to do a one-week -- why do we need to  
25 send it to the department as opposed to just --

1 MR. LAURENT: Well I think it just will speed it up quicker so that --  
2 really this should be consolidated into the other case, and so rather than lose that  
3 delay time, it'll get it in front of the Court and they can get that motion to consolidate,  
4 but that's -- we were just asking. Whatever the Court's pleasure.

5 THE COURT: All right. Set it in Department XII.

6 THE CLERK: And a hundred thousand dollars?

7 THE COURT: Yes.

8 THE CLERK: December -- December 2<sup>nd</sup> at 8:30.

9 MR. LAURENT: Thank you, Judge. And ask that Exhibits 1 and 2 be  
10 lodged with the Clerk of the Court.

11 THE COURT: That'll be the order of the Court.

12 MR. LAURENT: That concludes our business today. Thank you so  
13 much.

14 THE COURT: Thank you.

15 MR. LAURENT: Have a great day.

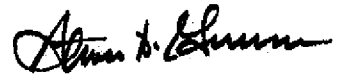
16 PROCEEDING CONCLUDED AT 11:36:22 A.M.

17 \* \* \* \* \*

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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio/video proceedings in the above-entitled case to the best of my ability.

21 

22 Kiara Schmidt, Court Recorder/Transcriber



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

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STEVEN DALE FARMER,

11

Defendant.

12

13

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
TUESDAY, DECEMBER 2, 2008

14

15

**RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:  
INITIAL ARRAIGNMENT  
INDICTMENT WARRANT RETURN**

16

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**APPEARANCES:**

20

For the State:

AARON M. NANCE, ESQ.  
Deputy District Attorney

21

22

For the Defendant:

DARIN F. IMLAY, ESQ.  
Deputy Public Defender

23

24

25

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, DECEMBER 2, 2008; 8:46 A.M.

2  
3 THE COURT: State versus Steven Farmer, C249693.

4 THE DEFENDANT: But my attorney's not here.

5 THE COURT: Who represents you?

6 THE DEFENDANT: Stacey Roundtree.

7 THE COURT: Okay.

8 [Matter trailed and recalled at 10:27 a.m.]

9 THE COURT: State versus Steven Farmer, C249693. Mr. Farmer –

10 THE DEFENDANT: My attorney's still not here.

11 THE COURT: – we can't find your lawyer, so I'm going to continue this  
12 one week.

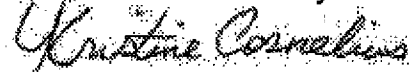
13 THE DEFENDANT: Okay.

14 THE CLERK: It's going to be December 11<sup>th</sup>, 8:30.

15 [Proceedings concluded at 10:27 a.m.]

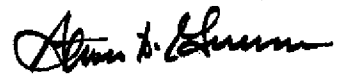
16 \* \* \* \* \*

17 ATTEST: I hereby certify that I have truly and correctly transcribed the  
18 audio/visual proceedings in the above-entitled case to the best of my ability.

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20 Kristine Cornelius,  
21 Court Recorder  
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CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

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STEVEN DALE FARMER,

11

Defendant.

12

13

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
THURSDAY, DECEMBER 11, 2008

14

15

**RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:  
INITIAL ARRAIGNMENT  
INDICTMENT WARRANT RETURN**

16

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19

**APPEARANCES:**

20

For the State:

KRISTA D. BARRIE, ESQ.  
Deputy District Attorney

21

22

For the Defendant:

DARIN F. IMLAY, ESQ.  
Deputy Public Defender

23

24

25

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 THURSDAY, DECEMBER 11, 2008; 10:05 A.M.

2  
3 THE COURT: State versus Farmer, C249693.

4 MR. IMLAY: He's present in custody.

5 THE COURT: Okay. I need the Indictment.

6 MR. IMLAY: This is an indictment return.

7 [Colloquy between the Court and clerk]

8 THE COURT: He's present. He's in custody. This is the date and time  
9 set for his initial arraignment in this case.

10 Sir, will you please state your true and full name for the record.

11 THE DEFENDANT: Steven Dale Farmer.

12 THE COURT: How old are you?

13 THE DEFENDANT: Fifty-six.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: Some college.

16 THE COURT: You do read, write, and understand the English language?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You received a copy of the Indictment in this case?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And you understand you're being charged with count 1,  
21 sexual assault; count 2, open or gross lewdness; count 3, sexual assault; count  
22 4, open or gross lewdness; count 5, open or gross lewdness and count 6,  
23 indecent exposure?

24 THE DEFENDANT: Yeah. I haven't read it yet but [inaudible].

25 THE COURT: Do you understand those charges?

1 THE DEFENDANT: Yes.

2 THE COURT: And you've discussed them with your lawyer?

3 THE DEFENDANT: Yes.

4 THE COURT: How do you plead to the charges in the Indictment?

5 THE DEFENDANT: Not guilty.

6 THE COURT: I'm going to enter your plea of not guilty. You have the  
7 right to be brought to trial within 60 days. Do you wish to invoke or waive that  
8 right?

9 THE DEFENDANT: Invoke.

10 THE COURT: Okay. We'll set it for trial in 60 days.

11 THE CLERK: The calendar call will be January 27<sup>th</sup>, 2009, at 8:30; jury  
12 trial will be February 3<sup>rd</sup>, 2009, at 1:30.

13 MS. BARRIE: I'm sorry. What was the second date, Madam Clerk?

14 MR. IMLAY: February 3<sup>rd</sup>.

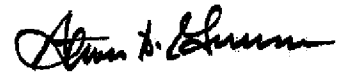
15 MS. BARRIE: Thank you.

16 [Proceedings concluded at 10:07 a.m.]

17 \* \* \* \* \*

18 ATTEST: I hereby certify that I have truly and correctly transcribed the  
19 audio/visual proceedings in the above-entitled case to the best of my ability.

20   
21 Kristine Cornelius,  
22 Court Recorder  
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CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. 08C245739

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vs.

DEPT. I

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STEVEN DALE FARMER

12

Defendant.

13

***BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE***

14

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***MONDAY, JANUARY 12, 2009  
RECORDER'S TRANSCRIPT RE:  
DEFENDANT'S MOTION FOR DISCOVERY***

16

17

**APPEARANCES:**

18

For the State:

SUMMER CLARKE, ESQ.  
Deputy District Attorney

19

20

For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

21

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RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Monday, January 12, 2009 at 10:36 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 MS. CLARKE: Good morning, Your Honor, Summer Clarke for the State.

6 THE COURT: Good morning.

7 MR. COYER: Morning, Judge, Gregory Coyer for the Public Defender's  
8 Office on behalf of Mr. Farmer.

9 THE COURT: Good morning.

10 MS. CLARKE: Your Honor, I believe this is on for the Defense's motion  
11 for discovery. Unfortunately, I didn't get to call Ms. Roundtree on Friday. I  
12 sent her a text this morning asking if I could have a few days. I wanted to  
13 respond in writing.

14 THE COURT: Okay.

15 MS. CLARKE: I'm not sure – do you have any objection to that? But that  
16 was gonna be my request this morning.

17 THE COURT: I don't particularly – I this, I think we need to have a little  
18 discussion about what the DA's required to do in these cases. I had a few  
19 questions as I read through this about how far you require the DA to go out and  
20 do something if you can use your subpoena power for it, and I'd like to get their  
21 – their view on that.

22 I mean it's one thing to say, give me everything you got or everything  
23 that they can reasonably get a hold of, like from another police agency but –

24 MR. COYER: Yeah.

25 THE COURT: This – this – at first blush at least, you know, it seems to

1 go a little further than that, so I want to get their response.

2 MS. CLARKE: And Judge that's what we want to be able to do, is go  
3 through and just list our objections and also list what we don't have a problem  
4 providing under Brady. I don't know if Mr. Coyer has a problem – if you even  
5 have the file to argue it today.

6 MR. COYER: No Judge, we don't have an opposition to allowing the  
7 State to do a written response –

8 THE COURT: Okay.

9 MR. COYER: -- but I think Your Honor is exactly right on the issue.  
10 Some of it we suspect they may be within the State's control. Some of it –  
11 you know, it's a unique issue with all of the medical records, so some of it, we  
12 may have to go out and get ourselves.

13 THE COURT: Yeah. Okay. How long do you want?

14 MS. CLARKE: One week. Is that okay?

15 MR. COYER: Uhuh.

16 MS. CLARKE: If we can get one week from today, Judge?

17 THE COURT: We'll continue this a week, and then you'll get your  
18 response.

19 MS. CLARKE: I will have my response in the next few days, but that way  
20 in case the Defense wants to file a reply.

21 THE COURT: All right.

22 THE CLERK: January 21<sup>st</sup> at 9 a.m.

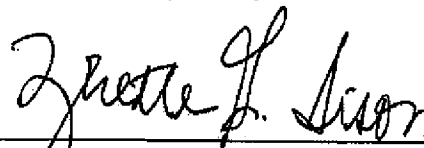
23 MS. CLARKE: Thank you.

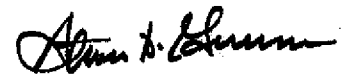
24 THE COURT: Okay. We'll see you then.

25 [Proceedings concluded at 10:38 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
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Yvette G. Sison  
Court Recorder/Transcriber

  
CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 STEVEN DALE FARMER,

11 Defendant.  
12

CASE NO: C249693

DEPT. NO: XII

13 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
14 TUESDAY, JANUARY 27, 2009

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:**  
16 **CALENDAR CALL**  
17  
18

19 **APPEARANCES:**

20 For the State:

SUMMER C. CLARKE, ESQ.  
Chief Deputy District Attorney

22 For the Defendant:

21 LAUREN R. DIEFENBACH, ESQ.  
23 DARIN F. IMLAY, ESQ.  
24 Deputy Public Defenders

25 RECORDED BY: KERRY ESPARZA, COURT RECORDER



1 TUESDAY, JANUARY 27, 2009; 8:34 A.M.

2  
3 THE COURT: State versus Farmer, C249693. State versus Farmer.  
4 Present in custody. Date and time set for calendar call.

5 MS. LIEFENBACH: Judge, I'm sorry. This is a special team. Ms.  
6 Roudtree's out of the office. I was hoping Mr. Coyer from our office will be  
7 here. If we could trail this please.

8 [Proceedings trailed and recalled at 8:51 a.m.]

9 THE COURT: State versus Farmer, C249693. State versus Farmer.

10 MS. CLARKE: Good morning, Your Honor. Summer Clarke for the State.

11 MS. DIEFENBACH: Unfortunately, Ms. Roundtree's on medical leave this  
12 week.

13 THE COURT: Okay.

14 MS. CLARKE: Judge -

15 MR. IMLAY: If you trail it for a minute, I'll make a phone call and see.

16 MS. DIEFENBACH: Right.

17 MS. CLARKE: No. Judge, I've already spoken with Ms. Roundtree. I  
18 don't know if you want me to make representations to the Court. The  
19 Defendant previously invoked his right in this particular case. Ms. Roundtree  
20 didn't know she was assigned to this case. He has two active cases in the  
21 system. He waived his right to a speedy trial in the other case, but I think the  
22 public defender who was down there just invoked to make sure. But it's my  
23 understanding that this case is getting continued. The defense is not ready.  
24 And I don't know if you want to wait for Mr. Imlay to call.

25 THE COURT: Okay. Mr. Farmer, are you going to waive your right to be

1 brought to trial within 60 days?

2 THE DEFENDANT: Yes

3 THE COURT: Okay. So are you seeking a continuance?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay, then I'll vacate the trial date.

6 THE CLERK: Calendar call is going to be May 19<sup>th</sup> at 8:30; jury trial, May  
7 26<sup>th</sup>, 1:30.

8 [Proceedings concluded at 8:52 a.m.]

9 \* \* \* \* \*

10 ATTEST: I hereby certify that I have truly and correctly transcribed the  
11 audio/visual proceedings in the above-entitled case to the best of my ability.

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13 Kristine Cornelius,  
14 Court Recorder  
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CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 STEVEN DALE FARMER

12 Defendant.

CASE NO. 08C245739

DEPT. I

13 **BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

14 **MONDAY, JANUARY 21, 2009**  
15 **RECORDER'S TRANSCRIPT RE:**  
16 **DEFENDANT'S MOTION FOR DISCOVERY**

17 **APPEARANCES:**

18 For the State:

SUMMER CLARKE, ESQ.  
Deputy District Attorney

19  
20 For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

21  
22  
23  
24  
25 **RECORDED BY: BEV SIGURNIK, COURT RECORDER**

1 Las Vegas, Nevada, Monday, January 21, 2009 at 9:47 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 MS. CLARKE: Good morning, Your Honor, Summer Clarke for the State.

6 THE COURT: Good morning.

7 MR. COYER: Morning, Judge, Gregory Coyer for the Public Defender's  
8 Office.

9 THE COURT: Oh what do we got this morning here?

10 THE COURT: Judge, as a preliminary matter, I'd like to file in open court our  
11 reply brief. We did email it to your chambers late I guess yesterday probably. I  
12 don't know if Your Honor has a chance to review it, but I would --

13 THE COURT: I haven't.

14 MR. COYER: -- I would like to file that at this time.

15 THE COURT: All right. If you want me to actually, you know, have any  
16 benefit from it, then we really should probably move this over a couple of days.

17 MS. CLARKE: Judge, perhaps we can do this. I know that on February 2<sup>nd</sup>,  
18 Defense Counsel has filed a motion to continue the trial date. State's not opposing  
19 that, and we are going to announce ready, but maybe we could just pass this to the  
20 February 2<sup>nd</sup> date, since we're going to be here anyway on the motion to continue  
21 trial and hear the discovery motion and that motion at the same time?

22 THE COURT: Want to do that?

23 MR. COYER: How far out is that? February?

24 THE COURT: February 2<sup>nd</sup>.

25 MR. COYER: Well, I don't think that should be a problem, Judge. I kinda

1 didn't anticipate putting it out that far. I know some of these requests will be  
2 granted, but we want to get the discovery process moving as quickly as possible but

3 --

4 THE COURT: Sure. Are you -- has your --

5 MR. COYER: -- if the State's representing they're not going to oppose the  
6 motion to continue, then it probably won't be an issue anyway.

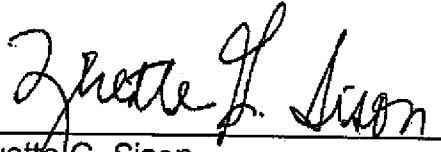
7 THE COURT: Yeah. All right. Well let's -- maybe that'll resolve everything.  
8 We'll continue this to February 2<sup>nd</sup> then and deal with it then.

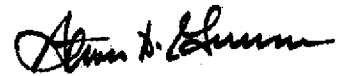
9 THE CLERK: At 9 a.m.

10 [Proceedings concluded at 10:38 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
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Yvette G. Sison  
Court Recorder/Transcriber



CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 STEVEN DALE FARMER

12 Defendant.

CASE NO. 08C245739

DEPT. I

13 ***BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE***

14 ***MONDAY, FEBRUARY 2, 2009***  
15 ***RECORDER'S TRANSCRIPT RE:***  
16 ***DEFENDANT'S MOTION FOR DISCOVERY/DEFENDANT'S MOTION TO***  
17 ***CONTINUE TRIAL DATE***

18 APPEARANCES:  
19

20 For the State:

AARON NANCE, ESQ.  
Deputy District Attorney

21 For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

22  
23  
24  
25 RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Monday, February 2, 2009 at 9:57 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 THE COURT: Good morning.

6 MR. NANCE: Judge, the State's going to ask to pass the calendar call to  
7 February 4<sup>th</sup>. Summer Clarke is handling this case, and she's not available to be  
8 here today.

9 THE COURT: Okay. The calendar call is February 4<sup>th</sup>. You're saying you  
10 want to pass the motion?

11 MR. NANCE: Yes, pass the motion. I'm sorry, Judge, yes pass the motion to  
12 the same day.

13 THE COURT: Okay. That means if there is a dispute at that point, the  
14 Defense is going to say, oh, I need more time. I'm all right with that if you guys are  
15 okay with it.

16 MR. NANCE: That's what we would request, Your Honor.

17 THE COURT: Okay.

18 MR. COYER: Yeah, Judge, it's pretty clear we're still trying to get evidence at  
19 this point, and even with the State's agreed to give us, we still haven't gotten yet so  
20 —

21 THE COURT: Okay.

22 MR. COYER: Come to calendar call, we're definitely going to be requesting a  
23 continuance.

24 THE COURT: All right. We'll pass it to the 4<sup>th</sup>.

25 THE CLERK: February 4<sup>th</sup> at 9 a.m.



[Proceedings concluded at 9:58 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Yvette G. Sison  
Court Recorder/Transcriber

1 TRAN

2 ORIGINAL 2009 JUN -9 P 4:18  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA

6 Plaintiff

7 vs.

8 STEVEN DALE FARMER

9 Defendant

CASE NO. C245739

DEPT. NO. 1

10  
11 BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE

12  
13 WEDNESDAY, FEBRUARY 4, 2009

14 RECORDER'S TRANSCRIPT RE:  
15 CALENDAR CALL, DEFENDANT'S MOTION FOR DISCOVERY  
16 AND DEFENDANT'S MOTION TO CONTINUE TRIAL DATE  
17

18  
19 APPEARANCES:

20 For the Plaintiff:

SUMMER C. CLARKE  
Deputy District Attorney

21  
22 For the Defendant:

GREGORY E. COYER  
STACEY ROUNDTREE  
Deputy Public Defenders

23  
24  
25 RECORDED BY: BEVERLY SIGURNIK, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 4, 2009, 10:03 A.M.

2 \* \* \* \* \*

3 THE CLERK: The next case is on page 7, Steven Farmer, case  
4 number C245739. Defendant is present in custody

5 MS. CLARKE: Good morning, Your Honor, Summer Clarke for the  
6 State. Ms. Clarke for the State.

7 MS. ROUNDTREE: Stacey Roundtree and Gregory Coyer, on behalf of  
8 Mr. Farmer, who is present in custody.

9 THE COURT: Okay. Shall we deal with the discovery motion first?

10 MS. ROUNDTREE: That'd be fine.

11 MS. CLARKE: That's fine, Judge.

12 THE COURT: What's the status on that? Anything change since the  
13 filing of the – well, okay, I guess –

14 MS. CLARKE: And it did, Judge, so maybe I should address that.

15 THE COURT: Okay.

16 MS. CLARKE: Mr. Coyer and I spoke at the last court date about, in  
17 particular, the victim's medical records from both Centennial Hospital as well as the  
18 mental facility. We – where Frances Rose was. That day, on January 21st, when  
19 we were here the State submitted an order for all of those medical records. We're  
20 still waiting on those. We haven't received them yet. However, we have agreed to  
21 get them. We think they're relevant, and we were – we had just ordered that, so  
22 we're waiting on those. So that is the only update on 'em.

23 THE COURT: So, as to that part, the medical records, what's our  
24 status here? Does that mean the motion is granted as to that, or does that mean it's  
25 denied as moot or – because you're gonna –

1 MS. CLARKE: I believe it would be denied as moot. Just moot.

2 MS. ROUNDTREE: Yeah, declared moot.

3 MS. CLARKE: That's fine.

4 THE COURT: Okay. And what does that leave on the discovery  
5 motion? Besides medical records were there any other –

6 MS. CLARKE: I believe the first – well, if we could just maybe go in  
7 order. The CPS records, Ms. Roundtree feels they're relevant; the State does not.  
8 So I don't know if you want to hear argument on each one and then go through it  
9 that way.

10 THE COURT: Mm, that's not –

11 MS. CLARKE: It's up to you, Judge.

12 THE COURT: I don't know how to get around that, really, because I  
13 think, you know, the relief that is sought here depends in large part on the kind of  
14 records that are sought and who has control or custody of them, so. Your position, I  
15 understand, is that you can't control CPS.

16 MS. CLARKE: Well, no, more than that, Judge. I mean, they're  
17 irrelevant. All the women in this case, they're adult women; the victims in this case  
18 are all adults. There are no issues. There are no child witnesses or no – CPS  
19 records in this case aren't relevant at all. We're not dealing with a 13-year-old kid  
20 who was taken away from a mother and now the mother and father are in divorce  
21 proceedings, et cetera. We just don't think it's relevant in this type of case, so. We  
22 don't have any CPS records, but we certainly could get them if the Court ordered,  
23 but it's our position that they're irrelevant.

24 Even if Your Honor deems they may be relevant we think that the  
25 proper procedure to follow is an in-camera review of those records first before

1 they're turned over to the State and the defense, but along those lines we still don't  
2 think they're relevant in this case.

3 THE COURT: Is there a reason to think that they're relevant here?

4 MS. ROUNDTREE: Judge, as we put in the response to the motion for  
5 discovery – or to their opposition, I do understand Ms. Clarke's point, and she's  
6 saying that, you know, normally you think of CPS records you're dealing with  
7 children who may have made allegations of sexual abuse and that's what we want  
8 to get into. In this case we are talking about adult women. Some – if those adult  
9 women – and some of 'em are younger women, as well. You know, not – they're  
10 not – they're either 19, 20, early twenties.

11 If they made prior allegations of sexual abuse that would've been  
12 investigated in this jurisdiction by CPS that was either a substantiated allegation or  
13 an unsubstantiated allegation would definitely be relevant and that would be  
14 potentially exculpatory evidence for Mr. Farmer. And so I do understand Ms.  
15 Clarke's point, but we feel that the Court wants to do an in-camera review that's fine,  
16 but we're looking for things of that nature, prior allegations of sexual abuse and  
17 things of that nature. Just because they're adults now I don't think that changes the  
18 fact that they could've made those allegations when they were children and it may  
19 have been investigated by CPS.

20 THE COURT: Does your motion as to these CPS records apply only to  
21 certain individuals as opposed to all individuals?

22 MS. ROUNDTREE: Not all – not all – well, all the accusers, actually,  
23 the alleged victims.

24 THE COURT: So without regard to current age or anything.

25 MS. ROUNDTREE: Correct.

1 THE COURT: Your position is they're all in the same category.

2 MS. ROUNDTREE: That's correct.

3 MS. CLARKE: And, Judge, my response to that is why are we getting  
4 CPS records when these – I mean, I'm not sure if we're asking for when these  
5 women were minors if they made false allegations, I mean – and this is kind of  
6 crazy. I mean, some of these women are in their forties. I think the youngest is 23  
7 years old, so we're not talking 18, 19. But even then I don't think CPS records is the  
8 route to go about getting information about prior false allegations. It's protected  
9 information, Judge, it's not relevant.

10 MS. ROUNDTREE: And we don't feel that any sort of right of privacy  
11 would trump his right to a fair trial and right to know, you know, any exculpatory  
12 information that may be contained. And there are other ways, I agree, for the State  
13 to know about prior false allegations, but that's just one – that's just one suggestion  
14 and one way that we might know that.

15 There may be other allegations in CPS records that might be relevant  
16 as well, and we don't have a problem with the Court doing an in-camera review to  
17 determine if there are any allegations that have relevance in this case, but we don't  
18 think a blanket denial – we don't think any sort of right of privacy trumps his right to  
19 a fair trial.

20 THE COURT: And how many prior victims or individuals are we talking  
21 about, how many different sets of records?

22 MS. CLARKE: Five.

23 MS. ROUNDTREE: Five in this case. And they may not exist. I mean,  
24 the State may issue the order –

25 THE COURT: Yeah.

1 MS. ROUNDTREE: -- and, you know, DHS may actually say -- or DFS  
2 may actually say, you know, we don't have anything, and we understand that.

3 THE COURT: I think out of an abundance of caution so that we don't  
4 wind up injecting some issue in here I will order that they be turned over to the Court  
5 for in-camera inspection and that only those records that the Court determines have  
6 some potential value for impeachment will be turned over.

7 MS. CLARKE: Judge, the only other thing, the very last line of Ms.  
8 Roundtree's request under number 1, is counseling services rendered by Rosalie  
9 Montoya. Judge, those are privileged records. We don't think those fall into the  
10 same category --

11 THE COURT: Yeah.

12 MS. CLARKE: -- as CPS. We would ask that that part be denied.

13 THE COURT: How would we get into that?

14 MS. ROUNDTREE: I'm sorry, I don't know where we are.

15 (Off-record counsel colloquy)

16 THE COURT: Counseling records. And how likely is it that if there is  
17 any such allegation, I understand you're looking for prior false accusations that --

18 MR. COYER: I think prior allegations in general.

19 THE COURT: What's the likelihood that if there are that they're  
20 contained in some counseling record, but not contained in some other CPS record  
21 that I would be reviewing anyway?

22 MS. CLARKE: Well, Judge, our argument is that the counseling record  
23 is privileged information where you're having victims disclosing to counselors. It's  
24 completely different than a CPS worker showing up at a house doing a welfare  
25 check.

1 THE COURT: I understand. I'm just saying that even as a relevance  
2 determination I don't think it's likely that there would be anything in there. But what  
3 about the point that they're privileged communications that you can't get into?

4 MS. ROUNDTREE: I'm sorry. I'm still trying to figure out what --

5 MR. COYER: Judge, the --

6 THE COURT: Counseling records from the counselor.

7 MS. ROUNDTREE: I have a -- I have a -- unfortunately I have a copy  
8 that's not a file-stamped copy and I don't know where my file-stamped copy is, so I  
9 must not have that section there.

10 THE COURT: Well, let's put it this way. I agree with the argument that  
11 they're privileged and I also think that if there were any such allegations in those  
12 kinds of records they probably would've been repeated to CPS in other records  
13 anyway, so the order --

14 MS. CLARKE: Actually, Judge, I apologize. That was something I had  
15 in my motion that was not included in Ms. Roundtree's motion, so I don't think there  
16 are any counseling records, at least not that I see.

17 THE COURT: Oh, then it's a dead issue. Okay?

18 Anything else on the discovery? I mean, we've talked about CPS.

19 MS. ROUNDTREE: We're just talking about CPS right now, right?

20 Number 1? Okay. No, Judge, I think your order is clear.

21 THE COURT: Okay. That covers that. What's the next one?

22 MS. CLARKE: The next one is any notes of mental health workers who  
23 had any contact with the family members or anyone else.

24 THE COURT: And are those the ones that you have subpoenaed, or  
25 you've only done number 3, medical records?



1 MS. CLARKE: The State's assuming that's what Ms. Roundtree meant  
2 In terms of the mental health workers with regard to, I believe, Frances Rose, who  
3 was at the mental health facility. We have issued the court order for those, and in  
4 the subpoena we sent we – in the order we said "including any and all notes  
5 associated with this patient." So those should be on their way.

6 THE COURT: So that's included; that part is resolved.

7 MS. ROUNDTREE: And, Judge, one of the accused – or alleged  
8 victims was also brought to the hospital on a suicide attempt and we feel that those  
9 records as to her would be pertinent as well.

10 MS. CLARKE: Those are included –

11 THE COURT: I would think that would be included in mental health,  
12 yeah. That would be included in that.

13 MS. CLARKE: Well –

14 THE COURT: Number 3, medical records, is already covered.

15 MS. CLARKE: And, Judge, I guess we needed to argue on that. It's  
16 the State's – there are the five victims in the case. One of the five was taken to the  
17 emergency room on a suicide attempt. Later on she was kept there; the defendant  
18 assaulted her while she was in her hospital room. I believe the issue came out at  
19 preliminary hearing that she did come in on a suicide note.

20 I believe the State objected at preliminary hearing and said that any  
21 information about her suicide is irrelevant or her potential depression that she may  
22 have been suffering. So I think what Ms. Roundtree is asking for is prior mental  
23 health records from her as to why she got to the hospital.

24 It's the State's position that calling the hospital on a suicide attempt and  
25 then being assaulted days later by the defendant, it's irrelevant; her, you know,

1 medications and psychiatrists she may or may not have been seeing is irrelevant.  
2 The fact where she was brought to the hospital by ambulance to the emergency  
3 room and then was later assaulted by the defendant, so I think that's what you're  
4 talking about, so we do need argument on that.

5 THE COURT: Okay.

6 MS. ROUNDTREE: And so our position is that of course her emotional  
7 state, her veracity is on trial here. She – my understanding was that I think she  
8 swallowed a bottle of pills and she was in the emergency room for that issue, but her  
9 mental health state, or her emotional state is absolutely relevant to her credibility  
10 and her veracity.

11 There – as you know, sometimes we have psychological evaluations  
12 done as to some victims and if it has an impact or may have an impact on her  
13 veracity, the medications that she may have been taking at the time that she's  
14 making these allegations all impact her credibility or her veracity, her emotional  
15 state, and we do feel it's relevant and she's – and Ms. Clarke is correct that we were  
16 looking for not only the hospital records as to her mental health, but prior to coming  
17 to the hospital as well.

18 MS. CLARKE: And it's the State's position that that information is  
19 irrelevant, Judge. She's – the fact that a victim may or may not have seen a  
20 psychiatrist beforehand, medications that they may or may not be on, is just a way  
21 to paint her in a bad light in front of the jury, perhaps argue that she's crazy. It  
22 doesn't have anything to do with her veracity and whether or not she's able to testify  
23 in court in front of a jury that this man, the defendant, assaulted her while she was  
24 there.

25 Certainly the medications she was on when she was at the hospital

1 while she was assaulted is relevant, which is why we subpoenaed those medical  
2 records, but if we're gonna go back five, ten years of this woman's psychiatric  
3 history, Judge, that's unfair, it violates the victim's privacy rights, and it doesn't have  
4 any bearing on this case in the sense that any medications she was on before and  
5 on that day when she was assaulted or the days prior would be included in the  
6 medical records from Centennial Hospital.

7           So, it's our position that go in [sic] and subpoenaing all these victims'  
8 psychiatric and mental, you know, records from years past or decades past is really  
9 taking the issue away from what this case is about.

10           THE COURT: Is there any diagnosis of this person at the time that she  
11 did come into the hospital?

12           MS. CLARKE: No.

13           THE COURT: Diagnosis of mental state or mental condition?

14           MS. CLARKE: No, Judge.

15           MS. ROUNDTREE: We don't have those records and so we're not  
16 aware, and we don't know whether or not the woman may have been hallucinating,  
17 delusional. Those things certainly we feel would be pertinent to her ability to  
18 concoct a false allegation.

19           MS. CLARKE: Judge –

20           THE COURT: I think that we do need to at least make sure that there  
21 isn't an issue there that would pop up later. If you want, I would – I would – I  
22 wouldn't welcome it, but I would order that those be turned over to the Court again  
23 to see if there is any such diagnosis. Depending on what the diagnoses, previous  
24 diagnoses, are and how they might relate to hallucinating or that sort of thing, they  
25 could become relevant.

1 MS. CLARKE: Well, Judge, our response is that at the preliminary  
2 hearing when she was specifically asked about that she said I was unhappy and  
3 depressed so I wanted to take a bunch of pills because I didn't want to live anymore.  
4 There was no doctor. I mean, at this point I don't even know who to subpoena to  
5 get any of that information unless Ms. Roundtree has information on that.

6 THE COURT: Okay. That's a good point.

7 MS. ROUNDTREE: Our response is that the Court could order her to  
8 inquire of the victim of her prior medical records and her medical history, once the  
9 Court deems it relevant and potentially affecting her veracity, her credibility. As a  
10 material witness in this case the Court can order her to divulge the information.  
11 There's no right of privacy that trumps his right to a fair trial, his Constitutional right  
12 to a fair trial.

13 THE COURT: I don't think -- you know, you may be -- you may be  
14 correct that you would -- that there's a relevance and that you may have the ability to  
15 require that such records be produced by someone, but I don't see the connection to  
16 the State. If the State doesn't have 'em and they're mental health records and we  
17 don't even know where they are or who might have 'em, I don't think that -- unless  
18 you have some authority that says that under this kind of a circumstance that the  
19 Court can require the State to begin making inquiries to their own witnesses and  
20 produce all that.

21 MS. ROUNDTREE: Judge, if I may just interject briefly. Counsel  
22 refreshed my recollection that this accuser was actually en route to a mental health  
23 facility as she waited at the hospital at the time that she made these allegations.  
24 And so, if -- I mean, of course, if the Court would just order the State to collect the  
25 records from the mental health facility that she was sent to, of course they do a

1 background and history, and the records that we would need and the information  
2 that the Court has now deemed relevant and has agreed to in-camera review of  
3 would be contained in those records. And so that would probably be an easy  
4 solution.

5 THE COURT: Well, that at least limits it. Does the State object to  
6 producing those records? You're talking about the facility that she was apparently  
7 eventually sent to?

8 MS. ROUNDTREE: Correct.

9 MS. CLARKE: Judge, that's a roundabout way of saying we want her  
10 past psychiatric records. I mean, that's exactly what that is. It's saying, well, she  
11 was gonna be taken to this mental facility, so let's subpoena all the records in the  
12 past from there. Well, that's the same thing. It's not relevant to why she was in the  
13 hospital.

14 THE COURT: Well, but what -- here's my query, though. What if those  
15 records do contain some sort of diagnoses or actual account of hallucinating and  
16 that sort of thing? That could be relevant, could it not?

17 MS. CLARKE: Well, I guess, Judge, the argument is that we could  
18 stand up here and say, well, let's subpoena all the records everywhere from  
19 everything and school records and, you know, psychiatric hospitals, et cetera, and  
20 maybe the school records from Heather Shank when she was in eighth grade might  
21 have some relevance. I mean, the point is we're in trial -- the defendant's on trial for  
22 this case and it's about activity that occurred at Centennial Hospital, you know, in  
23 the spring of this year that it was charged. It's like a fishing expedition for the  
24 defense that they're doing it. It's not fair to the State that we go out and subpoena  
25 every facility there is for the potential that there might be this evidence. If --

1 THE COURT: Well, I agree with you to a point, but we're talking about  
2 limiting it to the one institution –

3 MS. ROUNDTREE: Correct.

4 THE COURT: -- or whatever it is –

5 MS. CLARKE: Then we'll submit it to Your Honor on that.

6 THE COURT: -- where this person went to.

7 MS. CLARKE: On that one mental institution.

8 THE COURT: Yeah, and that would be submitted to the Court. Now,  
9 let's talk about – I'm assuming – the only thing I can think of is that if there is  
10 something in those records that indicates a past history of hallucinating or doing  
11 something that might impact on the credibility of testimony now, then that's the only  
12 thing that I would be looking for to turn over to the defense. Right?

13 MS. CLARKE: So then perhaps if the State subpoenas those for an in-  
14 camera review with the CPS records from that facility?

15 THE COURT: Let's –

16 MS. CLARKE: And I guess I'd be asking for a timeframe. Certainly,  
17 you know, hallucinations 15 years prior wouldn't be relevant or at least that would be  
18 the State's position, so.

19 THE COURT: Well, let's do this. Let's just get it to me and I'll look at it  
20 and then we may have to come back and revisit it and argue it back and forth.

21 MS. CLARKE: What I mean, Judge, is they're gonna ask me the dates  
22 of admittings, they're gonna ask me the dates of treatment for this particular patient,  
23 and I'm gonna have to give them a range. I mean, am I gonna say from the  
24 beginning of time until present, or do we have, you know, a year before, six months  
25 before?

1 THE COURT: If she went to some institution and they got a bunch of  
2 mental health records wouldn't they just have 'em all in one folder or one place?

3 MS. CLARKE: Usually the facilities request either date of admittance or  
4 the date of seeing the patient, so.

5 THE COURT: Well, we're not talking about having --

6 MS. CLARKE: You mean everything; you want everything.

7 THE COURT: -- anybody else go out and do anything else, we're just  
8 talking about whatever they may have.

9 MS. CLARKE: Okay. So if they'd seen her ten years ago, you want  
10 those records as well as if they'd seen her three months prior?

11 THE COURT: Well, I guess, you know, to -- I mean, if there's a mental  
12 health history that includes something like an hallucination, that sort of thing,  
13 something that might have a fairly obvious impact on credibility, then --

14 MS. CLARKE: Okay. All right. We'll get those, Judge.

15 THE COURT: -- have to take a look at it. Okay. So that takes care of  
16 those. What about Victim Witness Assistance?

17 MS. CLARKE: I believe the next one is any and all notes or records  
18 related to physical exams, including the colposcopy associated with the sexual  
19 assault exam.

20 THE COURT: I'm going off the reply. Let me get the motion.

21 MS. CLARKE: Oh, I'm sorry, Judge, page 6 of the --

22 THE COURT: Motion? Okay.

23 MS. CLARKE: I think page 6 of the original motion.

24 THE COURT: Okay.

25 MS. CLARKE: I believe we need to argue this as well.

1 THE COURT: Physical – we're on number 3 then? We're looking at  
2 number 3 on page 6? Is that where we are? Are we on page 6 now?

3 MS. ROUNDTREE: I believe so. I believe so.

4 MS. CLARKE: Yes, sorry. Sorry, Judge.

5 THE COURT: Okay. Physical exams, et cetera, et cetera. Okay.  
6 Remind me the State's position.

7 MS. CLARKE: Judge, State's position is that any and all notes and  
8 records related to the physical exams we've already turned over to Ms. Roundtree,  
9 if we receive them we certainly will. The DVD of the video colposcopy, Judge, I'm  
10 not exactly sure why the defense needs that. It's a very intrusive video. It's an  
11 internal video of the victims.

12 It's been our practice in the District Attorney's office when we talk to our  
13 experts or the nurses or doctors who do these physical exams it's that even if we did  
14 turn over that information it's nothing that can be used. We haven't been notified of  
15 any expert they're retaining to look at it, but certainly our argument is it's an extreme  
16 invasion of the victim's rights. I mean, these are video cameras that are into the  
17 victim's vagina and filmed inside there. There can be no, that we believe,  
18 evidentiary value for that other than just violating those victims' privacy rights.

19 THE COURT: What do you want those for?

20 MS. ROUNDTREE: To turn over to our expert for review, and we don't  
21 have to tell the State of experts that we are retaining for purposes of, you know,  
22 consultation and trial preparation. If at a point we deem that –

23 THE COURT: Have you got – have you got any argument or evidence  
24 or authority that that kind of evidence has been allowed or –

25 MS. ROUNDTREE: Judge, one of the ladies has positive – alleged



1 positive medical findings that they saw during – that's how they find out whether or  
2 not there's any evidence of sexual abuse is they do the video culposcope and that's  
3 what our expert needs to review to see if he agrees that there's a positive medical  
4 finding or not.

5           So we have – I don't – I have never done a trial where it wasn't ordered  
6 and in fact the State usually puts it right there in front of the jury to see. I don't know  
7 whatever privacy issues they're talking about, but they usually put it up in front of the  
8 juries over our objection, but in every case that I've ever tried involving a sexual  
9 assault the video culposcope, if there are positive medical findings especially, have  
10 been ordered to the defense for purposes of having our expert look at it, review it,  
11 see if they agree that there is a positive medical finding. And if they do not agree  
12 then we – if we ultimately do endorse a witness in the case then we'll provide  
13 whatever reports are discoverable, et cetera.

14           MS. CLARKE: Judge, it's not been my experience that the actual video  
15 has been played. Certainly the photographs, the blue dye, and so forth. I've never  
16 had an experience where we've actually sat and played the video because it looks  
17 like a bunch of pink tissue on the screen. If they have an expert who wants to  
18 review – in particular I believe she's referring to Roxanne Cagnina's colposcopy –  
19 the State wouldn't have any objection to that. I don't believe there was any other  
20 medical findings or any other issues, as most of these victims were –

21           THE COURT: Okay. So, is it limited to that one then?

22           MS. ROUNDTREE: That would be fine.

23           MS. CLARKE: That's fine.

24           THE COURT: Okay. Let's identify it again for our record here. It's the  
25 video colposcopy of who?

1 MS. ROUNDTREE: Roxanne –  
2 MS. CLARKE: Roxanne Cagnina. It's C-A-G-N-I-N-A. We're not  
3 currently in possession of that. I would need to contact to get that.  
4 THE COURT: All right. So that's – now that's – and that's the extent of  
5 number 3, right? Is there anything else in number 3 that we're talking about that's –  
6 MS. CLARKE: No, Judge.  
7 THE COURT: -- that is contested at this point?  
8 MS. CLARKE: Well, I've conceded that notes, records and  
9 photographs relating to any of those physical exams I either have already turned  
10 over to Ms. Roundtree or will upon –  
11 MS. ROUNDTREE: Correct.  
12 MS. CLARKE: --- receivable – receipt of those.  
13 THE COURT: Okay. So that's resolved.  
14 Number 4, monetary assistance.  
15 MS. CLARKE: Judge, I'm assuming that this is referring to the \$25  
16 witness fee that is given to the witnesses. This is by statute; the State doesn't pay  
17 it. I certainly don't pull out my purse or my wallet and pay that.  
18 THE COURT: Are you looking at anything besides witness fees?  
19 MS. ROUNDTREE: I'm sorry. I'm sorry, Judge.  
20 THE COURT: Are you looking at anything – something – are you just  
21 looking at witness fees or are you asking –  
22 MS. ROUNDTREE: Any inducement –  
23 THE COURT: -- whether there've been other payments?  
24 MS. ROUNDTREE: -- reward, any benefit given for testimony. We  
25 were recently in – I won't say myself, but we were recently – our office was recently

1 made aware, I guess you could say, that another representative of the State of  
2 Nevada District Attorney's office said that, for instance, for a particular witness in a  
3 case for a pretrial hearing was given \$50. So, if, in fact, anything of that nature was  
4 given to any of the witnesses in this case we feel that would be relevant, as well as  
5 the victim witness fees and any other, again, inducement reward given for  
6 testimony.

7 MS. CLARKE: In terms of the [unintelligible] if a witness is subpoenaed  
8 by the State of Nevada and they show up at the date and time they're supposed to  
9 they're entitled to a \$25 witness fee whether that's for a conference or a court  
10 hearing.

11 THE COURT: How about saying if we limit it to anything beyond  
12 witness fees?

13 MS. CLARKE: Well, I mean, here's the State's position and there  
14 hasn't been any – that's fine with the State. There hasn't been any rewards.  
15 Certainly if Ms. Roundtree wants to go into that on cross-examination, like, hey did  
16 the Victim Witness Assistance Center offer you any type of counseling. I mean,  
17 certainly us referring a victim to counseling, the State of Nevada pays for that. We  
18 would object at trial, but that's not something we're gonna go out and pull all those  
19 records for her.

20 THE COURT: Well, this is – this is just something paid by the District  
21 Attorney, as I read it.

22 MS. ROUNDTREE: Correct.

23 THE COURT: So, if we – if we simply say if there's any other monetary  
24 assistance given directly by the District Attorney to somebody beyond witness fees –

25 MS. CLARKE: That's fine.

1 THE COURT: -- the likelihood that there is any is probably about nil,  
2 but if there were I can see that that might be -- might be --

3 MS. ROUNDTREE: And the reason why we include it in the motion,  
4 Judge, is we -- actually I've been doing this for a while, a little over 15 years, and  
5 sometimes I've had victims or alleged victims get up and say, you know, the District  
6 Attorney helped them get their driver's license or, you know, put them up in a hotel,  
7 or they were, you know -- that kind of thing.

8 THE COURT: So you're looking at more than monetary, is that what  
9 you're saying?

10 MS. ROUNDTREE: Yeah, anything -- anything --

11 THE COURT: Any benefit --

12 MS. ROUNDTREE: Correct.

13 THE COURT: -- conferred by the District Attorney office beyond  
14 witness fees --

15 MS. ROUNDTREE: Yes, Judge.

16 THE COURT: -- directly related to this case --

17 MS. ROUNDTREE: Correct, Judge.

18 THE COURT: -- or during the period of this case.

19 MS. CLARKE: And I just want to clarify that the District Attorney's office  
20 is different than the State of Nevada.

21 THE COURT: Right. Absolutely.

22 MS. CLARKE: For example, when we fly in an out-of-state witness the  
23 State of Nevada pays for their hotel room, not the District Attorney's office.

24 THE COURT: Okay.

25 MS. CLARKE: So, we -- you know, we have an agreement with the

1 state is what we do. That's fine.

2 THE COURT: All right. Does that take care of everything in 4 then?

3 MS. CLARKE: Yes.

4 THE COURT: Okay. 5, notes of interviews subject minor and material  
5 witnesses.

6 MS. CLARKE: Judge, it's the State's position that any and all notes of  
7 Las Vegas Metropolitan Police Department is work product, as is the notes of the  
8 District Attorney's office. It's privileged, it's not to be turned over –

9 THE COURT: You're not asking for their work product, are you?

10 MS. ROUNDTREE: Well, I don't know what work product that Ms.  
11 Clarke is discussing right now. I guess – we feel, I guess, that it's not work product.  
12 Any notes that the police officer takes while they're interviewing witnesses, I don't  
13 see that as being work product.

14 THE COURT: Well, if it were a direct recollection of a verbatim  
15 statement of a witness that's one thing. If it includes the thought processes and the  
16 work product of an officer or anyone else –

17 MS. ROUNDTREE: Exactly.

18 THE COURT: -- for the State, then that – I think the State's position is  
19 correct. That should not have to be turned over.

20 MS. ROUNDTREE: Well, so their conclusions or their – we agree with  
21 what the Court just suggested. Anything that they've written down that might be a  
22 potential lead, a witness they spoke to that either had information or did not have  
23 information, or information that they decided not to follow up on, those type of  
24 things. We're not looking for what would technically be –

25 THE COURT: Thought processes.

1 MS. ROUNDTREE: Yeah, the thought processes.

2 MS. CLARKE: Judge, notes from my interviews and so forth, those are  
3 my thought processes, the way I decide to write those down based on whatever  
4 someone is saying to me. Audios and videos have been turned over. You know,  
5 we understand that police reports and so forth, any phone calls recorded, would  
6 certainly be turned over, but in terms of my notes or police officer's notes –

7 THE COURT: Yeah. Well, was there a distinction here between a  
8 police officer and the D.A.'s notes? I mean, I don't think it's common to go combing  
9 through the D.A.'s personal notes, are you?

10 MS. ROUNDTREE: Notes of patrol officers, as we put in the motion, or  
11 notes of phone calls made to potential witnesses or attempts to contact such  
12 witnesses, that type of thing. Again, we're not looking at thought processes.

13 MS. CLARKE: And again, Judge, that's our work product. That's –  
14 that's the detective's personal thought processes and notes, knowing this case is  
15 just gonna be submitted to our office for prosecution.

16 THE COURT: What about – what about the witnesses? If there's – if  
17 there's phone calls made to potential witnesses would that be included?

18 MS. CLARKE: If any of those were recorded or we had any records of  
19 those we would turn those over to Ms. Roundtree under Brady. We know our  
20 obligations under that.

21 THE COURT: I don't think it would even require, you know, whatever  
22 the notes were. All you're talking about is identification?

23 MS. ROUNDTREE: Correct.

24 THE COURT: So you just want to know a name.

25 MS. ROUNDTREE: And we do – we've received – in other discovery

1 motions we've received the officer's notes if it doesn't include work product. So,  
2 yes, if there are notes that don't include work product we would ask they turn them  
3 over or if there are notes that do include work product but have witnesses and other  
4 information that does fall under the Brady requirements then they could turn  
5 information over without turning the actual note over. That's fine.

6 MS. CLARKE: And, Judge, in my experience, the notes of the police  
7 officers – the notes in general have been ruled as not discovery, as work product.  
8 Everything else has been turned over.

9 THE COURT: Well, you know, I would tend to agree with that unless it  
10 identifies an individual as a potential witness. I don't know what privilege could  
11 attach to that.

12 MS. CLARKE: Judge, any type of –

13 THE COURT: Just identification is all I'm talking about.

14 MS. CLARKE: – any type of notes that wouldn't be – would be  
15 included in their arrest report, incident report, or declaration of warrant for arrest,  
16 which has been all provided to the Public Defender's office. If there's a – if there's a  
17 mention of a witness, that would be turned over, Judge. So anything else is going to  
18 be the thought processes.

19 THE COURT: So what you're saying is in any notes of the officer they  
20 could only be working off of what's in the discoverable stuff and so it would have to  
21 be included.

22 MS. CLARKE: Correct. Correct. Which is why it's phrased as the  
23 notes.

24 THE COURT: That makes sense to me. Why would the defense think  
25 that there might be in some notes mention of a witness that isn't included in the

1 reports that are turned over?

2 MS. ROUNDTREE: Well, we have in the past received copies of  
3 LRMS, which is their – basically the – used to be the Metropolitan Police  
4 Department, maybe it still is, their note-taking system and quite often there are  
5 mentions of witnesses who were contacted and simply because they – if the police  
6 officer did not do an actual recorded interview or a formal statement from that  
7 person, most often, if not always, it's not included in the discovery packet or the  
8 police reports, but that doesn't mean that it's not discoverable in that.

9 THE COURT: I think about the furthest that I would be willing to go is to  
10 say that if those notes of the officer that have not been turned over contain the name  
11 and identification of a potential witness then that should be turned over, but anything  
12 else seems to me – you know, without a particularized showing I would not be  
13 willing to order. So I leave that to the District Attorney to take a look and see if  
14 there's some –

15 MS. CLARKE: I will inquire from Detective Saunders about that and I  
16 will let Ms. Roundtree know.

17 THE COURT: Number 6. That's pretty standard, isn't it? Prior criminal  
18 record of witnesses.

19 MS. CLARKE: Well, Judge, by statute the defense is not entitled to  
20 NCIC of the witnesses. Certainly if any of the witnesses that we intend to call have  
21 prior felony convictions within the last ten years we would notify them. I believe it's  
22 our policy in our office, particularly on our team, to invite the Public Defenders over  
23 to our office so they can review our file. At that time is usually when we show them  
24 the NCIC printout, which they can review but cannot take a copy with. We're  
25 forbidden to do that, Judge.



1 THE COURT: You're not asking for anything beyond that, are you?

2 MS. ROUNDTREE: Well actually, Judge, we -- are you surprised? We

3 believe that actually the law states, as we put in the response, that it's not just the

4 prior convictions within the last ten years that we would be entitled to, but it would be

5 any -- I'm not sure that this just falls under NCIC.

6 THE COURT: Well, if you get to go look at the NCIC, though, then

7 where's the problem?

8 MS. ROUNDTREE: Right. If that's -- if that's going to be -- if that's

9 going to be their offer then I -- actually that's not the normal course in my

10 experience, but if that's going to be their offer I think that would probably suffice.

11 MS. CLARKE: I have no problem letting them --

12 THE COURT: Okay. You're gonna have 'em come over --

13 MS. CLARKE: I have no problem letting them --

14 THE COURT: -- and look at NCIC and that takes care of it.

15 MS. CLARKE: I have no problem. In terms of the misdemeanors and

16 the records surrounding that, if it doesn't have to do with a perjury misdemeanor or

17 something to do with the truthfulness, then I would say they're not entitled to that,

18 but looking at the NCIC they're certainly welcome to.

19 MS. ROUNDTREE: I've just never had --

20 THE COURT: I think you have to -- if you look at the NCIC you remove

21 all doubt.

22 MS. ROUNDTREE: Thank you. Absolutely. That's not -- I didn't realize

23 that was a common process.

24 THE COURT: There's no -- you're not relying on them to determine

25 relevance.

1 MS. ROUNDTREE: That's fine.

2 THE COURT: You get to see everything and then whether it's  
3 admissible is another question.

4 MS. ROUNDTREE: Of course. Of course. Thank you, Judge.

5 THE COURT: Boy, we're gonna be here a while. Number 7. Have we  
6 included – I mean, have we covered that basically with the other records that we  
7 talked about?

8 MS. CLARKE: Yes. Any information, Judge, that we have of prior  
9 allegations, if we get any of that information we will certainly turn that over to Ms.  
10 Roundtree.

11 MS. ROUNDTREE: And since that was the State's response to our  
12 motion we just didn't even – we didn't even address that and they promised that  
13 they would turn that over, and that's fine, so we went on to number 8 in our  
14 response.

15 THE COURT: Okay. And number 8 is pro forma, although –

16 MS. CLARKE: And, Judge, our response is that's the defense's job. I  
17 mean, that's why they're appointed. That's what they do is to find – any exculpatory  
18 evidence that we have we'll turn over, but we're certainly not gonna go out on this  
19 big expedition to find out all evidence of, you know, the defendant not committing  
20 this crime. I mean, we know what exculpatory evidence is; we know we have a duty  
21 to turn it over.

22 It's kind of a vague request, so we're gonna ask that that be denied  
23 unless there's a specific thing that Ms. Roundtree's searching for.

24 MS. ROUNDTREE: We kind of put the specifics of what we're looking  
25 for in the motion, if not the response, and what we – what the Public Defender's

1 office has – actually, it's more than what a lot of defense attorneys have so we're  
2 glad that we have it, but it's just the SCOPE. So if the State has access to other  
3 information that one of the alleged victims made prior false allegations, we do feel  
4 like they should turn it over.

5 THE COURT: Well, when you say if they have access to it – to me  
6 what this comes down to is if the prosecutor or the case agent has direct knowledge  
7 of something they've already indicated they understand they have an obligation  
8 under Brady to turn that over.

9 MS. ROUNDTREE: Okay.

10 THE COURT: And so I'm not gonna deny it 'cause I think it is the law,  
11 but let's have a clear understanding that all that means is if the State is aware of  
12 something that the State can tell is exculpatory that hasn't been covered in this other  
13 stuff, then they'll turn it over.

14 MS. CLARKE: And then I guess the State would only ask that in the  
15 order it state that versus the way it's phrased on page 7, number 8, is any and all  
16 information which shows that the defendant – I mean, that kind of extends our duty  
17 to everything versus anything in our possession or that we know about.

18 THE COURT: Well, this – number 8 has to be that thing that it relies on  
19 whether the State can tell that it's exculpatory. If the State can tell –

20 MS. CLARKE: I guess I can just ask the language reflect that.

21 THE COURT: Hmm?

22 MS. CLARKE: I guess I would just ask that the language reflect –

23 THE COURT: Yeah. Well, and that's the –

24 MS. CLARKE: -- anything we have in our possession or we know  
25 about.

1 THE COURT: -- that's the Catch 22 about Brady, you know, that's the  
2 whole Catch 22 because who's supposed to determine whether it shows that it's  
3 exculpatory? And that's why we get into the fishing expeditions to go beyond it, but  
4 it still -- the actual Brady obligation still remains and if the State is aware that there's  
5 something that the State can tell is exculpatory then they'll turn it over and the State  
6 recognizes that.

7 MS. CLARKE: Okay.

8 THE COURT: Number 9.

9 MS. CLARKE: Judge, I think this is just redundant, the patrol officer's  
10 notes. I think we've already covered that, and I think Your Honor has already ruled.

11 THE COURT: Yeah, this is covered by our previous discussion. The  
12 only thing that's really gonna go beyond reports that are given is in terms it says  
13 "notes" -- well, let's see now. Wait, we get down to the polygraph. What about  
14 polygraph? Any discussion of polygraph?

15 MS. CLARKE: I don't believe there was a polygraph done in this case.

16 MS. ROUNDTREE: Okay, Judge.

17 THE COURT: No indication of any polygraph. Okay?

18 MS. ROUNDTREE: Okay.

19 THE COURT: Number 10, chain of custody. And if somebody made a  
20 report that they destroyed evidence, then --

21 MS. CLARKE: We would certainly turn that over, Judge, knowing that's  
22 the policy under Brady.

23 MS. ROUNDTREE: And, Judge, the relevant chains of custody we  
24 would ask be turned over as well. Unfortunately, we usually don't -- I guess we  
25 usually don't get that until the trial, so if there -- sometimes there are reports about

1 the chain of custody of the items in evidence and sometimes there are not. But if  
2 there are we'd ask that that be turned over just prior to the trial just so we can have  
3 a chance to review it without delaying the trial proceedings at the time the trial starts.

4 MS. CLARKE: We'd submit it as just granted for that, Judge. If we  
5 have anything we'll turn it over.

6 THE COURT: Okay. Inconsistent statements.

7 MS. CLARKE: We acknowledge our obligation, Judge.

8 THE COURT: Number 12. Experts, mental health workers.

9 MS. CLARKE: Judge, we think this is covered under the mental health  
10 workers in number 2, and I think Your Honor ordered Ledahlia Spurlock, all of hers,  
11 which is the woman who was maybe taken, so I think that's moot.

12 THE COURT: 15, photographs of lineups. Were there any lineups  
13 done here?

14 MS. CLARKE: We're gonna provide all that. We understand our  
15 obligation, so.

16 THE COURT: 911 recordings.

17 MS. ROUNDTREE: And, I'm sorry. Just regarding number 13, I know  
18 that the police officers or the detectives in this case went to some of these women to  
19 see if they had been victimized, and so if in fact when they went to these women to  
20 see if they had any problems with Mr. Farmer, if in fact they did show, you know, a  
21 picture, we would just ask to know what picture it was and be shown that picture.  
22 That's kinda what we're talking about in that one.

23 THE COURT: If they did that wouldn't that be in the report that you  
24 get?

25 MS. ROUNDTREE: Sometimes yes, sometimes no. I mean, depends

1 on – in my experience it depends on sort of how –

2 THE COURT: If there were any photo showups or that you're talking  
3 about, if that were done then that would be turned over.

4 MS. CLARKE: That's fine.

5 MS. ROUNDTREE: Thank you.

6 THE COURT: 911 recordings?

7 MS. CLARKE: We agree – we would – we understand our obligation,  
8 Judge, under Brady for that.

9 THE COURT: 15, Roxanne Cagnina.

10 MS. CLARKE: Judge, it is – it says that if any other complaining  
11 witness has filed a lawsuit. We have no information that any other complaining  
12 witness has. If we find out that they have we certainly would tell the defense about  
13 that.

14 THE COURT: And that's the extent of it, 'cause anything they – if they  
15 have filed one then that's public record, presumably.

16 MS. CLARKE: Right. It looks like it's just – it's just asking for any – if  
17 any others have we deem that exculpatory, so.

18 THE COURT: Okay.

19 MS. CLARKE: If we find out any of that information we would turn it  
20 over to the State – I mean, to the defense.

21 THE COURT: All right. 16, Frances Rose. That's covered, is it not?

22 MS. ROUNDTREE: I think – as to Frances Rose she alleges that she  
23 was abused at the Rawson-Nealson [sic] Mental Health Clinic. And I think if the  
24 Court would make an order very similar to the other order regarding the suicide  
25 attempter then that would probably suffice as far as getting us started on that

1 because she was actually institutionalized, or committed, if you will. I don't know if  
2 that's a nice word or not, but.

3 THE COURT: So what you're saying is you want the State to turn that  
4 over to me to go through to see whether or not there's any indication of prior mental  
5 health treatment that might be exculpatory, such as hallucinations?

6 MS. ROUNDTREE: Right. Or – and if those records included her  
7 making allegations against someone else, against the clinic. That doesn't include  
8 hallucinations, but that's another thing that we deem could be relevant. I think the  
9 Court probably has a good understanding of what would be potentially, you know,  
10 exculpatory and relevant, and so if you want to do an in-camera review, that's fine.

11 MS. CLARKE: And I believe we subpoenaed all the records from the  
12 Rawson-Neal facility.

13 THE COURT: Okay.

14 MS. CLARKE: Any and all records associated with that facility are  
15 gonna come to us and I'll turn them over to the defense.

16 THE COURT: So any records you get you're turning over anyway.

17 MS. CLARKE: Correct.

18 MS. ROUNDTREE: Thank you, Judge.

19 THE COURT: So there really isn't a need to submit it in camera.

20 MS. CLARKE: Well, I mean, I guess the only other thing is, you know –

21 MS. ROUNDTREE: Okay. That's what I assumed.

22 MS. CLARKE: -- prior hospitalizations and everything. I don't have  
23 names of any other hospitals, but everything from Rawson-Neal.

24 THE COURT: That's the extent of it.

25 MS. ROUNDTREE: Right, that should be included. Yeah.

1 THE COURT: That's the extent of it. Yeah.  
2 Okay.  
3 MS. CLARKE: And then I believe it's also on for a motion, right, to  
4 continue it.  
5 MS. ROUNDTREE: And so I guess as the Court is probably getting the  
6 picture, we will not be ready for trial next week.  
7 THE COURT: You can't get all that done by [inaudible]? How long do  
8 you want?  
9 MS. ROUNDTREE: What is the Court's ordinary course?  
10 THE CLERK: We have June and we have July available.  
11 MS. CLARKE: Judge, we're gonna request the June date. I don't know  
12 about Ms. Roundtree's schedule. Just because the hearing, that preliminary hearing  
13 was in July of last year, so we'd like to get things moving. We should get everything  
14 by then.  
15 MS. ROUNDTREE: That sounds good.  
16 THE CLERK: June 22nd.  
17 MS. CLARKE: Would that be for the trial date, Ms. Clerk?  
18 THE CLERK: Jury trial at 10:30 with a calendar call June 17th at 9:00  
19 a.m.  
20 MS. ROUNDTREE: I'm sorry we took so much of the Court's time, but  
21 thank you for hearing it.  
22 THE COURT: That's all right. Okay. Anything else?  
23 MS. ROUNDTREE: No, Judge, thank you.  
24 THE COURT: Has the defendant already waived?  
25 MS. ROUNDTREE: He has.



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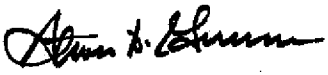
THE COURT: Okay. Thank you.

PROCEEDING CONCLUDED AT 10:43 A.M.

\*\*\*\*\*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.

  
BEVERLY SIGURNIK  
Court Recorder/Transcriber

  
CLERK OF THE COURT

1 RTRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

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STEVEN DALE FARMER,

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Defendant.

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BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
TUESDAY, MAY 19, 2009

14

15

**RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:  
CALENDAR CALL**

16

17

18

19

**APPEARANCES:**

20

For the State:

SUMMER C. CLARKE, ESQ.  
Chief Deputy District Attorney

21

22

For the Defendant:

STACEY ROUNDTREE, ESQ.  
Deputy Public Defender

23

24

25

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, MAY 19, 2009; 9:19 A.M.

2  
3 THE COURT: State versus Farmer, C249693. Present in custody.

4 Are you ready to go?

5 MS. CLARKE: Your Honor, at this time the State's requesting a  
6 continuance in the matter and here's why. The Defendant has two cases in the  
7 system right now. One involves five different victims. That case came through  
8 the system first. There was a preliminary hearing and a trial date set and that is  
9 currently in District Court XX. We're set for trial June 22<sup>nd</sup>. This case came  
10 later because of the victim that's involved. She suffers from severe seizures.  
11 She has 15 to 20 a month. After she has a seizure she is incapacitated for a  
12 period of two to three days. She cannot speak. She cannot walk. She has a  
13 hard time functioning. Because of that, are detective had difficulty setting up  
14 interviews and so forth during his investigation.

15 A long story short, that case came through the system second. We  
16 had a grand jury presentation. She actually had a seizure during the grand jury  
17 presentation and was rushed to the emergency room, stopped breathing. There  
18 was a period we weren't sure what was going to happen. That case came here  
19 and, for whatever reason, Your Honor's schedule is quicker than in District  
20 Court XX, so this case got set before – it got continued once and it was prior to  
21 that trial date. And I believe I didn't have my trial schedule with me and didn't  
22 make it known to the Court that we were requesting this case come after.

23 THE COURT: Oaky. When do you want it set?

24 MS. CLARKE: If we could get a date –

25 MS. ROUNDTREE: Could I –

1 MS. CLARKE: Oh, go ahead.

2 MS. ROUNDTREE: I wonder if we could possibly set a status check after  
3 the other.

4 MS. CLARKE: That's fine.

5 MS. ROUNDTREE: Is that okay?

6 MS. CLARKE: That's fine.

7 MS. ROUNDTREE: And just – and we do not have an opposition to it.  
8 The reason being, I was actually scheduled to be in a retrial, so of course that  
9 client had been in custody way longer than Mr. Farmer. That started yesterday.  
10 It negotiated as the jury was coming in, so I expected I would be in trial this  
11 week. So we have no opposition and it seems –

12 THE COURT: Okay. When do you want it set?

13 MS. ROUNDTREE: Well –

14 MS. CLARKE: We were just talking.

15 MS. ROUNDTREE: – we'd ask for a status check.

16 MS. CLARKE: Perhaps we could get a status check date. We think the  
17 other case is –

18 THE COURT: Thirty days.

19 MS. ROUNDTREE: After, if we could, about the end of June, if that's  
20 okay. Thank you.

21 THE CLERK: June 22<sup>nd</sup> – no, June 23<sup>rd</sup>.

22 MS. ROUNDTREE: Thank you very –

23 Is that – that's after, right?

24 THE CLERK: 8:30.

25 MS. CLARKE: Could we – and I apologize. Could we get the week after?

1 We're supposed to start trial in the other case on June 22<sup>nd</sup>.

2 THE COURT: Sure.

3 MS. CLARKE: I don't think we're -

4 MS. ROUNDTREE: Oh, right.

5 MS. CLARKE: - going to have an update for you -

6 MS. ROUNDTREE: Good point.

7 MS. CLARKE: - by the day after.

8 THE COURT: Why don't you go mid-July.

9 MS. CLARKE: Great.

10 THE CLERK: July 14<sup>th</sup>, 8:30.

11 MS. ROUNDTREE: Thank you very much.

12 THE COURT: Thank you.

13 MS. CLARKE: Thanks.

14 MS. ROUNDTREE: We appreciate it.

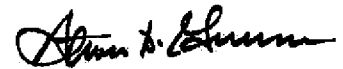
15 [Proceedings concluded at 9:22 a.m.]

16 \* \* \* \* \*

17 ATTEST: I hereby certify that I have truly and correctly transcribed the  
18 audio/visual proceedings in the above-entitled case to the best of my ability.

19 

20 Kristine Cornelius,  
21 Court Recorder  
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CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. 08C245739

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vs.

DEPT. I

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STEVEN DALE FARMER

12

Defendant.

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***BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE***

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***WEDNESDAY, JUNE 17, 2009***

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***RECORDER'S TRANSCRIPT RE:***

16

***DEFENDANT'S MOTION TO CONTINUE TRIAL DATE/CALENDAR CALL***

17

18

**APPEARANCES:**

19

For the State:

SUMMER CLARKE, ESQ.

20

Deputy District Attorney

21

For the Defendant:

GREGORY COYER, ESQ.

22

STACEY ROUNDTREE, ESQ.

23

Deputy Public Defenders

24

25

**RECORDED BY: BEV SIGURNIK, COURT RECORDER**

1 Las Vegas, Nevada, Wednesday, June 17, 2009 at 10:56 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 MS. CLARKE: Good morning, Your Honor, Summer Clarke for the State.

6 THE COURT: Good morning.

7 MS. ROUNDTREE: Good morning, Your Honor, Stacey Roundtree and  
8 Gregory Coyer for Mr. Farmer, who's present in custody.

9 THE COURT: Good morning. It's on your motion?

10 MS. ROUNDTREE: Your Honor, we filed this motion to continue the trial  
11 date, and while I do realize that it's been, you know, almost a year since Mr.  
12 Farmer was arraigned, he was arraigned on July 1<sup>st</sup>, I believe of 2008; we  
13 simply need a little more time to complete the investigation. You know, it's at  
14 the fault of the Defense I feel, pretty much exclusively, but I feel if the Court  
15 could give us a continuance to of about at least 'til maybe November, October,  
16 November we could have the case prepared for trial.

17 I sort of started a string of trials starting February which took me  
18 through May. Have I not been so involved in that string of trials, I'd perhaps  
19 could've been more on top of the investigation, making sure that things were  
20 prepared, but that was my situation, and I've laid it out in the motion to  
21 continue.

22 THE COURT: Is there – in the motion, I think it says something about the  
23 problem of having – getting investigation itself done?

24 MS. ROUNDTREE: That's correct, Your Honor. Mr. – this case involves  
25 five – about five alleged victims that sort of had no connection to one another.

1 Now, there – so there's five different events that are alleged. So, any  
2 investigation of those five events, there are – you know, my client has given us  
3 a list of witnesses, perhaps percipient witnesses that we just have not had  
4 adequate opportunity to investigate to speak with, as well as some additional  
5 discovery that we think that we may be able to – to retrieve if we have a little  
6 more time.

7 I know the Court has already ordered, you know, made court orders  
8 for the information that we believe we need, but we haven't received all of it.

9 THE COURT: Okay.

10 MS. ROUNDTREE: And that's the basics.

11 THE COURT: All right. As it stands now, if we continue with the present  
12 trial date, the Defendant will not be prepared for trial?

13 MS. ROUNDTREE: That's correct, Your Honor.

14 THE COURT: Okay.

15 MS. CLARKE: Your Honor, as much as the State understands Ms.  
16 Roundtree's position in terms of the investigation and so forth, this case has  
17 been going on for so long. It's been continued multiple times. There's another  
18 active case in the system with another victim that the Defendant is charged  
19 with sexually assaulting, and that is trailing this case.

20 At this point, the State – the State was going to announce ready.  
21 We have 20 to 25 witnesses. The victims in the case want the case to  
22 proceed. They – in fact one of them called and wanted to come to court this  
23 morning and address Your Honor, and let Your Honor know that, you know,  
24 she can't get closure except this trial is over with, and so forth. I explained to  
25 her she wouldn't even have standing to address the court, but that I would let



1 Your Honor know of her concerns.

2 THE COURT: Okay.

3 MS. CLARKE: And the fact that she can't get through this matter until  
4 the criminal trial has proceeded. We are ready. We're opposing a continuance.  
5 It has been -- there has been more than ample opportunity for Ms. Roundtree to  
6 prepare this case. So, we would submit it to Your Honor, but we are opposing  
7 a continuance.

8 THE COURT: Okay. Well, and I -- I don't know if the victims understand  
9 all the legal ins and outs but if we force this case to trial without a Defendant  
10 who isn't prepared for trial, then what happens is they don't get closure, it  
11 means that it gets reversed, and they come back down here and have to testify  
12 again, so they still don't get closure.

13 On that basis, the Court will continue the trial. We have a --  
14 November --

15 THE CLERK: November stack, we have November 9<sup>th</sup> with a calendar call  
16 November 4<sup>th</sup> at 9 a.m.; jury trial November 9<sup>th</sup> at 10:30.

17 THE COURT: Is this a five-day trial?

18 MS. ROUNDTREE: Yes Judge, it will be a full week.

19 MS. CLARKE: We agree.

20 MS. ROUNDTREE: It may even spill over into the next week.

21 MS. CLARKE: I agree.

22 THE COURT: You don't think we could get it into five days?

23 MS. CLARKE: No, Your Honor, we have 20 to 25 witnesses.

24 THE COURT: You don't think we could --

25 MS. CLARKE: Including experts.

1 THE COURT: -- do this in five days? Okay. So, how many days do you  
2 say then?

3 MS. ROUNDTREE: About seven -- seven, eight.

4 THE COURT: Seven or seven, eight. Okay. All right. Anything else  
5 then?

6 MS. ROUNDTREE: I'm sorry; I miss the time of the trial.

7 THE CLERK: Ten-thirty.

8 MS. ROUNDTREE: Ten-thirty. All right. Thank you, Judge. We  
9 appreciate it.

10 MS. CLARKE: And it's my understanding, just for the record that the  
11 other case that's trailing this one will then be continued as well, so just so we  
12 have that on the record.

13 THE COURT: Okay.

14 THE CLERK: Is that in our courtroom?

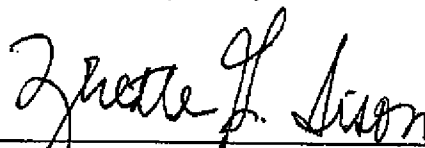
15 MS. CLARKE: It is not. But, it's a matter of -- this is getting continued  
16 over our objection, and the other one will obviously trail this. I believe Ms.  
17 Roundtree is okay with that.

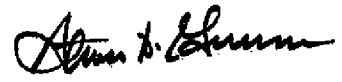
18 MS. ROUNDTREE: That's correct.

19 [Proceedings concluded at 11:01 a.m.]  
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
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Yvette G. Sison  
Court Recorder/Transcriber

  
CLERK OF THE COURT

1 RTRAN  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,

7  
8 Plaintiff,

9 vs.

10 STEVEN DALE FARMER,

11 Defendant.  
12

CASE NO: C249693

DEPT. NO: XII

13 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
14 TUESDAY, JULY 14, 2009

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:**  
16 **TRIAL SETTING**  
17  
18

19 **APPEARANCES:**

20 For the State:

SHAWN A. MORGAN, ESQ.  
Deputy District Attorney

22 For the Defendant:

STACEY ROUNDTREE, ESQ.  
Deputy Public Defender

24  
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, JULY 14, 2009; 9:40 A.M.

2  
3 THE COURT: State versus Steven Farmer, C249693. Thank you. He's  
4 present. He's in custody. This is on for trial setting.

5 MR. MORGAN: Judge. –

6 THE COURT: Good morning.

7 MR. MORGAN: – this is Ms. Clarke's case.

8 MS. ROUNDTREE: Ms. Clarke is in Henderson. If we could possibly – I  
9 received a text message from her. She had a prelim on this morning and was  
10 not aware until she got to her office that it was actually in Henderson. So we  
11 have the – we were waiting for the trial on the much bigger case involving Mr.  
12 Farmer's allegations, which has been continued until – or actually October. So  
13 we were asking the Court to consider a status check on this trial setting in  
14 November.

15 The reason we're asking for a status check is this alleged victim is  
16 – suffers severe medical issues and each and every time they pretrial her it  
17 causes her to have seizures. And so they're – she's just – Ms. Farmer's *[sic]*  
18 just being very careful about – if there is a conviction in the other case, perhaps  
19 they might not move forward on this case. And so we just would rather set it  
20 for a status check –

21 THE COURT: Okay.

22 MS. ROUNDTREE: – as opposed to resetting it for trial.

23 THE COURT: That's fine.

24 MS. ROUNDTREE: Thank you so much.

25 [Colloquy between the Court and clerk]

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MS. ROUNDTREE: Oh, I'm sorry.

THE CLERK: November 17<sup>th</sup> at 8:30.

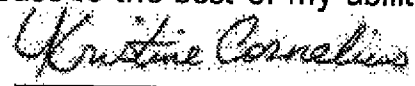
MS. ROUNDTREE: Thank you very much.

THE COURT: Thank you.

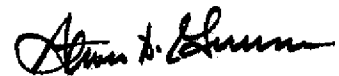
[Proceedings concluded at 9:42 a.m.]

\* \* \* \* \*

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



Kristine Cornelius,  
Court Recorder



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. 08C245739

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vs.

DEPT. I

11

STEVEN DALE FARMER

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Defendant.

13

**BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

14

15

**WEDNESDAY, OCTOBER 28, 2009  
RECORDER'S TRANSCRIPT RE:  
STATE'S REQUEST TO CONTINUE TRIAL**

16

17

18

**APPEARANCES:**

19

For the State:

**WILLIAM JAKE MERBACK, ESQ.  
Deputy District Attorney**

20

21

For the Defendant:

**ABEL YANEZ, ESQ.  
Deputy Public Defender**

22

23

24

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**RECORDED BY: BEV SIGURNIK, COURT RECORDER**

1 Las Vegas, Nevada, Wednesday, October 28, 2009 at 10:07 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 MR. MERBACK: Judge, this is on at the agreement of both parties to request  
6 a continuance of the trial date. We realize the trial date has been continued a  
7 number of times.

8 As the Court is aware there is a number of victims in this case. One of  
9 the victims is having surgery on November 5<sup>th</sup>, and our trial date is November 9<sup>th</sup>,  
10 and she's doing inpatient surgery, so we don't know when she's getting out of the  
11 hospital, and then the Defense also has some issues in regards to some expert  
12 notices they still need to do and some other issues, so I think both parties are going  
13 to ask the case be continued.

14 We're going to ask for a firm setting, and we were looking at our  
15 calendars. Is April – is the Court in a criminal stack in April?

16 THE COURT: What do we have?

17 THE CLERK: April 19<sup>th</sup> has a firm setting, so April 26<sup>th</sup> will be available.

18 THE COURT: What's your trial time?

19 MR. MERBACK: A week and a half, potentially two weeks I think. What  
20 about the week before, the 19<sup>th</sup>?

21 THE COURT: Well, but then we got a firm setting on the 19<sup>th</sup>.

22 MR. MERBACK: That's right.

23 THE COURT: You want to go the next one up? What was that? The 20  
24 what?

25 THE CLERK: The 26<sup>th</sup>.



1 MR. MERBACK: That work for you?

2 MR. YANEZ: The 26<sup>th</sup> is fine.

3 MR. MERBACK: April 26<sup>th</sup> is fine, Judge.

4 THE COURT: Okay. Then we'll block it out for two weeks then or, you know,  
5 a week and a half.

6 MR. MERBACK: Okay. Thank you, Judge.

7 THE COURT: Okay.

8 MR. MERBACK: And so the calendar call and the trial date are both vacated?

9 THE COURT: They're both vacated. Has the Defendant already waived?

10 MR. YANEZ: I believe so.

11 MR. MERBACK: It's been continued a number of times at the Defense's  
12 request.

13 THE COURT: All right, Mr. Farmer, we'll see you in April.

14 THE DEFENDANT: Can I ask you a question, you're telling me that there's  
15 no calendar call. It's just gonna be a straight trial this time?

16 THE COURT: No, there will be a calendar call. Thank you.

17 THE CLERK: Jury trial, April 26<sup>th</sup> at 10 a.m., with a calendar call, April 21<sup>st</sup> at  
18 9 a.m.

19 THE COURT: Can you work that in? You're gonna be here?

20 THE DEFENDANT: Yeah.

21 MR. YANEZ: Thank you, Judge.

22 [Proceedings concluded at 10:09 a.m.]


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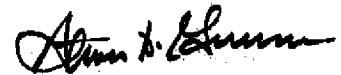
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
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Yvette G. Sison  
Court Recorder/Transcriber



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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CASE NO: C249693

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vs.

DEPT. NO: XII

10

STEVEN DALE FARMER,

11

Defendant.

12

13

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

14

TUESDAY, NOVEMBER 17, 2009

15

**RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:  
TRIAL SETTING**

16

17

18

**APPEARANCES:**

19

20

For the State:

WILLIAM J. MERBACK, ESQ.  
Chief Deputy District Attorney

21

22

For the Defendant:

LYNN AVANTS, ESQ.  
Deputy Public Defender

23

24

25

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, NOVEMBER 17, 2009; 8:44 A.M.

2  
3 THE COURT: State of Nevada versus Steven Farmer, C249693.

4 MR. MERBACK: Judge –

5 THE COURT: Mr. Farmer is present. He's in custody.

6 MR. MERBACK: – can we – James Merback for the State.

7 Judge, I got a text from Ms. Roundtree this morning indicating that  
8 she was in trial and might not be able to make it here today. She had an early  
9 start on a trial. Judge, the – this – I don't know if this Court's aware of this.  
10 This case is trailing kind of the bigger case that's in District Court I. That case  
11 has been set for trial April 26<sup>th</sup>. So both parties were going to ask that this  
12 case be continued for –

13 THE COURT: After April 26<sup>th</sup>?

14 MR. MERBACK: – for a status check after the trial in that case.

15 THE COURT: You don't want me to set it for trial right now?

16 MR. MERBACK: I – Ms. Roundtree and I both discussed the fact that we  
17 were just going to set it for a status check. Whatever happens with that case,  
18 Judge, this case will resolve.

19 THE COURT: Okay. All right.

20 MR. AVANTS: I'll submit it on your representations.

21 [Colloquy between the Court and clerk]

22 THE CLERK: It will be May 4<sup>th</sup> at 8:30.

23 MR. MERBACK: And also, just to inform the Court, there's a possibility  
24 there might even be a motion to consolidate this case with that case.

25 THE COURT: Okay.

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MR. MERBACK: That's a possibility. Thank you, Judge.

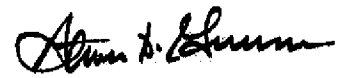
[Proceedings concluded at 8:45 a.m.]

\* \* \* \* \*

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Kristine Cornelius,  
Court Recorder

  
CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 STEVEN DALE FARMER

12 Defendant.

CASE NO. 08C245739

DEPT. I

13 **BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**  
14

15 **WEDNESDAY, MARCH 17, 2010**

**RECORDER'S TRANSCRIPT RE:**

16 **STATE'S MOTION FOR VIDEOTAPED TESTIMONY OF VICTIM, MARCIA**  
17 **PETERSEN/STATE'S MOTION TO CONSOLIDATE**  
18

19 **APPEARANCES:**

20 For the State:

DANAE ADAMS, ESQ.  
Deputy District Attorney

21 For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

22  
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25 **RECORDED BY: BEV SIGURNIK, COURT RECORDER**

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3 Las Vegas, Nevada, Wednesday, March 17, 2010 at 9:52 a.m.  
4

5 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
6 present in custody.

7 THE COURT: State's going to ask to continue this? I have a note.

8 MS. ADAMS: I don't think – I don't know if it was the State's per se  
9 continuance. I think the Defense needed additional time to – is that right? To  
10 respond?

11 MR. COYER: I thought it was because Mr. Merback was in trial.

12 MS. ADAMS: Yeah, he's in trial. I believe there was more additional time  
13 needed for a response. So we just wanted to continue a week.

14 THE COURT: Is that enough?

15 MR. COYER: I had – I had thought that it was gonna be moved to Monday,  
16 and this is coming from Ms. Roundtree who is first chair on the case, and I don't  
17 want to put it on a day that she's not available.

18 MS. ADAMS: And I also got a note that they contacted the Court, so the  
19 Court was aware of the –

20 THE COURT: Yeah.

21 MS. ADAMS: So Monday?

22 THE COURT: Monday? Is that when – can we fit it in Monday?

23 MS. ADAMS: I had a week.

24 THE COURT: Okay. Well, I'm good either way. Tell me what you want.

25 MS. ADAMS: That's fine.

MR. COYER: Yeah, let's give it Monday.

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THE COURT: Mr. Merback had asked for Monday, my clerk says.

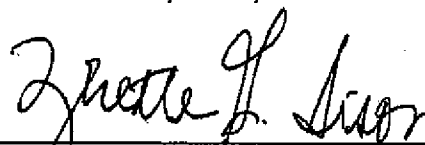
MS. ADAMS: That's fine. Perfect.

THE CLERK: Continued to March 22<sup>nd</sup> at 9 a.m.

MR. COYER: Thank you.

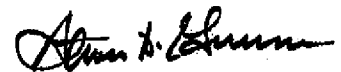
[Proceedings concluded at 9:54 a.m.]

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Yvette G. Sison  
Court Recorder/Transcriber





CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

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Plaintiff,

10

vs.

CASE NO. 08C245739

11

STEVEN DALE FARMER

DEPT. I

12

Defendant.

13

**BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

14

**MONDAY, MARCH 22, 2010**

15

**RECORDER'S TRANSCRIPT RE:**

16

**STATE'S MOTION FOR VIDEOTAPED TESTIMONY OF VICTIM, MARCIA  
PETERSEN/STATE'S MOTION TO CONSOLIDATE**

17

**APPEARANCES:**

18

For the State:

19

JAKE MERBACK, ESQ.  
Deputy District Attorney

20

For the Defendant:

21

GREGORY COYER, ESQ.  
STACEY ROUNDTREE, ESQ.  
Deputy Public Defenders

22

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RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Monday, March 22, 2010 at 10:51 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 MS. ROUNDTREE: Good morning, Your Honor, Stacey Roundtree and Greg  
6 Coyer for Mr. Farmer who is in custody in red here.

7 THE COURT: Good morning. I didn't get any opposition, was there one?

8 MS. ROUNDTREE: Your Honor, we ask for a little additional time to answer.  
9 There's some Defense motions coming around, but we wanted to keep this date.  
10 We thought it's important to appear in front of Your Honor. It's our understanding  
11 that the Court is moving around some trial dates, and as a result of that, I think that  
12 we are both on board that this is – this trial – regardless of whether it proceeds with  
13 the consolidation, which the State is asking for, or without it, there's five alleged  
14 victims in this case. It'll be a two-week trial, very conservatively.

15 MR. MERBACK: At least two weeks.

16 MR. COYER: At least two weeks.

17 MS. ROUNDTREE: Yes, at least. Yes.

18 THE COURT: Okay. So, we'll keep the trial date, and you want – how much  
19 time do you need to respond.

20 MS. ROUNDTREE: Judge, we actually are going to ask to vacate that trial.

21 THE COURT: Oh.

22 MS. ROUNDTREE: My understanding is you're going to be out of the  
23 jurisdiction. There's not going to be an overflow department that's going –

24 THE COURT: I'm sorry, I misunderstood.

25 MS. ROUNDTREE: I'm sorry. No, I wasn't clear. Obviously, I –

1 MR. MERBACK: Can we actually approach, Judge, just to kind of discuss  
2 this?

3 THE COURT: Sure.

4 [Bench Conference]

5 THE COURT: All right. Counsel, as I've indicated to you, I will have to  
6 continue the trial date in any event because I'll be out of the jurisdiction on the last  
7 part of April and the first week of May. This is -- I'm told is at least, if it's  
8 consolidated I gather, it would be then two weeks and probably more -- am I hearing  
9 --

10 MS. ROUNDTREE: Yes, definitely.

11 THE COURT: -- we would not be able to do it within two weeks.

12 MR. MERBACK: I think even if it's not consolidated, it's probably still two  
13 weeks, and if it is, you're talking maybe a couple more days because of the  
14 consolidation. There's a ton of evidence.

15 THE COURT: So, I'm having to continue it because I will be out of the  
16 jurisdiction. As we've discussed here at the side bar, the next available that we can  
17 give you a firm date on would be in November --

18 THE CLERK: The 29<sup>th</sup>.

19 THE COURT: -- November 29<sup>th</sup>, and on the chance that it might get  
20 consolidated I can put it down for a three week -- you know, if it doesn't get  
21 consolidated, then fine we'll still be at two weeks apparently. So we'll set it for three  
22 weeks knowing that if we don't do the consolidation, we can cut it back down to two  
23 weeks.

24 THE CLERK: The calendar call would be Monday, November 22<sup>nd</sup>, with a jury  
25 trial November 29<sup>th</sup> at 10:30; and the motions are continued --

1 MS. ROUNDTREE: Can we get like a week or two weeks, whatever is – so  
2 the State can respond, I think maybe two weeks. I'll have my oppositions by, you  
3 know, today or tomorrow and then they have some time to respond though.

4 MR. MERBACK: That's fine, Judge.

5 THE COURT: So if we set this out two weeks then will that – that'll work –

6 MS. ROUNDTREE: Yes, thank you.

7 THE CLERK: April 7<sup>th</sup> at 9 a.m.

8 MS. ROUNDTREE: Thank you very much. We appreciate it.

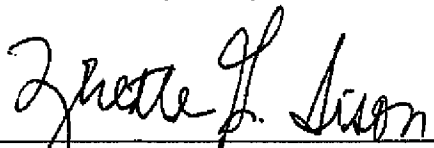
9 MR. MERBACK: Thank you, Judge.

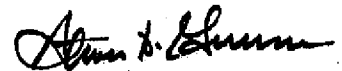
10 THE COURT: Okay. Hang on, before you guys take off. Let's see what I got  
11 here. Oh yeah. Let me see Defense Counsel for a second please. This is on an in-  
12 camera matter.

13 [Proceedings concluded at 11:01 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
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Yvette G. Sison  
Court Recorder/Transcriber



CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

CASE NO. 08C245739

11 STEVEN DALE FARMER

DEPT. I

12 Defendant.

13 **BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

14 **WEDNESDAY, APRIL 7, 2010**

15 **RECORDER'S TRANSCRIPT RE:**

16 **STATE'S MOTION FOR VIDEOTAPED TESTIMONY OF VICTIM, MARCIA**  
17 **PETERSEN/STATE'S MOTION TO CONSOLIDATE**

18 **APPEARANCES:**

19  
20 For the State:

JAKE MERBACK, ESQ.  
Deputy District Attorney

21 For the Defendant:

NO ONE PRESENT

22  
23  
24 RECORDED BY: BEV SIGURNIK, COURT RECORDER  
25

1 Las Vegas, Nevada, Wednesday, April 7, 2010 at 9:34 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
4 present in custody.

5 MR. MERBACK: Judge, this is on for the State's motions. As of last night, I  
6 hadn't gotten an opposition.

7 THE COURT: I have no opposition.

8 MR. MERBACK: I talked to Ms. Roundtree, and she indicated that her  
9 secretary had been sick –

10 THE COURT: Okay

11 MR. MERBACK: -- and there were some issues; and so we agreed – we  
12 called your law clerk and indicated that we were gonna ask for a new date, just so  
13 that she has the time to get – I think she finally got it filed last night, but it was kind  
14 of late. So, we're just gonna – we're going to ask for maybe a couple of weeks, at  
15 the Court's pleasure. The trial date is now in November, so there really isn't a rush.

16 THE COURT: All right. Two weeks.

17 MR. MERBACK: Ms. Roundtree texted me this morning indicating that she  
18 had a number of other appearances this morning, so she might not make it here.

19 THE COURT: Okay

20 MR. MERBACK: If I could just get a new date. If she has a problem with the  
21 date, then she would let us know.

22 THE COURT: Okay.

23 MR. MERBACK: Whatever the Court's pleasure in regards to maybe a  
24 couple of weeks or so.

25 THE CLERK: April 19<sup>th</sup> or May 5<sup>th</sup>.

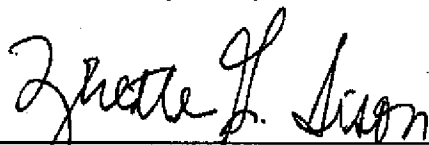
1 MR. MERBACK: Can we do May 5<sup>th</sup> and then that gives Ms. Roundtree a  
2 little more time too if she has anything scheduled.

3 THE COURT: Sure. All right.

4 THE CLERK: Continued to May 5<sup>th</sup> at 9 a.m.

5 [Proceedings concluded at 9:35 a.m.]  
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15 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
16 proceedings in the above-entitled case to the best of my ability.

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19 Yvette G. Sison  
20 Court Recorder/Transcriber  
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CLERK OF THE COURT

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,

7 Plaintiff,

8  
9 vs.

10 STEVEN DALE FARMER,

11 Defendant.

CASE NO: C249693

DEPT. NO: XII

12  
13 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
14 TUESDAY, MAY 4, 2010

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:**  
16 **TRIAL SETTING**

17 **APPEARANCES:**

18 For the State:

MICHELLE THOMAS, ESQ.  
Deputy District Attorney

20 JAMES R. SWEETIN, ESQ.  
21 CHRISTOPHER P. PANDELIS, ESQ.  
22 Chief Deputy District Attorneys

23 For the Defendant:

STACEY ROUNDTREE, ESQ.  
Deputy Public Defender

24  
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, MAY 4, 2010; 9:20 A.M.

2  
3 THE COURT: State versus Steven Farmer, C249693.

4 Who are we waiting for on this?

5 MS. THOMAS: Mr. Merback, Your Honor.

6 THE COURT: Who?

7 MS. THOMAS: Jake Merback.

8 THE COURT: Okay.

9 MR. SWEETIN: Judge, I actually have this case.

10 THE COURT: All right.

11 MR. SWEETIN: I'm not sure if defense counsel's here.

12 THE COURT: Who represents Mr. Farmer?

13 MR. SWEETIN: I think it's Ms. Roundtree and I haven't seen her yet.

14 THE COURT: Okay.

15 [Proceedings trailed and recalled at 9:48 a.m.]

16 THE COURT: State versus Farmer. Do I have anyone here on that yet?

17 MS. ROUNDTREE: Yes, Judge.

18 THE COURT: Oh, I'm sorry. I didn't see you over there.

19 MS. ROUNDTREE: That's okay.

20 THE COURT: C249693. He's present. He's in custody.

21 And I think we just need to set it for trial.

22 MS. ROUNDTREE: Yes, Judge. The State has actually filed a motion to  
23 consolidate this case into the lower numbered case, which is in District Court I.

24 THE COURT: Okay.

25 MS. ROUNDTREE: That was scheduled to be heard tomorrow. It's been

1 put off. So if – respectfully, if it's okay with the parties, could we just reset  
2 this for trial after the other trial is scheduled to go, which is in November? So I  
3 would suggest resetting it for trial in December. If this gets consolidated,  
4 obviously, it will be taken care of. It will be pulled into the other case.

5 THE COURT: All right.

6 MS. ROUNDTREE: And it will be taken off calendar.

7 THE COURT: So you just want me to set it for trial?

8 MS. ROUNDTREE: Just in case –

9 THE COURT: I thought he was in trial right now in the other case.

10 MS. ROUNDTREE: No. It – the Court had other obligations and it had to  
11 get continued.

12 THE COURT: Okay.

13 MS. ROUNDTREE: Yes.

14 THE CLERK: The calendar call is going to be December 28<sup>th</sup> at 8:30; the  
15 jury trial, January 4<sup>th</sup>, 2011, 1:30.

16 THE COURT: Thank you.

17 MS. ROUNDTREE: Thank you very much. We appreciate it.

18 THE COURT: And so Judge Cory's going to hear a motion to consolidate  
19 it in his department?

20 MS. ROUNDTREE: That's correct.

21 THE COURT: Thursday he's going to hear that?

22 MS. ROUNDTREE: It was scheduled for tomorrow, but the State is in –  
23 the District Attorney's in trial. So we're going to be moving it –

24 MR. PANDELIS: Yeah.

25 MS. ROUNDTREE: – a week or so.

1 THE COURT: Okay.

2 MS. ROUNDTREE: Real soon. But we weren't sure, so this seemed to  
3 be a better solution.

4 THE COURT: Okay.

5 MS. ROUNDTREE: Thank you, Judge.

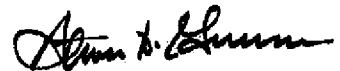
6 [Proceedings concluded at 9:50 a.m.]

7 \* \* \* \* \*

8 ATTEST: I hereby certify that I have truly and correctly transcribed the  
9 audio/visual proceedings in the above-entitled case to the best of my ability.

10   
11 Kristine Cornelius,  
12 Court Recorder

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CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. 08C245739

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vs.

DEPT. I

11

STEVEN DALE FARMER

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Defendant.

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**BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

14

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**WEDNESDAY, MAY 5, 2010  
RECORDER'S TRANSCRIPT RE:**

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**STATE'S MOTION TO CONSOLIDATE**

18

19

**APPEARANCES:**

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For the State:

KRISTEN KRAMER, ESQ.  
Deputy District Attorney

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For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

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RECORDED BY: BEV SIGURNIK, COURT RECORDER

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2  
3 Las Vegas, Nevada, Wednesday, May 5, 2010 at 11:45 a.m.  
4

5 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
6 present in custody.

7 MR. COYER: This is a matter – it's being handled by Mr. Merback from the  
8 DA's Office and Ms. Roundtree and I from the PD's Office. She just wanted to ask  
9 for a couple of weeks to reset these motions.

10 THE COURT: Okay.

11 MR. COYER: I think everyone's in agreement with it.

12 MS. KRAMER: That's correct, Your Honor.

13 THE COURT: Two weeks then?

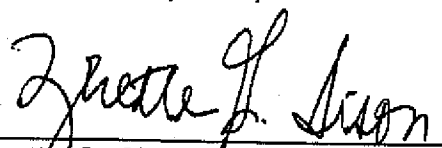
14 MR. COYER: Yes please.

15 THE CLERK: May 19<sup>th</sup> at 9 a.m.

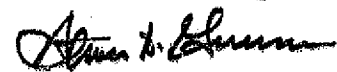
16 MR. COYER: Thank you very much.

17 [Proceedings concluded at 11:46 a.m.]  
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
22 proceedings in the above-entitled case to the best of my ability.

23   
24 Yvette G. Sison  
25 Court Recorder/Transcriber

1 RTRAN



CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

CASE NO. 08C245739

10 vs.

DEPT. I

11 STEVEN DALE FARMER

12 Defendant.

13  
14 **BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

15 **WEDNESDAY, MAY 19, 2010**

16 **RECORDER'S TRANSCRIPT RE:**

17 **STATE'S MOTION TO CONSOLIDATE/STATE'S NOTICE OF MOTION AND MOTION  
18 FOR VIDEOTAPED TESTIMONY OF VICTIM MARCIA PETERSEN**

19 **APPEARANCES:**

20 For the State:

JAKE MERBACK, ESQ.  
Deputy District Attorney

21 For the Defendant:

GREGORY COYER, ESQ.  
STACEY ROUNDTREE, ESQ.  
Deputy Public Defenders

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25 **RECORDED BY: BEV SIGURNIK, COURT RECORDER**

1 Las Vegas, Nevada, Wednesday, May 19, 2010 at 11:47 a.m.

2  
3 THE CLERK: C245739, State versus Farmer.

4 MS. ROUNDTREE: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. ROUNDTREE: Stacey Roundtree and Greg Coyer on behalf of Mr.  
7 Farmer, who's present in custody.

8 MR. MERBACK: Jake Merback for the State.

9 THE COURT: Good morning. This on – State has two motions on. First it's a  
10 motion to consolidate.

11 MS. ROUNDTREE: And Your Honor, I had filed a written opposition to the  
12 motion to consolidate. The Defense has filed such an opposition. I also referenced  
13 in the motion my opposition that we filed a motion to sever alongside because the  
14 issues are sort of the same. You're talking about whether or not to consolidate and  
15 whether or not the cases should be severed. The law is kind of the same, but I had  
16 actually prepared a motion to sever separately, that sort of analyzed it from the  
17 severance standpoint. I noticed as I – we had a little time before court today, and I  
18 went back and I noticed – I was able to pull up my motion to sever, but I also noticed  
19 that it did not get – it didn't get filed for whatever reason. Either the electronic filing  
20 didn't go through –

21 THE COURT: Okay.

22 MS. ROUNDTREE: -- or my secretary just didn't file it, didn't know she was  
23 supposed to, a glitch with our office obviously. But again, the law is – I think the law  
24 is completely the same, and so I – I may file that –

25 THE COURT: Well, if we're going to consider them, we need to consider



1 them together right? –

2 MS. ROUNDTREE: Okay. Right.

3 THE COURT: -- I mean the motion to consolidate with a motion to sever  
4 wouldn't seem -- it doesn't make any sense to --

5 MR. MERBACK: I don't have any problem. I mean -- whatever Ms.  
6 Roundtree wants to do. I have no problem arguing -- you know, the facts of the  
7 case, the law in regards to joinder and severance is the law, and you know, if Ms.  
8 Roundtree wants to reference some of the things in the motion to sever I mean  
9 that's fine, and if I feel like it's getting far filled of what I prepared for based upon the  
10 motion, then maybe we can bring that up at that point, but I don't have any problem  
11 arguing it the way it is.

12 THE COURT: So, you want to do that? So, you want to bring in -- now how  
13 many events do we have in the --

14 MR. MERBACK: I was going to lay that out for the Court kinda of in my --

15 THE COURT: Okay.

16 MR. MERBACK: -- initial part of my argument, and if the Court had more  
17 questions, we could address that.

18 THE COURT: All right.

19 MR. MERBACK: But, let me also just say if Ms. Roundtree needs more time  
20 I'm not -- I don't -- I wanna be easy go -- easy here. If she needs more time, then  
21 that's fine with me. If she wants to go today, that's fine too. I don't want to push her  
22 in either direction.

23 MS. ROUNDTREE: No it's just that, I wanted the record to be clear that we  
24 had not only opposed their motion to consolidate but also move to sever. And what  
25 I did in the motion to sever, which again I apologize, did not get filed; I just sort of -- I

1 argued it from the standpoint of why they should be separated as opposed to  
2 arguing against their motion to consolidate, which is slightly different. It's similar but  
3 slightly different.

4 THE COURT: Does the motion to sever ask to sever out each – each  
5 individual act?

6 MS. ROUNDTREE: Yes. It does. For – in large part it does, with the  
7 possible exception of two – of the accusers, which I believe are Shank and Hanna,  
8 and those – Denise Hanna and Heather Shank. Their allegations are the ones  
9 where they allege that Mr. Farmer, you know, using his position as a Certified Nurse  
10 Assistant, sort of used as a ruse for checking their EKG leads and then in the  
11 meanwhile make them feel uncomfortable by either touching a part of their body or  
12 looking at their breast, you know, for a lewd purpose. So those two allegations I  
13 could see the common scheme argument applying, but other than that, we – the  
14 motion asked that they all be severed.

15 THE COURT: All right. Well let's – let's treat it as the motion to consolidate.

16 MR. MERBACK: Judge, there's two different cases here. There's the case in  
17 front of Your Honor, and in the case in front of Your Honor, there are five different  
18 victims on five different incidents.

19 One of the victims is Frances Rose. She is probably the most  
20 distinguishable from all of the other victims. Frances Rose, the incident involving  
21 her, involves the Defendant putting his – her hand on his penis. It occurs in  
22 December of 2007. It occurs not at the Centennial Hills Hospital like the rest of  
23 them do. Instead it occurs at the Frances – Rawson-Neal Hospital. It's a psychiatric  
24 hospital.

25 So, Frances Rose occurs in December of 2007, then you've got

1 Ledahlia Spurlock which occurs in April 27, 2008, where the Defendant rubs his  
2 penis up against her feet. You have Roxanne Cagnina which occurs May 16, 2008  
3 where the Defendant digitally penetrates her, performs cunnilingus on her, and  
4 touches her breast as well. Then you have Heather Shank where the Defendant  
5 touches her breast, which occurs on May 15, 2008, and then Denise Hanna, where  
6 the Defendant touches her breast which occurs May 16 of 2008. So, that's the case  
7 in front of Your Honor, with all five of those victims.

8 Then there's the separate case, the District Court 12 case, which  
9 involves one victim, Marcia Petersen. In that case Judge, the Defendant penetrates  
10 Marcia digitally. He touches her breast and her genital area as well, and that occurs  
11 sometime between May 13<sup>th</sup> and May 20<sup>th</sup> of 2008.

12 So, Judge the only reason that Marcia's case is even separate is  
13 because it took her a little while longer to disclose. She didn't report the incident to  
14 Metro until June 15, 2008, due in large part to a medical condition she had. She  
15 reported when she saw some media that was in regards to the Defendant. But, part  
16 of the reason she didn't report she said was because of this medical condition she  
17 has, which is detailed out in our motion to – to do a videotaped deposition for her.  
18 She has severe seizures. She often can't talk for days after she has a seizure, and  
19 there are time periods where she has a seizure almost every day. So, there was  
20 somewhat – there was somewhat of a delayed reporting from her to Metro for that  
21 reason, and – and her reporting was basically sparked by the fact that she saw the  
22 Defendant in the media.

23 Judge, I would – I would refer to NRS 173.115, which says that a  
24 joinder is proper if the offenses are based upon multiple transactions that are – and  
25 then there's two options: One, connected together or two, a part of a common plan

1 or scheme. If you qualify under either one of those two criteria, joinder is proper  
2 under 173.115. And I appoint to a case Middleton versus State. And Judge, in  
3 Middleton v. State, the Defendant -- he murders two different women on two  
4 different occasions, and he was convicted of both murders in the same case.  
5 Before trial -- I'm reading from the case: Before trial, Middleton moved to sever, and  
6 I'll give you the cite 114 Nevada 1085; before trial Middleton moved to sever the  
7 counts related to Davila, that's one of the victims, from the counts relating to Powell.  
8 The District Court denied the motion and tried both victims together. Middleton says  
9 the joinder was improper and any appeals based on that.

10 The Court says; here joinder was proper because the acts charged  
11 constituted parts of a common scheme or plan on Middleton's part to meet women,  
12 abduct and hold them captive, abuse, and kill them, and dispose of their bodies.

13 And then, the Court goes through and talks about the similarities in  
14 these cases, in the two murders. And Judge, in this case, you have a very similar  
15 situation. We have multiple victims and then multiple similar facts from each victim.  
16 All, except for Frances Rose, every single one of these incidence occurred at  
17 Centennial Hills Hospital.

18 In every single one of these incidence, the Defendant was working as  
19 a nurse's assistant and used his position as a nurse's assistant to gain access to  
20 these victims, to have a -- a ruse to some extent on some of the victims, to pretend  
21 like he was performing some action that was related to his duties as a nurse's  
22 assistant. All these women have severe health issues that caused them to be in the  
23 hospital. In fact, both Roxanne from the case in here, as well as Marcia, who's the  
24 case in District Court 12, suffer from seizures. I mean that's the reason they were in  
25 the hospital. The Defendant pretended as if he was going to treat the women in

1 each of these cases.

2           The event involving Frances occurred in December of 2007 at a  
3 different hospital, and the event involving Ledahlia occurred April 27, 2008. But,  
4 except for those two events, every single other event, the event involving Roxanne,  
5 the event involving Heather, the event involving Denise, and the event involving  
6 Marcia all occurred within about a week of each other, less than a week timeframe  
7 for each of those events, and the event involving Ledahlia occurred within a few  
8 weeks of those other events. So, the event involving Frances is the only one that's  
9 not within that really close time period.

10           None of these women knew the Defendant, Judge. There's multiple  
11 facts here that go to show that this was part of a common plan or scheme by the  
12 Defendant to use his position at the hospital as a certified nurse's assistant to  
13 perpetrate acts of sexual assault, sexual abuse on victims who he had access to  
14 through his position. It's clearly part of a common plan or scheme. The facts of each  
15 victim, her situation, his access to them; all of this is very clearly – it's so similar  
16 Judge, it's very clear they are part of a common plan or scheme.

17           Now, the Defense is going to argue I would say that – I would guess,  
18 based upon their motions, that this is not a common plan or scheme, and they're  
19 going to talk about some cases where the Supreme Court said; this situation doesn't  
20 involve a common plan or scheme. Let me talk about one of those cases. Weber is  
21 a case the Defense cited in their opposition. In Weber, the Court said that there was  
22 five different basic crimes, I guess, five different events. One of them is a sex  
23 assault, two of them were murders, and two of them were violent crimes. I would  
24 say that – and then the Court Weber said that – the Weber Court said that those  
25 acts were not a part of a common plan or scheme.

1 I would say that our cases easily distinguishable. First of all, because  
2 every one of the charges in our case are sex-based offenses. They're all very  
3 similar offense. In Weber, you've got murders, you've got violent crimes, and you've  
4 got sex offenses. So the Court said; they're not a part of the common plan or  
5 scheme, and the Defense used that to argue that this is not a common plan or  
6 scheme in this case too.

7 I would argue that this is a common plan or scheme, but even if the  
8 Court found under the Defense's argument that this wasn't a common plan or  
9 scheme, there's that second option, Judge, under 173.115. And that's that they are  
10 connected together. And after the Weber Court said this is not a common plan or  
11 scheme, the Weber Court went on to say that this is clearly connected together  
12 events. And so you've got a sex assault, two murders, and two violent crimes, and  
13 the court said these are events that are connected together, and so joinder was  
14 proper.

15 So, while the Weber Court said it wasn't a common plan or scheme, it  
16 did say that all the events were connected together, and the joinder was proper  
17 Judge.

18 I would argue that in this case, this is clearly a common plan or  
19 scheme, it's clearly distinguishable in Weber and the other cases cited by the  
20 Defense, but even if it's not, if the Court finds it wasn't, it's still connected together  
21 events. These are events closely related in time, almost identical sexual actions by  
22 the Defendant involving almost identical victims in almost an identical situation in  
23 relation to him, and Judge we would ask that you consolidate all the cases.

24 I have some more argument in regards to the cross admissibility, but I  
25 don't know if you want to hear from me now in regards to that or wait for the

1 Defense.

2 THE COURT: Let's hold off on that.

3 MS. ROUNDTREE: Judge, we believe that the Court should be considering  
4 this from the standpoint of whether or not the cases should've been joined in the first  
5 place because we should start with the position that these are clearly not -- these  
6 alleged crimes are clearly not based on the same act or transaction. In other words,  
7 you know, it wasn't a situation where Mr. Farmer was allegedly touching, you know,  
8 one of the alleged victims, either in the view of the other alleged victim who  
9 witnessed it or they were not in the same location. We don't have same act or  
10 transaction analysis applicable. So, initially the cases should be joined.

11 Under the law, the State often joins separate cases because they  
12 believe -- because we have one Defendant and several alleged victims coming  
13 forward at the same time, the joinder is, therefore proper. It isn't proper under the  
14 law unless again we had the same act or transaction analysis. I think the State can  
15 see that's not what we have here.

16 So, what you have to decide is whether or not all of these various  
17 accusers do reflect or make up a common plan or scheme, as such that they're  
18 individual allegations are so distinctly similar that the common plan or scheme law  
19 applies.

20 And, you know, that's language that's not that necessarily easy to  
21 understand common plan or scheme, but that's been defined in the cases that we've  
22 cited. And -- I -- we -- there's lots of case law luckily on this issue, but we try to stay  
23 with, you know, law that was somewhat similar to the allegations that we have in this  
24 case.

25 And so; therefore, the Richmond case explained that for something to

1 be a common scheme, you need that – well first of all, Richmond was a sexual  
2 assault allegation. It was a sexual assault case, and in the Richmond case, we had  
3 an accused committing a sexual assault at the same location – the sexual assault  
4 itself, the acts to which comprised the sexual assault were done in the same  
5 manner, the same sexual acts a month apart. Again, same location and the same  
6 sexual acts were perpetrated upon the victim in the Richmond case, and the Court  
7 still said that that is – that does not establish a common plan or scheme, but that is a  
8 situation where you had independent crimes that Richmond did not plan until he –  
9 you know, until he identified the next victim.

10 Basically, that – to use the language it says here: Richmond appeared  
11 simply to drift from one location to another, taking into advantage of whichever  
12 potential victims came his way.

13 But again, the facts of that case – the sexual allegations were very  
14 similar, and he did it in the same exact location, similar to our case as far as the  
15 location. The actual sexual acts alleged in this case are far different from one  
16 another.

17 You have Cagnina alleging oral copulation of her vagina of course and  
18 digital penetration of her vagina.

19 You have Petersen, the one that's not joined yet that they're asking to  
20 join alleging anal penetration under the ruse of Mr. Farmer allegedly cleaning her  
21 anal area.

22 So, the motivation that Cagnina fessed to be in place when her sexual  
23 assault was happening, and again it was vaginal penetration and oral copulation.  
24 She said that he – it wasn't – he wasn't using his examination of her as a ruse to  
25 sexually abuse her but in fact, she said that he was wanting to sexually please her



1 and that was – that was his intent or his motive in her sexual abuse.

2 Petersen on the other hand, it's more using his position as a nurse, as a  
3 ruse for molesting her by acting as if he's cleaning her anal area, according to her,  
4 and in doing so anally penetrating her.

5 Those are completely different sexual acts, and so under the case law,  
6 common plan or scheme doesn't apply. They have to be sufficiently similar acts to  
7 qualify under that prong of the joinder statute.

8 Heather Shank and Denise Hanna are even more dissimilar than the  
9 Cagnina and Petersen allegations, and again those are the ones where they allege  
10 he was using the ruse of adjusting their EKG leads and in doing so, looked at their  
11 breast, brushed their breast, you know, touch their breast area for a lewd purpose.  
12 That's nowhere near the type of sexual acts that the other two alleged happened.

13 Ledahlia Spurlock – the sexual acts – or again, this one completely  
14 different from the other four in that Ledahlia Spurlock suggest that – Ledahlia  
15 Spurlock was the one who would come to – to the hospital where Mr. Farmer  
16 worked after a failed suicide attempt. He was attending her; and she alleges that  
17 he, while standing at the end of her bed, grabbed her feet and pulled her feet into  
18 his groin area, and jammed her feet into his groin area. Completely different sexual  
19 acts. So we don't have sufficiently similar facts in any of these cases, not even  
20 close to qualify for joinder charges or to say that this – this is a common plan or  
21 scheme, like the MO type evidence that is sometimes used as an exception to the  
22 general rule that you should not join charges.

23 The other – other cases that we cited – the reason why the Court in the  
24 Weber case ultimately decided that you had – I can't remember the language – I  
25 think they decided that these were basically transactionally related; in the Weber

1 case while you did have some that were murders and some that were sexual  
2 assaults, there was a story there.

3 If I remember correctly, the Weber case was where – I believe Steven  
4 Weber was in some type of a sexual relationship with a young girl, perhaps the  
5 daughter of his girlfriend. At some point when that relationship was revealed he – I  
6 believe murdered the mother of the little girl and then when – knowing that that  
7 murder was going to be revealed, and he was going to be caught kind of went on a  
8 murderous rampage and went into the Albertsons Store and gunned down a few  
9 people.

10 So that – that case everything was connected because it all kind of  
11 came to fruition. It all kind of culminated in a series of violent acts, murder and  
12 sexual assault, but again all sort of related to one another. Because each had a  
13 purpose in relation to the other crimes. That's not what we have here either.

14 And in the Weber case, they also decided that wasn't common plan or  
15 scheme, even though that there was some relation between the acts and even  
16 though they were within days of one another they're separate crimes.

17 If you look at – well I want to mention the Mitchell case that's cited by  
18 the State. Again, that's a murder charge. I believe I heard the State argue that they  
19 tried to cite cases that are similar to our facts, but again those were murder charges,  
20 and it sounds like that was more of the MO type evidence, a common plan or  
21 scheme in that the murders were perpetrated in the same manner and because they  
22 were so sufficiently similar, when you're questioning the identity of the murder, and  
23 those would've been cross admissible at each other's trial. I know that's kind of an  
24 exception. But, because those two had been cross admissible under the MO  
25 exception to the general rule that you don't let other bad acts come in, the common

1 plan or scheme analysis fit the Mitchell facts, but again that's a murder case, not a  
2 sexual assault allegation.

3 What you basically have is a situation where you had --

4 THE COURT: In Weber were they all on the same day?

5 MS. ROUNDTREE: They were not all on the same day. They were within a  
6 short timeframe, I would say within a -- less than a month between one another but  
7 not all on the same day.

8 Some of the acts were done on the same day because he went to  
9 Albertsons and kind of let loose with his machine gun and got a few people at once,  
10 and that was within a day or so of his murdering I believe the mother of the young  
11 girl he was sexually abusing, but again they were days apart. Less than a month -- I  
12 think the total time span was less than a month but not -- except for the murders in  
13 Albertsons, not the same day.

14 And -- you know, Steven Farmer, in order to defend these separate --  
15 completely separate and different allegations -- the Frances Rose case, I didn't  
16 mention that when I was talking about the differences in all of these different  
17 allegations, Frances Rose alleges -- first of all, it didn't happen at the Centennial  
18 Hospital, it happened at Rawson-Neal Mental Health Facility, and she alleges, you  
19 know, that he took her hand and placed it on his private part. Well they -- they were  
20 in a relationship or they began a relationship after that alleged sexual abuse  
21 happened. So for Farmer to defend all of the separate charges, he would -- he was  
22 going to -- there's going to be different defenses to these separate charges because  
23 all of them are completely different in one another, again with the possible exception  
24 of the -- the EKG lead allegations of Shank and Hanna.

25 And so for him to get a fair trial, because they are not in the least bit

1 same transaction or act, nor do they represent a common plan or scheme, his ability  
2 to put on a defense in one case may be different or his wishes in putting forth a  
3 defense in one case will be different depending on which victim is testifying because  
4 they're completely different types of allegations, different cases, and not connected  
5 to one another in anyway.

6 THE COURT: How much difference does it make that one was at one  
7 hospital and the others were at another hospital that really figure into the analysis?

8 MS. ROUNDTREE: I don't believe that it does because I believe that the act  
9 themselves are sufficiently dissimilar that they can't be argued, that he – that he  
10 basically targeted one victim in an effort to attain access to the other victims, that's  
11 what – again with the common plan and scheme case law, that's what you usually  
12 see. Like for instance, a Boy Scout leader who, you know, is in charge of a bunch of  
13 boy scouts, and while he molests several of the boy scouts, they're at least all part  
14 of the same troop or whatever, that might be a different situation.

15 I don't think that the location of it matters as much as the fact that these  
16 are different sexual acts, different victims who have no relation to one another,  
17 different days, and different stories behind the abuse. Even the MO for the alleged  
18 abuse is different in that Cagnina says he was trying to sexually please her.  
19 Petersen said he was acting as if he was cleaning her, and he molests her. Frances  
20 Rose –

21 THE COURT: So in that sense you're looking at a different intent?

22 MS. ROUNDTREE: Yes.

23 THE COURT: And that's significant?

24 MS. ROUNDTREE: Yes.

25 THE COURT: In determining common scheme or plan?

1 MS. ROUNDTREE: Yes. And all of the cases –

2 THE COURT: Is it your impression –

3 MS. ROUNDTREE: -- I'm sorry –

4 THE COURT: -- that our State's Supreme Court Law in this area is more  
5 restrictive than the Federal Law on common scheme and plan?

6 MS. ROUNDTREE: Because I haven't practiced in Federal Court I'm not sure,  
7 Your Honor, whether or not ours is more restrictive, but I – I would suggest even in  
8 the Tabish case, you know, the Binion case is what I usually call it, that trial had to  
9 be done over because of the improper joinder of several allegations, and again I  
10 know that it seems efficient sometimes for courts not to have to do separate trials,  
11 but the overriding concern is giving the Defense a fair trial, and Mr. Farmer a fair  
12 trial, which I know that is this court's overriding concern as well and it –

13 THE COURT: So the difference between Rose and the others is that – is a  
14 different hospital, which probably doesn't really matter –

15 MS. ROUNDTREE: Probably doesn't matter as much –

16 THE COURT: -- and is more of a time gap, December of '07 to – the next one  
17 is April of '08. How important is the time gap?

18 MS. ROUNDTREE: I –

19 THE COURT: In Weber they said 45 days, but they didn't really hang their hat  
20 on it, but they did – they did point out that 45 days seemed to be a bit of a gap.

21 MS. ROUNDTREE: Right. I think it's important – the time gap is important,  
22 but more important I think in the Rose allegation is that – you know, they weren't –  
23 they – Mr. Farmer and Ms. Rose began a relationship following her alleged, you  
24 know, sexual abuse --

25 THE COURT: Why couldn't the Court – I'm sorry to interrupt – I just – I just

1 throw it out there.

2 MS. ROUNDTREE: That's okay. I understand.

3 THE COURT: Why couldn't the Court then separate out Rose and put all the  
4 rest together? Wouldn't that take care of any – any detriment to your client? Any  
5 unfair disadvantage to your client's defense?

6 MS. ROUNDTREE: I don't believe it would because I still believe that because  
7 these – what's going to happen – and I think what would be beneficial to the State  
8 would be that any deficiencies in – in the evidence that they have with regard to the  
9 Shank and Hanna allegations, the EKG cases, are going to be, you know, they're  
10 hoping that the jury is just going to err on the side of caution. At some point, when  
11 we start marching a number of different victims with – distinctly different allegations  
12 against Mr. Farmer, this jury stops looking at the – at the individual evidence and the  
13 burden of proof becomes less important.

14 THE COURT: I must comment – my experience with juries has been – a  
15 number of juries at least, has been to the contrary, that I have seen them where a  
16 number of instances and crimes are lumped together. I've seen them acquit on  
17 some and convict on others precisely because they look at the level of proof and  
18 decide that it's not – it's not enough on some and they go with the others.

19 But, is the rationale for allowing the State to put these together as a  
20 common scheme and plan, besides just judicial economy, isn't that the very thing  
21 that you're warning the Court against that – and that is that there is some probative  
22 value to the fact that you have somebody operating under the similar scheme and  
23 plan – similar modus operandi insofar as it relates to – to evidence of their intent and  
24 knowledge, precisely so that where there may be a question as to one, maybe the  
25 evidence is a little bit weaker – a little more paucity of evidence as to intent and

1 knowledge of one and that the fact that – that the same thing happens over and over  
2 becomes probative.

3 MR. MERBACK: And Judge, I might just add to that briefly, I'm sorry to  
4 interrupt, but in addition to that, there's lack of mistake is a cross admissibility, bad  
5 act, reason to allow evidence in. I mean – if on some of these cases they're going  
6 to argue, hey he was just doing his job and the person's mistaken that – that – I  
7 mean beyond intent, beyond motive, beyond common plan or scheme, lack of  
8 mistake is another reason for cross admissibility. So, I would add that to what the  
9 Court just said.

10 MS. ROUNDTREE: The only –

11 THE COURT: Were the Court – let's talk about that a minute even though  
12 we're not going to – we're kind of put mistake – or admissibility a little bit to the side.  
13 Were you to do that – where the Court holds that; yeah, it is admissible to show lack  
14 of mistake, does it come in in the State's case-in-chief or do you – does it – or we're  
15 merely saying that it can be used for impeachment?

16 MR. MERBACK: No, it comes in the State's case-in-chief Judge and here's  
17 why. In Weber, the Court actually explains. The Court finds – now, once again I'd  
18 argue this is clearly common plan or scheme in this case, but like I said before,  
19 that's not the only way that it comes in under joinder. It also comes in under joinder  
20 if they are connected together. So that's – even if the Court said this is not common  
21 plan or scheme, the other argument is that if they are connected together, then they  
22 come in. That's what the Court says in Weber. It says: We conclude that the three  
23 groups of crimes did not constitute a common scheme or plan and joinder cannot be  
24 sustained on that ground; however the question remains, were the three groups of  
25 acts nevertheless connected together, and then the Court goes on to describe how

1 you determine whether it's connected together. It says: We hold that for two  
2 charged crimes to be connected together, a Court must determine that evidence of  
3 either crime would be admissible in a separate trial regarding the other crime. We  
4 have recognized this cross admissibility is a basis for joinder of charges in some of  
5 our prior decisions.

6           So the Court is saying okay – if – so there's two options, common plan  
7 or scheme or connected together, and if you're going to under connected together  
8 theory, they have to be cross admissible. They have to be – and if they are cross  
9 admissible under one of the bad acts, you know, one of the bad act exceptions, then  
10 they come in as they're joined together, it comes in under the State's case-in-chief,  
11 and that's what happened in Weber, and I would argue Judge clearly here – I mean  
12 the Defense has even argued that this goes to motive. I mean it goes to motive. It  
13 goes to his intent. I mean, if the Defense is going to argue you know, he was  
14 touching her in that area for his work purposes but it was not – not his intent to  
15 commit any type of crime that clearly makes all this evidence cross admissible. If  
16 they say, you know, these girls are mistaken, he was doing something to them in  
17 relation to his duties as a certified nurse assistant and they're mistaken, absence of  
18 mistake, it's clearly cross admissible. It goes to his intent. It goes to his motive. It's  
19 cross admissible Judge, which makes it – which makes joinder proper under the  
20 State's case-in-chief under 173.115.

21           MS. ROUNDTREE: Okay, as to – I'm trying to decide which one I'll address.  
22 Again, in Weber, they were connected together in that again Mr. Weber was having  
23 a sexual relationship with an underage daughter of his girlfriend; I believe his  
24 relationship with the lady. When that was discovered by the lady, he murdered her,  
25 and when he – I think when it was revealed that this murder was going to obviously



1 lead to his confinement and his arrest, he then went on a murderous rampage, and  
2 that's what connected those crimes together. We have no such connection with  
3 these individual alleged victims in this case. There's no connection with them,  
4 whatsoever.

5 If you're talking – if the State is arguing, well of course we could bring  
6 these crimes during the same trial because it goes to lack of mistake. It's really  
7 important to understand that, first of all for any sexual assault allegations, which  
8 would be Cagnina, her allegation of oral copulation or digital penetration, mistake is  
9 not a defense to that charge.

10 Even in the Petersen allegation that he put his finger in his anal, you  
11 know, cavity; if we were to argue that he did it mistakenly while he was cleaning her,  
12 then I – again whether or not we could ever open the door to these other charges  
13 coming in is a separate question, but not in a case-in-chief –

14 THE COURT: Well – but what I'm wondering is, is it really a separate  
15 question. In other words if – and maybe this is where the State's been going with  
16 this before they start talking about cross admissibility. If the Court rules that they  
17 are cross admissible anyway, then is there really any reason not to join – join them  
18 and take them trial together?

19 MS. ROUNDTREE: Well I – if the Court rules them to be cross admissible, I  
20 don't know how you could – with all due respect, I don't know how you could rule  
21 that they're cross admissible unless you found that they met the common plan and  
22 scheme analysis or that they were connected together, which these aren't.

23 Again whether or not – if we start opening the door and defending that  
24 he did not have the intent to molest when he touched, that's a different  
25 consideration, but as far as allowing in the case-in-chief and allowing these cases to

1 be presented all as one -- all as one --

2 THE COURT: Would -- would not -- I mean, and I'm not indicating any  
3 inclination, any particular direction, but if the Court -- I'm wondering if it takes up -- if  
4 it makes sense for the Court to take up the issue of cross admissibility, because that  
5 seems like that would have some impact on it, it might not be the only -- you know, it  
6 might not be the end all and be all. It might not be the end of the question on  
7 joinder, but -- but would it not have an impact on the Court's ultimate determination  
8 of what the joinder is.

9 MS. ROUNDTREE: Yes, I mean I agree that under the case law, the cross  
10 admissibility does come into play -- is that what you're --

11 THE COURT: That's what I'm thinking, what I'm wondering. What's your  
12 view on that Mr. Merback?

13 MR. MERBACK: Judge, if the Court -- Ms. Roundtree can saw that this is not  
14 connected together the way the Weber case was, but that's not why the -- the Court  
15 didn't, in the Weber case, didn't say; hey these cases are connected together  
16 because this guy ended up killing everybody because they didn't want to get caught.  
17 The Court said that the cases are connected together. It said -- it says: We have  
18 not addressed the connected together language in the statute. It is a term that calls  
19 for a more precise definition. We hold that for two charged crimes to be connected  
20 together under NRS 173.115, a Court must determinate that evidence of either  
21 crime would be admissible in a separate trial regarding the other crime, and the  
22 Court clearly says it doesn't -- it doesn't matter -- the reason that they were cross  
23 admissible in Weber or the reason the joinder was proper in Weber under the  
24 connected theory is because they were clearly cross admissible, and in this case  
25 Judge, I think if you get to that point -- if the Court is gonna say; okay, there's no

1 common plan or scheme here – I don't see the common plan or scheme, so I'm  
2 gonna look at this under the section option, which is connected together, then  
3 clearly the Court has to make a determination about cross admissibility. If the Court  
4 determines that there is cross admissibility, then joinder is proper, and they should  
5 be joined in the same case. That's clearly the way the case law is written out.

6 I don't think we'd get that far. I think this is – with the exception of  
7 maybe Frances Rose, everybody is clearly common plan or scheme, Judge. I mean  
8 these – three of the – four of these –

9 THE COURT: So your view is we do away with trying to determine  
10 connectedness and cross admissibility because you just lump them altogether as  
11 common scheme and plan?

12 MR. MERBACK: I would say Judge – and that's 'cause there's the two  
13 choices under 173. There's either common plan or scheme or connected together.  
14 So, if you do common plan or scheme then you don't have to worry about the whole  
15 cross admissibility analysis because of the common plan or scheme, then their  
16 joinder is proper.

17 THE COURT: You've already addressed this in your pleadings, but can we  
18 talk a little bit more in detail about what we mean here by common scheme and  
19 plan?

20 MR. MERBACK: Judge –

21 THE COURT: Common scheme and plan to do what? I mean what is it?  
22 What defines? What is the common scheme?

23 MR. MERBACK: And Judge, that's why I said probably the Francis Rose  
24 case, is – in regards to common plan or scheme, probably distinguishable at this  
25 point.

1 THE COURT: Okay.

2 MR. MERBACK: With everyone else -- with everyone else it's to use -- the  
3 Defendant is using his position as a Certified Nurse's Assistant to take advantage --  
4 to take sexual advantage of women that are -- that have -- that have health  
5 conditions to make it difficult for them, some of them to report, some of them are in  
6 situations where they're on bed rest. They can't get out of bed. He's using his  
7 position to commit similar, similar acts of sexual abuse including digital penetration  
8 of the vagina, digital penetration of the anus, touching of the breast, rubbing of the  
9 genitals. I mean these are -- I mean and in Weber we're talking about murder and  
10 sex assault. Here we're talking about the same crime. I mean technically, he's  
11 touching different parts of the body, but Judge, it's the same crime. It's clearly  
12 common planner scheme. He's using his position to commit these crimes. The list  
13 of similarities between his victims and this situation is almost endless and --

14 THE COURT: So in your view, the fact that they are different forms of  
15 commission of the crime -- well, doesn't matter what part of the body or who touches  
16 who or who's being gratified or aroused?

17 MR. MERBACK: It's not Judge. The Defendant is using his position to  
18 commit sexual offenses against women and he's doing it -- I mean two of these  
19 women occur in the same day and three of them occur within -- one of them occurs  
20 the next day, and the other one occurs in like a four or five day time period right  
21 around that, with those days stuck right in the middle of it. I mean there -- the  
22 Defendant -- and the Defense makes some arguments, well he's never done this in  
23 the past, and so he can't be -- it can't be he was using his position. Judge, he was  
24 clearly using his position to violate the women that he came into contact with, and  
25 that's what he did in this case, and that's why I would say Frances is maybe

1 somewhat distinguishable, it's more difficult to argue that that's common plan or  
2 scheme. I think she is connected together --

3 THE COURT: You would say then that under common scheme and plan, you  
4 might have to relinquish Rose?

5 MR. MERBACK: I think under common plan or scheme, I don't think that I  
6 can stand up here and tell the Court, you know, an incident occurred at a different  
7 hospital three or four months beforehand on a girl that he had a relationship with. Is  
8 the common plan or scheme to women who occur within a week of each other and  
9 then one -- like a little bit earlier at the same hospital, who he doesn't know, who he's  
10 never met before, he has no other relationship with, who he's treating for health  
11 issues, and he uses his position -- and I think I have to release that.

12 THE COURT: Are you saying you still want that in though because it's  
13 connected?

14 MR. MERBACK: I think it's connected. I think it goes into that second  
15 argument. The Court would have to determine cross admissibility as to Frances  
16 Rose, but I do agree that it's not a common plan or scheme argument with Frances  
17 Rose.

18 THE COURT: Well let's -- I'm trying to figure out how to cut through all this  
19 and analyze this.

20 MS. ROUNDTREE: Judge I -- let me just address the question --

21 THE COURT: Sure.

22 MS. ROUNDTREE: -- you asked about how do we know what common plan  
23 or scheme means. I think the Richmond case best defines what common plan or  
24 scheme actually means, and if I may quote from Richmond v. State, 118 Nevada  
25 924. It says: Next, the common plan exception is inapplicable here, as this

1 exception requires that each crime should be an integral part of an overarching plan  
2 explicitly conceived and executed by the Defendant. Indeed, this Court has stated  
3 the test is not whether the other offense has certain elements in common with the  
4 crime charged but whether it tends to establish a pre-conceived plan which resulted  
5 in the commission of that crime. It says we had held that a sexual assault at the  
6 same location perpetrated in the same manner one month before the sexual assault  
7 is at issue, is inadmissible because it does not establish a common plan, and that's  
8 citing the Mitchell case.

9 Here, Richmond appeared simply to drift from one location to another,  
10 taking advantage of whichever potential victims came his way. His crimes were not  
11 a part of a single overarching plan. And this is what our case is; its independent  
12 crimes, which Richmond did not plan until each victim was within reach. This is  
13 what we have in this case, but again in Mitchell, it's similar as the report – the Court  
14 – the Nevada Supreme Court held that it was an error for the Defendant to go to trial  
15 on four criminal accounts where being 45 days apart, these separate incidents  
16 cannot be considered part of the same transaction, nor can taking two different  
17 women dancing and later attempting intercourse with them be considered part of the  
18 common plan, just because the women are taken to the same bar. So, in that case,  
19 again it's the same sexual acts, attempting to sexually assault them after dancing  
20 with them at the same bar. That's exactly what we have in this case. It wasn't a  
21 common plan or scheme in Mitchell nor Richmond, and neither is it here.

22 THE COURT: And you see no difference between that and a common  
23 scheme to use one's position as a nurse to effect some sort of sexual contact under  
24 similar circumstances, I mean if you want to say the hospital bed equates to a bar in  
25 the Mitchell case, you're saying that there's nothing else – nothing else that

1 distinguishes this from Mitchell?

2 MS. ROUNDTREE: And under -- right --

3 THE COURT: I'm having a little hard time with that.

4 MS. ROUNDTREE: -- and the other -- there's further case law in this area,  
5 which one case involved -- I don't know if I cited this in this version of this motion or  
6 not or whether it's cited in the motion to sever, but there is -- there is a line of cases  
7 involving -- I don't know if you know this terminology but, trick roll; and the Nevada  
8 Supreme Court held that -- you know, the State tried to bring in a few trick roll cases  
9 and tried them together because they involved the same prostitute, you know,  
10 getting with the John and then stealing stuff from them after the sexual acts. And  
11 the Court held those are independent crimes. There's no common planner scheme  
12 that would separate that -- those crimes from any other type of trick roll crime.

13 THE COURT: But this is the fact of using one's -- I mean the position of being  
14 a caregiver in a hospital is a position itself of kind of a unique trust isn't it? It's  
15 almost a -- I don't know whether fiduciary is the right word, but it's something that not  
16 anybody could do. It's something that only a person who has that degree, that  
17 expertise, that license, that job can be in a position to do and doesn't that -- the use  
18 of that itself become --

19 MS. ROUNDTREE: I guess if --

20 THE COURT: -- part of the common scheme and plan?

21 MS. ROUNDTREE: -- under the case law only if the Defendant took the job,  
22 and I think it is important that there are no allegations before in his vast career as a  
23 Certified Nursing Assistant because the law says that it would -- the facts would  
24 have to prove that he, Mr. Farmer, took the position as Certified Nurse Assistant in  
25 order to gain access to potential victims, which he then, you know, abused --

1 THE COURT: And which -- is that in the Weber case you're talking about?

2 MS. ROUNDTREE: Well no, you posed -- sort of different -- I remember a boy  
3 scout case, and I don't know whether or not it's cited in this motion or motion to  
4 sever or whether or not it's in either of the motions, but there's a boy scout case  
5 which says, you know, when -- the evidence showed that the Defendant who was,  
6 you know, a pedophile took a position as a Boy Scout leader for the purpose of  
7 having access to young boys, then yes. I think that's what the Court is posing to  
8 me. I remember that that is a case that's pending, and then the Nevada Supreme  
9 Court said in that circumstance; if that's what the evidence showed is that that Boy  
10 Scout leader took that position in order to gain access to young children, that's a  
11 whole different ball game. That is -- that's what common plan or scheme means,  
12 and that's what the Court is posing in this case.

13 In this case, the evidence would have to show that Mr. --

14 THE COURT: Well if in order to qualify for common scheme or plan, the State  
15 had to be able to prove that he actually took the position with that intent, then that  
16 would be the end of the hunt probably, unless they have evidence of that. I'm sure  
17 the State doesn't concede that point.

18 MR. MERBACK: Judge the boy -- I mean, I don't know -- I don't have this  
19 case. I haven't read it -- Ms. Roundtree is talking about, but this seems to me almost  
20 perfectly analogous with that Boy Scout case. I mean, you're talking about the  
21 situation where a person uses his position to gain access to young boys, who he  
22 then sexually assaults or sexually molests. In this case -- well --

23 THE COURT: But what she's saying is the case stands for the proposition --

24 MR. MERBACK: -- but I can't --

25 THE COURT: -- that you have to get the position with the pre-existing.



1 MR. MERBACK: Well I – we don't know that. I mean, it very well could be that  
2 that was a factor in that case that the Court used to determined was common plan  
3 or scheme, but not necessarily dispositive of the fact that it's common plan or  
4 scheme. I mean, in that case, the person used their position to become a boy scout  
5 leader to gain access, then that would be a factor, absolutely you would consider,  
6 but that doesn't mean that it's dispositive, and if in this case, the Defendant decided,  
7 ho hey, I've got this position – and Judge, I'm not quite sure, and I had to look at this  
8 as to when he started at Centennial Hills, but hey I've got this position, and I've been  
9 working on it for a while, you know what I'm going to use my position to sexually  
10 assault women. I'm gonna start using it. I mean that's – I can't imagine that's very  
11 different in regards to common plan or scheme.

12 THE COURT: Is the start time at Centennial Hills close in proximity to the first  
13 event?

14 MR. MERBACK: I don't know for sure. I don't know at the top of my head  
15 when the start time at Centennial Hills is.

16 But Judge, I think – I mean the problem is, is this is a very fact specific  
17 determination, and – my – I mean I can't say this for sure, and I don't know if Ms.  
18 Roundtree can correct me, but my guess would be that – that in that boy scout case,  
19 it's most likely that that was a factor considered by the Court, but I don't know that  
20 the Court said it was dispositive. I don't know if Ms. Roundtree knows if the Court  
21 said that that's a fact that is absolutely dispositive as to whether or not it's common  
22 plan or scheme. I wouldn't guess that that's the case having read other cases and  
23 seeing how the Court and what the Court normally does, but Judge in this case, it's  
24 fact specific. You have people that are – the sex assaults are occurring within a  
25 week of each other at the same hospital, with the same medical conditions under

1 the same care of the Defendant, using his position to gain access to these women.  
2 It's clearly common plan or scheme, Judge, if you take Frances Rose out of the  
3 equation.

4 THE COURT: Okay. Is that -- is that --

5 MR. MERBACK: And let me just --

6 THE COURT: -- let me just ask one question and then I'll let you go ahead. Is  
7 that case cited in your motion, for severance?

8 MS. ROUNDTREE: I would hope so. I can't be positive just because I  
9 haven't read it recently.

10 THE COURT: All right.

11 MS. ROUNDTREE: It's one I've cited in the past.

12 THE COURT: Well, what I can tell so far is we're not going to resolve this  
13 today because I do need to read --

14 MS. ROUNDTREE: Of course.

15 THE COURT: -- the severance, and it may have to -- in order to really resolve  
16 the whole thing, I may have to broach the issue of cross admissibility because  
17 clearly that's the only way I can take care of the connectedness issue.

18 MR. MERBACK: But Judge, my argument once again would be you don't  
19 even get to cross admissibility to find common plan or scheme. But let me -- I was  
20 gonna say one other thing, Judge, in regards to the Defense's argument that  
21 Mitchell is similar to this case, and that you know, this case isn't common plan or  
22 scheme because Mitchell isn't common plan or scheme.

23 There's a 45-day difference between the two victims and the Mitchell  
24 case, and the only similarities was the Defendant took them dancing and drinking at  
25 the same bar. That's it. There's no information in regards to similarities and how he

1 met them, how he gained access to them, what he -- I mean there's so many  
2 specific similarities in this case in regards to how the Defendant gains access to this  
3 women and what he does once he gains access to them, and how he came to that  
4 position, that the Mitchell case doesn't have. You have a guy who -- really, the only --  
5 the only factors are close in time together and he went to the same bar, well he  
6 probably lives in that area. I mean there's -- and that was the Court's position is  
7 there's not enough factors here. There's not enough facts to show common plan or  
8 scheme.

9 I think you clearly, with the exception of Frances Rose, have enough  
10 facts in this case to determine common plan or scheme.

11 THE COURT: Question and I'll let you come in. But do I need -- if I'm going  
12 to address connectedness and, therefore, common scheme -- I mean, therefore  
13 cross admissibility, I mean is that the subject of a separate motion which you have?

14 MR. MERBACK: No, I don't think it's a separate motion. I think that the Court  
15 -- the Court goes to --

16 THE COURT: Okay. So, I don't have to wait for you to file something else to  
17 deal with it?

18 MR. MERBACK: No, I think the Court would say; okay, there's no common  
19 plan or scheme here. I am going to look at it and connect it together. I'm going to  
20 make a determination by cross admissibility of these.

21 Now, as to whether or not the Court needs to have a Petrocelli hearing  
22 to make that determination, that's something the Court would need to decide, but  
23 you know, I think that there's enough factors here the Court can look at to make that  
24 determination without it, but that would obviously a decision the Court would have to  
25 make.

1 But, I think that's definitely the way the Court would go, is it would  
2 decide common plan or scheme first. If not common plan or scheme, look at  
3 connectedness, and connectedness clearly goes to cross admissibility which is  
4 basically the bad acts statute that we -- that we talk about all the time.

5 THE COURT: Okay. Ms. Roundtree, I've kind of cut you off at one point  
6 there.

7 MS. ROUNDTREE: That's fine.

8 THE COURT: Let me tell you what my leaning is at this point, and we're not  
9 going to resolve this today. I do need to see your motion to sever --

10 MS. ROUNDTREE: I apologize for that.

11 THE COURT: -- and I need an opposition. And we're going to have to redo  
12 this and kind of address everything at once.

13 I have a hard time saying that this is a Weber situation. I have a hard  
14 time not seeing that there is more evidence of a common scheme and plan.  
15 Whether I could ultimately say that it is sufficient under all the cases to so hold and  
16 make that be the holding, but I'm having trouble saying that this is a Weber that  
17 there's just no -- that there isn't an element here. If they had put on evidence that  
18 would seem to be relatively undisputed, that the Defendant was worked in that  
19 capacity and that there's that -- that kind of commonality between -- and the usage of  
20 that position as an integral part of how it all comes about, I'm having a hard time  
21 saying that that's not -- so I just -- that's my leaning at this point.

22 MS. ROUNDTREE: Okay. Just because I've -- I'm sorry --

23 THE COURT: And I agree that that may -- that may lose out when you get to  
24 the Rose incident, but as to the others at least, I'm having a tough time.

25 MS. ROUNDTREE: May I just let counsel be heard since I've dominated this --

1 THE COURT: Mr. Coyer?

2 MR. COYER: She's so mean Judge. I was gonna say one thing because I  
3 saw the Court leaning that way too, and I think that if -- quite frankly, if the Court  
4 chooses to view it that way then that's what it is. But, if the Court chooses to look at  
5 -- this is a person using his role as a nurse to victimize women, I think the Court has  
6 to also look at that position as a whole. Because we are talking about a man who --  
7 from the time period he worked at Centennial Hills, and I know a lot of the stuff from  
8 having done medical malpractice in the civil arena, this is a hospital where there is  
9 unbelievable volume, unbelievable volume.

10 This man would have worked on literally thousands of patients in  
11 the time he was there. So you have to look at the fact that he did not victimize  
12 thousands of people and that somehow these individuals -- these five individuals  
13 were centered out for some reason. And then you look at the victims and you say;  
14 well, what's the connection with the victims? There's none. They go from elderly to  
15 low 20's. Some are white, some are black. I mean, there's no connection even in  
16 the victimology.

17 THE COURT: So it might fall to the State to try and supply some -- the  
18 answers to some of those kinds of queries. Why these and not others?

19 MR. COYER: If we're gonna say --

20 THE COURT: Before the Court could say --

21 MR. COYER: -- yeah, if we're gonna say, this is a guy using his position, then  
22 what's the connection? Because there's thousands of people he didn't victimize.

23 THE COURT: And I don't know what the evidence would be at trial of course.  
24 I mean, I don't know if there is some fairly obvious thing, like these were -- if not the  
25 only ones, maybe the location of the rooms, they were somewhere apart from, you

1 know, the others –

2 MR. COYER: If it becomes that they're crimes of opportunity, then it's not a  
3 common scheme or plan. I mean that's – the State has to concede some of this is  
4 opportunistic in nature. And, if that's what it is, then how is it a common scheme?

5 THE COURT: Doesn't it just mean the scheme – the common scheme or plan  
6 could be where he finds a vulnerable, if you will, victim, vulnerable virtue of being  
7 separate and apart or somehow more open to – I don't know –

8 MR. COYER: It says the facts –

9 THE COURT: -- just less people around or some such thing like that.

10 MR. COYER: -- the facts belie that. These – some of these offenses are  
11 happening in open areas –

12 THE COURT: Okay.

13 MR. COYER: -- where there's nothing – not even a curtain blocking the view.

14 THE COURT: All right. Okay. Well that's good argument then.

15 MR. MERBACK: And that – that's exactly the point though. Just because  
16 one person is not victimized, doesn't mean that there's not a common plan or  
17 scheme to victimize people who – who are – are available for the Defendant to  
18 victimize in a situation which he – he's attracted to them – he has some attraction to  
19 them, and he victimizes them.

20 I mean, just because – it's like saying, you know, -- it's like in the Weber  
21 case, like saying well because he killed these people here but didn't kill these people  
22 here, it can't possibly be a common plan or scheme. That's not what the Court said.  
23 The Court said it wasn't a common plan or scheme because the crimes were so  
24 different. But it's not because he didn't victimize other people.

25 I mean there would never be a common plan or scheme if the issue

1 was; you have to victimize everyone who's available to you. I mean, a guy is going  
2 down burglarizing a bunch of different homes, why does he pick this one and why  
3 not this one? I mean, the fact that he's burglarizing homes at the same time period,  
4 in the same manner, and that he's made this decision, he's gonna burglarize homes  
5 in this neighborhood, just because he skipped some of the homes for whatever  
6 reason because there's a light on. Because he thinks someone's home. Doesn't  
7 mean it's not a common plan or scheme. I mean, we can't start -- we're not -- if the  
8 issue is disproving every single person getting victimized, that becomes impossible,  
9 and that's not the standard for common plan or scheme.

10 MS. ROUNDTREE: Then I disagree that -- I think the State, and with all due  
11 respect, has a basic misunderstanding of common plan and scheme because that's  
12 exactly what the case law says.

13 If you're going under common plan or scheme, each crime has to be so  
14 sufficiently distinctly similar to the next crime that you're trying to get into evidence  
15 together, that it separates it from all other types of crimes of that nature. So, I think  
16 that's where perhaps the mis -- the wires are being crossed here, and there's a  
17 misunderstanding. Because if you're going under common plan or scheme, that's  
18 exactly what the State must prove, that these crimes are -- under the trick roll cases,  
19 that this particular set of trick rolls was so sufficient -- so sufficiently dissimilar than  
20 other trick rolls that it -- it equaled an MO.

21 These crimes were not, they weren't the same sexual acts against  
22 different types of victims, different locations in the hospital, you know --

23 THE COURT: But giving deference to your quote or somebody's quote out of  
24 Weber that says; thus purposeful design is central to a scheme or plan, though this  
25 does not mean that every scheme or plan must exhibit rigid consistency or

1 coherency. We recognize that a person who forms and follows a scheme or plan  
2 may have to contend with contingencies; therefore, a scheme or plan can and  
3 practice reflect some flexibility and variation, but still fall within an overall intended  
4 design.

5 MS. ROUNDTREE: But the --

6 MR. MERBACK: And that's all I was saying, Judge. I think Ms. Roundtree  
7 misunderstood what I said. What I said, Judge, is if you have an individual who has  
8 a common plan or scheme to burglarize a number of homes, and he burglarizes one  
9 and skips some other ones because there's a contingency, there's a light on, there's  
10 someone home, whatever the reason, and then he goes on he burglarizes the fifth  
11 house, he does the first and the fifth house, just because he skips those four houses  
12 in the middle, doesn't mean it's not common plan or scheme.

13 He had a plan to commit burglaries of these residences. He did it at the  
14 same time frame; in the same manner -- that would clearly -- the State could prove  
15 that, be common plan or scheme.

16 And, just because he skipped four houses in the middle, on the street,  
17 doesn't mean it's not common plan or scheme because he's allowed to plan for  
18 contingencies that come up. That's the point I was trying to make; that just because  
19 the Defendant didn't victimize other women that were under his care, doesn't mean  
20 there's not a common plan or scheme to victimize these women.

21 MS. ROUNDTREE: I completely agree with that, and in the scenario that the  
22 State just gave, the Nevada Supreme Court would not uphold joining those different  
23 burglary cases, unless those individual burglaries where he skips some houses in  
24 between were so sufficiently similar to one another, done with exactly the same  
25 manner. He always takes a rag over his hand to punch through the window, to



1 access the door in the bathroom, to go straight up to the vault. I mean, those cases  
2 would not be properly joined together, thus cited by the State unless those crimes  
3 were so similar to one another that it created an MO, an MO that was different than  
4 residential burglaries as a whole. That's what we're saying. This is not the case --

5 MR. MERBACK: And I agree.

6 THE COURT: It all comes down to how you define common scheme or plan.

7 MR. MERBACK: And I agree Judge --

8 THE COURT: Does it just mean the satisfaction of sexual lust or gratification?  
9 Or does it have to be defined to include how one does it, including it, you know,  
10 methodologies as well as individual circumstances of the victim.

11 MS. ROUNDTREE: I would guess that our Nevada Supreme Court is to find  
12 -- you were asking me about it, whether or not ours is stricter than the Federal law, I  
13 would guess that it is because --

14 THE COURT: Oh yeah.

15 MS. ROUNDTREE: -- they held that --

16 THE COURT: That I can tell you.

17 MS. ROUNDTREE: -- you know, various cases, we've cited a few of them, but  
18 many many cases have been held improper joinder based upon common plan or  
19 scheme, because there is such a big misunderstanding of it, so the Nevada  
20 Supreme Court has said if you're going in that prong, they have to be so sufficiently  
21 distinct that they are separated from all other crimes of that nature that they create  
22 some sort of an MO type situation, where that's the Defendant's MO, that's what he  
23 does and how he does it, and who he targets, and that kind of thing.

24 THE COURT: We have a settlement conference starting in 45 minutes --

25 MS. ROUNDTREE: Sorry.

1 THE COURT: We're going to have to break since we're not going to arrive at  
2 an answer here today, but thank you for your --

3 MS. ROUNDTREE: Thank you, Judge.

4 THE COURT: -- it's been very helpful. You can get your motion filed right  
5 away?

6 MS. ROUNDTREE: Yes, it's prepared.

7 THE COURT: And how long do you want to oppose?

8 MR. MERBACK: If I could get a week, if that's not too --

9 MS. ROUNDTREE: I start trial next week so --

10 MR. MERBACK: Maybe we could push it past Ms. Roundtree's trial then?

11 THE COURT: This trial is not until November.

12 MS. ROUNDTREE: November.

13 MR. MERBACK: I just thought we'd try to --

14 THE COURT: Yeah.

15 MR. MERBACK: Because based on what happens here, if the Court grants  
16 our motion, we didn't have to do a videotaped deposition, so I just -- we needed  
17 some time to get those things done.

18 THE COURT: Of course that's a whole separate issue.

19 MR. MERBACK: Well and that's -- that's the next step. I'm just saying, if  
20 things go my way, I wanted to be ready. That's all I'm trying to say.

21 THE COURT: Yeah. All right. Is a week enough time for you then?

22 MR. MERBACK: I think we want two weeks for Ms. Roundtree.

23 MS. ROUNDTREE: Is that okay, because I'm in trial next week. I don't know  
24 if it'll spill over. It's a sexual assault.

25 THE COURT: Sure.

1 MS. ROUNDTREE: Thank you so much.

2 THE COURT: So just for the hearing you're talking about?

3 MS. ROUNDTREE: Yes.

4 THE COURT: Or do you want that two weeks to file your motion?

5 MS. ROUNDTREE: No, no, I'll file it this week.

6 THE COURT: All right.

7 MS. ROUNDTREE: If not today and just for the hearing, yeah.

8 THE COURT: Okay. So, then are we saying two weeks for you to respond or  
9 are we saying –

10 MR. MERBACK: No, just a week for me to respond is fine.

11 THE COURT: -- a week to respond and then two weeks for the hearing?

12 MS. ROUNDTREE: Thank you, Judge.

13 THE CLERK: May 26<sup>th</sup> for State's opposition and then – a week after that?

14 THE COURT: I'm losing my clerk that's why I was hoping to get the hearing  
15 by June 1<sup>st</sup>.

16 THE CLERK: So – okay. And you wanted a week after May –

17 MS. ROUNDTREE: Or a few days after that, if you want to do it before June  
18 1<sup>st</sup>.

19 THE COURT: What's the last day of May? Is that on a – I wouldn't do that.  
20 Put it in June.

21 MS. ROUNDTREE: Well it's okay, if you want to go with the 28<sup>th</sup>.

22 [Colloquy – the Court and the Clerk]

23 MS. ROUNDTREE: How about – it's up to the Court. If you want your law  
24 clerk to be involved, I mean I certainly understand that, so maybe – after May 26<sup>th</sup>,  
25 it'll just take me a day or two to read it. So the 27<sup>th</sup>, 28<sup>th</sup>?

1 THE CLERK: June 2<sup>nd</sup> is 89 matters so.

2 THE COURT: How about. What's after June 2<sup>nd</sup>?

3 THE CLERK: June 2<sup>nd</sup>? Well you've got June 7<sup>th</sup> or 9<sup>th</sup>.

4 THE LAW CLERK: I'll still be here on the 7<sup>th</sup>.

5 THE CLERK: Great.

6 THE COURT: The 7<sup>th</sup>, how about the 7<sup>th</sup>?

7 THE CLERK: June 7<sup>th</sup> – you want it at a different time?

8 THE COURT: Yeah.

9 MR. MERBACK: The 7<sup>th</sup>, is that a Monday?

10 THE CLERK: Yes.

11 MR. MERBACK: Okay.

12 THE COURT: How about in the afternoon on the 7<sup>th</sup>?

13 MS. ROUNDTREE: Yes that's great.

14 MR. MERBACK: Yeah, that's fine.

15 [Colloquy – the Court – the Clerk]

16 MR. MERBACK: Judge, just to clarify, what we're doing is the Defense is  
17 going to file a motion to sever, I'm going to respond to it, and then we're gonna kind  
18 of re-argue this, but the Court isn't having – we're not having a hearing yet. Is that  
19 correct? We're just going to re-argue these issues.

20 THE COURT: Well, I thought that would be the continued hearing on both  
21 motions.

22 MR. MERBACK: Okay. Just the argument though?

23 THE COURT: Yes.

24 MR. MERBACK: You're not looking for – okay.

25 THE COURT: Yes. Argument on your motion and then her motion together.

1 MR. MERBACK: The only reason I brought it up is because obviously if we  
2 get to a point where it's not common plan or scheme but it is potentially connected  
3 together and we have to have a Petrocelli hearing, we're not there yet though.

4 MS. ROUNDTREE: Right.

5 MR. MERBACK: I want to make sure. Okay. We're on the same page.

6 THE COURT: Oh no. I'm not going to do a Petrocelli.

7 MR. MERBACK: Okay.

8 THE COURT: And if you want though, you don't have to respond to his  
9 motion for video depositions 'til we see whether we're gonna --

10 MS. ROUNDTREE: Okay. I'll do it orally.

11 MR. MERBACK: I agree.

12 MS. ROUNDTREE: Thank you.

13 THE CLERK: So what time do you want? I'll put it at 10:30 --

14 [Colloquy -- the Court and the Law Clerk]

15 THE COURT: You know what, it's really not gonna work then really --  
16 because if I have to do -- pick a jury that afternoon, there's no way. My Monday  
17 morning calendar is going to go too long to do this.

18 [Colloquy -- the Court and the Law Clerk]

19 THE COURT: All right. Let's do it at 11. We'll set it at 11, and everybody will  
20 talk fast.

21 MS. ROUNDTREE: Absolutely.

22 THE CLERK: June 7<sup>th</sup> at 11 a.m.

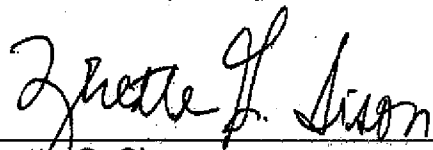
23 MS. ROUNDTREE: Thank you so much.

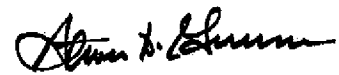
24 MR. COYER: We'll get through it Judge.

25 THE COURT: Thank you.

[Proceedings concluded at 12:48 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Yvette G. Sison  
Court Recorder/Transcriber



CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 STEVEN DALE FARMER

12 Defendant.

CASE NO. 08C245739  
08C249693

DEPT. I

13 ***BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE***

14 **MONDAY, JUNE 7, 2010**

15 **RECORDER'S TRANSCRIPT RE:**

16 **STATE'S MOTION TO CONSOLIDATE WITH C245739/STATE'S NOTICE OF**  
17 **MOTION AND MOTION FOR VIDEOTAPED TESTIMONY OF VICTIM, MARCIA**  
18 **PETERSEN**

19 **APPEARANCES:**

20 For the State:

JAKE MERBACK, ESQ.  
Deputy District Attorney

22 For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

24  
25 **RECORDED BY: BEV SIGURNIK, COURT RECORDER**

1  
2  
3 Las Vegas, Nevada, Monday, June 7, 2010 at 11:32 a.m.  
4

5 THE CLERK: Steven Farmer, case number C245739 and C249693.

6 MR. MERBACK: Judge, Jake Merback for the State. I was contacted by Ms.  
7 Roundtree. She indicated – or by her secretary, who indicated that she is sick today  
8 and isn't able to be here. So, I think the Defense is going to request that the hearing  
9 be continued. Obviously, I have no opposition to that.

10 I, however, Judge am out of the jurisdiction next week. So, if we could  
11 have two – maybe three weeks even would be good?

12 THE COURT: We need also – I don't think we have a response to the State's  
13 motion for videotape testimony.

14 MR. MERBACK: Judge, I think the Defense was going to – I don't know, Mr.  
15 Coyer can correct me, is going to wait to –

16 THE COURT: Find out. Okay.

17 MR. MERBACK: -- argue. Because if the case is not consolidated, I don't  
18 know that it's necessarily going to be an issue but –

19 THE COURT: All right.

20 MR. COYER: Right.

21 THE COURT: Okay. We'll wait on it. So, how long are we going out then?

22 MR. COYER: Maybe two weeks.

23 MR. MERBACK: Three weeks.

24 THE CLERK: June 28<sup>th</sup> at 9 a.m.

25 MR. MERBACK: Thank you, Judge.

THE COURT: By the way for any – the attorneys on either side that are



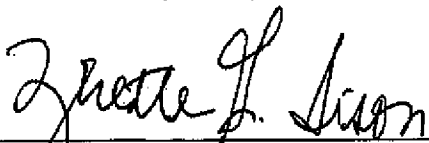
1 normally in here, I'm going to have to vacate my Wednesday calendar. So any  
2 cases you have on for Wednesday are going to have to get tossed to the next  
3 following week.

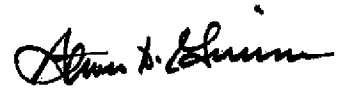
4 MR. COYER: This one's good.

5 THE COURT: A funeral requires my presence. Thankfully not my own.

6 [Proceedings concluded at 11:33 a.m.]  
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
21 proceedings in the above-entitled case to the best of my ability.

22   
23 Yvette G. Sison  
24 Court Recorder/Transcriber  
25



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

CASE NO. 08C245739  
08C249693

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STEVEN DALE FARMER

DEPT. I

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Defendant.

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***BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE***

14

***MONDAY, JUNE 28, 2010***

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***RECORDER'S TRANSCRIPT RE:***

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**STATE'S MOTION TO CONSOLIDATE WITH C245739/STATE'S NOTICE OF  
MOTION AND MOTION FOR VIDEOTAPED TESTIMONY OF VICTIM, MARCIA  
PETERSEN**

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**APPEARANCES:**

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For the State:

ALICIA ALBRITTON, ESQ.  
Deputy District Attorney

21

22

For the Defendant:

NO ONE PRESENT

23

24

25

**RECORDED BY: BEV SIGURNIK, COURT RECORDER**

1 Las Vegas, Nevada, Monday, June 28, 2010 at 9:37 a.m.

2  
3 THE COURT: Farmer matter.

4 THE CLERK: The DA did inform me that – counsel called and they're  
5 continuing it one week.

6 THE COURT: We're waiting for counsel or is this one we're gonna move?  
7 Do you know Ms. –

8 MS. ALBRITTON: I believe Defense Counsel was supposed be here, but  
9 they agreed to continue it. We're requesting a July 7<sup>th</sup> court date.

10 THE COURT: All right.

11 THE CLERK: Okay. That would be July 7<sup>th</sup>, 9 a.m., this court.

12 THE COURT: Or the hearing on all the various pending motions?

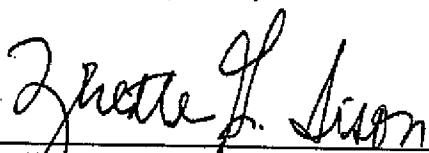
13 MS. ALBRITTON: Yes, Your Honor.

14 THE COURT: Okay.

15 [Proceedings concluded at 9:37 a.m.]  
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Yvette G. Sison  
Court Recorder/Transcriber

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**ORIGINAL**  
DISTRICT COURT  
CLARK COUNTY, NEVADA

*John A. [Signature]*  
CLERK OF THE COURT

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TRAN

STATE OF NEVADA

Plaintiff

vs.

STEVEN DALE FARMER

Defendant

CASE NO. C245739/C249693  
(Consolidated)

DEPT NO. I

08C245739  
TRAN  
Reporters Transcript  
1461944



BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE

WEDNESDAY, JULY 7, 2010

RECORDER'S TRANSCRIPT RE:  
MOTION TO CONSOLIDATE

APPEARANCES:

For the Plaintiff:

JAKE MERBACK  
Deputy District Attorney

For the Defendant:

STACEY ROUNDTREE  
GREGORY COYER  
Deputy Public Defenders

RECORDED BY: BEVERLY SIGURNIK, COURT RECORDER

CLERK OF THE COURT

JUN 09 2011

RECEIVED

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 7, 2010, 12:20 P.M.

2 \* \* \* \* \*

3 THE CLERK: This is page 6, Steven Farmer, Case Number C245739  
4 and Case Number C249693. Defendant is present in custody.

5 THE COURT: Good morning.

6 MS. ROUNDTREE: Good morning.

7 THE COURT: Are we ready to argue these? I had thought you were  
8 gonna file a motion.

9 MR. MERBACK: They did file a motion, Judge.

10 MS. ROUNDTREE: Yeah, the opposition we filed.

11 (Defense counsel colloquy)

12 THE COURT: Okay. I had thought at one point that there was  
13 discussion about filing a --

14 MR. MERBACK: There is a motion to sever. I've seen it.

15 MS. ROUNDTREE: Yeah.

16 MR. MERBACK: And I actually didn't file a response to it because it --  
17 this is what we talked about, Judge. We talked about the fact that potentially the  
18 motion to sever would include cases that we haven't already discussed as a part of  
19 the motion to consolidate and the opposition to the motion to consolidate. The  
20 motion to sever included the exact same cases and basically the exact -- it's a very  
21 similar argument to what we'd already discussed --

22 THE COURT: Okay.

23 MR. MERBACK: -- and so I just considered it an addition to what we've  
24 already talked about.

25 THE COURT: Okay. All right.

1 MR. MERBACK: I've got my motion; she's got hers and they – I don't  
2 think there's any – there wasn't any new case law introduced in the motion to sever.

3 Is that correct, Ms. Roundtree?

4 MS. ROUNDTREE: I thought that there was, but now I can't find my  
5 motion to sever. I have my – I put a – I have a folder of consolidation motions  
6 thinking it had –

7 THE COURT: Mm-hmm. I have a copy of it here if you want.

8 MS. ROUNDTREE: -- the motion to sever, but.

9 Is this the – and that's recently filed? Yeah, that's the one. I think it – I  
10 thought it did involve a couple new cases, but did the Court receive the motion to  
11 sever filed –

12 THE COURT: Yes, I have the motion to sever.

13 MS. ROUNDTREE: Oh, okay. Is this – It's mostly this case law  
14 discussed in the opposition to the motion to consolidate, but I did think that there  
15 were a couple additions, but it's been so long.

16 MR. MERBACK: It discusses the Weber case, which you've already  
17 talked about.

18 MS. ROUNDTREE: Right.

19 MR. MERBACK: It discusses the Richmond case, which we've already  
20 talked about, and it discusses the Mitchell case, which we've already talked about.  
21 There's a brief reference to the Tabish case, but those are the three main cases it  
22 discusses, is Weber, Richmond and Mitchell.

23 THE COURT: Tabish comes in for a brief mention.

24 MS. ROUNDTREE: Yeah, I think when I was here last time I had filed –  
25 I filed – or I thought that it had already been filed. I thought that there was additional

1 case law cited and perhaps there wasn't, 'cause what I did was – again, it had  
2 already been prepared last time, but it didn't get filed, I guess. So I just went back  
3 and filed it, so perhaps it doesn't have additional case law.

4 THE COURT: There's some citation to some other case but – cases,  
5 but they're not – they don't appear to be – well, like one is Tinch; on page 13 of your  
6 motion you refer to Tinch, Tavares and you got a quote out of Floyd.

7 So, are we ready to go on it then?

8 MS. ROUNDTREE: Yes, Judge, if you've received the motion to sever  
9 we're ready to go.

10 THE COURT: We will – we will simply consider the motion of  
11 consolidation and severance all in one –

12 MS. ROUNDTREE: Yes.

13 THE COURT: -- bailiwick, one basket.

14 MR. MERBACK: Yes, Judge.

15 THE COURT: All right. So, let's go with the State's motion to  
16 consolidate.

17 MR. MERBACK: Well, Judge, we've actually already argued this  
18 motion pretty extensively. The reason I think the Court didn't make a decision last  
19 time was because Ms. Roundtree needed some time to get that motion to sever  
20 filed, and so I don't know how much the Court wants me to rehash everything we've  
21 already talked about, Judge, but basically the Court mentioned last time that it was  
22 leaning towards consolidating the cases as to everyone except for – well,  
23 consolidating the Marcia Petersen case with the other case and severing Frances  
24 Rose, and the reason was because Frances Rose, as the Court remembers, is the  
25 individual who kind of is distinguished from the other people in this case.



1 Everyone else in this case, the events of sexual abuse occurred at  
2 Centennial Hills Hospital except for Frances Rose that was at Rawson Neal  
3 Hospital. The defendant was working as a nurse's assistant in all those situations.  
4 They all have health issues. None of 'em knew the defendant except for Frances  
5 Rose. She knew the defendant; actually dated him at one point in time, so.

6 And the other issue is that all of the – all of the events occurred within  
7 like an April-May time period, and in fact, as to four of the people, Roxanne,  
8 Heather, Denise and Marcia, all of 'em occurred within one week, except for  
9 Frances, who occurred I think it was like earlier on in the year, like January – I have  
10 it here, December; December Frances Rose occurred. So she's distinguishable  
11 both in the location as well as in the time frame and as well as in a relationship with  
12 the defendant, so I think the court was leaning towards that – doing that.

13 And, Judge, I would note, just kind of arguing some of the issues  
14 brought up in the motion to consolidate the defense talks about the Weber case. In  
15 the Weber case the court said there is no common plan or scheme here, but the  
16 crimes are connected together, and, if the Court remembers that the crimes in  
17 Weber were actually very distinct and different. There was a victim of sexual  
18 assault; there were two different murder victims; there were two different victims of  
19 different violent acts, and the court said so this is not a common plan or scheme,  
20 however, they are connected together.

21 And so I would note here that Weber is completely distinguishable from  
22 this case in regards to lack of common plan or scheme just because of the location  
23 where these occur, all in the same hospital, the defendant working as a nurse's  
24 assistant and having access to all these victims by way of his employment, the time  
25 frame in which all these events occur, the health issues of the victims. There's just

1 so many factors that go to show that this is a common plan or scheme on the part of  
2 the defendant, particularly his position as a nurse's assistant and his access to  
3 these victims by way of that position.

4 As to Richmond, Judge, the Richmond case involves a defendant who  
5 molests a younger girl sometime in – a little after 1996, that he'd known, lived with  
6 her at one point and she began visiting him, then he molested her, and then he  
7 molested another girl later on in 1999 who had lived in his apartment complex and  
8 who'd spent the night at his home a couple of times. And the court said that that  
9 was not a common plan or scheme and it seemed like the defendant was just  
10 randomly drifting until he found different victims and I think that this is – I mean there  
11 you've got like a three-year, four-year time difference. You've got different locations;  
12 you've got different contacts with the victim. There's really no connection there, so I  
13 think Richmond is distinguishable on those grounds.

14 And then finally they discuss Mitchell just briefly – and we already  
15 talked about Mitchell, Judge – that the defendant – the only connection there was  
16 the defendant took both of the victims dancing at the same bar, but they were 45  
17 days apart; there weren't connections to how they knew each other or connections  
18 as to how he met those – met those victims. I think all those cases are easily  
19 distinguishable, Judge.

20 I think it's pretty clear here under NRS 173.115 that these events, with  
21 the exception of Frances Rose, are a part of the – of a common plan or scheme on  
22 the part of the defendant.

23 And then we also talked about, Judge, that if the Court doesn't find a  
24 common plan or scheme that the next analysis is are they connected together, like  
25 the court did in Weber, and that would require a really – probably a Petrocelli

1 hearing in regards to cross-admissibility for, you know, intent or motive or lack of  
2 mistake or whatever, but I think the first analysis the Court can do in this case is a  
3 common plan or scheme analysis as to all of these victims. I think it's pretty clearly  
4 there and I'd ask the Court to grant the motion to consolidate except for as to  
5 Frances Rose, which the Court already mentioned it wasn't going to do, and deny  
6 the motion to sever.

7 THE COURT: Okay.

8 MS. ROUNDTREE: Your Honor, I think I'm gonna let the Court hear  
9 from counsel. I think you're probably tired of hearing from me and we kinda made  
10 our record on these issues; I believe I made it last time.

11 THE COURT: Okay.

12 MS. ROUNDTREE: I couldn't -- I couldn't really even recall why we  
13 continued it, but I think I now recall --

14 THE COURT: Okay. Mr. Coyer.

15 MS. ROUNDTREE: -- but I didn't let counsel speak last time, so I'm  
16 gonna let him be heard this time.

17 MR. COYER: Judge, here's the problem as I see it from the State's  
18 perspective. They have to concede, and I think Mr. Merback has all but conceded. I  
19 think he's conceding that if you want to look at this, if you choose to look at this as  
20 common scheme or plan, Frances Rose goes out the window. Gotta sever her out.  
21 It's years earlier, it's a different hospital, it's not part of a common plan or scheme.

22 They'd rather you grant it under common plan or scheme because that  
23 gets us away from the cross-admissibility analysis, which puts them in a  
24 presumption of inadmissibility. That's the bottom line. They're trying to cram the  
25 square peg into this round hole, knowing they gotta lose Francis Rose, because

1 they don't want to look at -- they don't want you to look at this from the cross-  
2 admissibility perspective 'cause they start with a presumption of inadmissibility if we  
3 go that route.

4           The problem with looking at it from a common plan or scheme, aside  
5 from the fact that Francis Rose doesn't fit in there, is the plan, the scheme is, as it  
6 was stated by the State, is that this individual is using his position as a way to find  
7 and, you know, abuse victims. That approach ignores a lot of really important facts.

8           That approach ignores that these things happened, as Mr. Merback  
9 pointed out, in a very tight time frame. They didn't happen over a period of time like  
10 you would expect from someone who's using their employment as a position to prey  
11 on people.

12           They didn't happen to thousands of other patients, which you would  
13 expect if someone was using their job as a position to prey on others. They did not,  
14 in any way, shape or form, happen to victims sharing similar characteristics, which  
15 you would expect if that's what somebody was doing. These things happened to an  
16 African-American woman, a white woman, young women, old women, women who  
17 were there with seizure disorders, women who were there with a heart condition, a  
18 woman who was there for being suicidal. It's all over the map.

19 \*\*           The factors heavily weigh against wrapping this all up in a common  
20 scheme or plan and the State's conceding that one of their victims doesn't fit in that  
21 pattern.

22           So, if we're gonna do anything I think we need to approach this from the  
23 perspective of cross-admissibility. I think common plan or scheme shouldn't even  
24 be on the table. Cross-admissibility that's a different ball game. We can look at  
25 that, have the Petrocelli hearing and then the Court will see the details of how

1 dissimilar these things are and I think if we approach this in any way that's the way it  
2 ought to be approached.

3           We do agree on one thing: Frances Rose has no part in this trial. She  
4 needs a separate trial by herself. There might be some common ground on some of  
5 these people that happened, you know, the same – you know, there's a couple  
6 people who, oh, he's accused of checking their leads and exposing a breast or  
7 something. Maybe you can put those two cases together. But when you really start  
8 looking at the details of each individual accusation and the accuser, it very heavily  
9 weighs against that there's just some, you know, conspiratorial scheme or plan  
10 that's existing.

11           His work history disavows that. There's nothing in this man's history  
12 until, boom, all of a sudden these accusers start raining from the sky it seems like.  
13 That's not what you see in common scheme or plan. So I think at the outset that  
14 should be not even considered.

15           If we're gonna go down that next road, should we consolidate 'em on  
16 this other basis, we would still oppose that, not only oppose the consolidating of Ms.  
17 Petersen into this, but we still believe there are some severance to be had.

18           THE COURT: Okay. Anything else?

19           MR. COYER: Unless you have anything.

20           MS. ROUNDTREE: We have cited – I don't know how well or  
21 eloquently we did it, but we've suggested and cited – I think it's in footnotes – how it  
22 would play out if the Court decided that the EKG cases should be kept together.  
23 Those are Counts 4 through 6; Frances Rose being Count 1 as a separate case; so  
24 that would leave Count 2, being Ledahlia Spurlock, the suicide alleged victim. So,  
25 again, Francis Rose, Count 1, Ledahlia Spurlock, the suicide alleged victim, being

1 Count 2. Counts 4 through 6 are the EKG accusers and then the rest would be  
2 pertaining to Roxanne Cagnina. Then, of course, the other case involves Marcia  
3 Petersen, which is in a different court right now at this time. If the Court were to  
4 consolidate that then that would come into this I guess at the end of the information,  
5 but we made an attempt to try to let the Court know where all of 'em fell in the  
6 information that's currently on file.

7 THE COURT: Okay.

8 MR. MERBACK: Judge, the problem with Mr. Coyer's argument is that  
9 he's looking at all of the things that don't exist to argue this is a common plan or  
10 scheme. By his definition you would never have a common plan or scheme  
11 because, look, this guy – you know, this guy did this on this day and this on this day,  
12 but he didn't do the same thing five years ago when he had the opportunity to do it.

13 Just because the defendant didn't take advantage of other women he  
14 had access to at different points in time doesn't mean that this event is not a  
15 common plan or scheme. What caused the defendant to begin doing this when he  
16 hadn't potentially done it in the past? Maybe he had. We don't know that. But  
17 that's not the issue; that's not the issue we're arguing.

18 Those aren't the facts that the Court should consider in deciding  
19 whether or not this is common plan or scheme. What the Court should look at is the  
20 events, what actually happened in this case and what elements exist in this case to  
21 make it – to show that this defendant committed these acts as part of a common  
22 plan or scheme. You've got an individual – all these events occurred at the exact  
23 same hospital. Four of them all occurred within a week of each other, some of them  
24 on the same day; they're all in the exact same time frame. In every single one of  
25 them the victims have serious health issues and they're in the hospital for those

1 health issues, health issues that in some way debilitate them, and the defendant is  
2 working as a nurse's assistant in that hospital, using his position as a nurse's  
3 assistant to gain access to each of these victims and thereby committing these  
4 crimes.

5           It's classic common plan or scheme, Judge, if you look at the actual  
6 facts, what actually occurred in this case. The fact that he didn't do it another time,  
7 the fact that he hadn't don't it for the 20 years previously or whatever, isn't an  
8 element the Court should be considering. What the Court should be considering are  
9 the facts of this case and the elements that – the common facts that show that this is  
10 part of a common plan or scheme, Judge.

11           The Court mentioned last time that he was headed in that direction. I  
12 think that that is the right direction, Judge, and there hasn't been any new case law  
13 cited by the defense to show anything different. It's pretty clear that with the  
14 exception of Frances – and I'm conceding that, Judge, because it's right. I'm  
15 conceding that because she clearly isn't a part of the same common plan or  
16 scheme. She's months earlier, not years earlier, she's months earlier; she's at a  
17 different hospital; she has a different relationship with the defendant. It's not a part  
18 of it, and that's why I'm conceding it. I'm not conceding it because I don't think the  
19 other ones fit together; they clearly fit together, Judge, and I'd ask the Court to grant  
20 the motion to consolidate.

21           MS. ROUNDTREE: Your Honor, I just – if I could be briefly heard in  
22 response to that argument. Where I disagree – two things. I don't recall the Court  
23 saying you were leaning towards finding that it wasn't a common plan or scheme. I  
24 don't recall that. Maybe it did happen. I do recall the Court suggesting that it  
25 appeared as if the Frances Rose matter should be heard by a jury of its own.

1 But the reason why Mr. Coyer's argument about what is not – what we  
2 don't have that's similar in this case is relevant and absolutely must be considered is  
3 because under every case that defines common plan or scheme what is obvious is  
4 that the Court must find that there was a preconceived plan which resulted in the  
5 commission of the crime. Each – this exception requires that each crime should be  
6 an integral part of an overarching plan explicitly conceived and executed by the  
7 defendant and a preconceived plan.

8 And so, therefore, Mr. Coyer points out the fact that until the allegation  
9 by one woman, Roxanne Cagnina – until that allegation was made and then the  
10 others sort of fell in place when they either saw his, you know, face on the news as  
11 being a rapist or when they were actually asked by the police officers whether or not  
12 he had ever done anything offensive to them, until then Mr. Farmer had held the  
13 same position at the same hospital doing the same job, for which the State is  
14 arguing is so relevant and which led to the commission of these crimes.

15 To be a preconceived plan it – he had to have had that in mind in  
16 accepting the job, as the case cited by the State where – I thought last court  
17 appearance I was thinking it was a scout leader, but it was – it was not a scout  
18 leader, it was some other type of youth group. The defendant clearly took the job in  
19 an effort to make himself available or –

20 THE COURT: Which case was that one?

21 MR. MERBACK: I still haven't seen that case.

22 MS. ROUNDTREE: It's actually cited in your motion. It's – I realized  
23 where I had seen it or where I remember it being cited was in the State's motion,  
24 which I don't think I have a copy of. I have my opposition and the motion to sever.

25 But let me see if I – let me see if I talk about it in – the reason – again,



1 the reason why these things that are not applicable in this case are relevant is  
2 because there is no preconceived plan. Unless you find that this was an  
3 overarching plan, an overarching scheme, there is no common plan or scheme  
4 applicable in this case. You have to consider the things that Mr. Coyer pointed out  
5 were lacking in this case. That's the whole – that is the definition of common plan or  
6 scheme under every case that defines it.

7 THE COURT: I'm still looking for where that case is.

8 MS. ROUNDTREE: Was it – Court's indulgence. I'm sorry. Well, I  
9 don't have the State's motion and so unless I –

10 MR. MERBACK: Is it a scout one or is it the home for boys one? Is  
11 that the –

12 MS. ROUNDTREE: Yeah, that's it. It's the home for boys.

13 MR. MERBACK: Okay. It's Willett versus State, Judge.

14 MS. ROUNDTREE: Willett, yes, which is cited in our motion, actually,  
15 but goodness.

16 THE COURT: Did you?

17 MS. ROUNDTREE: I discussed it at least, because the State cited it,  
18 so.

19 THE COURT: Can anybody point me to where that –

20 MR. MERBACK: Yes, Judge. It's on page 14 of our motion, Judge,  
21 and basically the facts are the defendant volunteers at Child Haven where a boy  
22 performs oral copulation on him and the Court allowed evidence at trial under  
23 common plan or scheme. The defendant had also visited the Eddie Lee Home for  
24 Boys, and there was a boy that did an act of oral copulation on him and the Court  
25 said it was a part of a common plan or scheme 'cause they were close in time and

1 the circumstances and modus operandi were similar, they both occurred during the  
2 month of November. The defendant worked as a volunteer at both institutions.

3 And, Judge, I would just mention in regards to that case that – oh, I'm  
4 sorry, are you still arguing? I'm sorry, Stacy.

5 MR. COYER: We were talking.

6 MR. MERBACK: Oh. Are you still arguing?

7 MR. COYER: I don't know. Are you still arguing?

8 MS. ROUNDTREE: No, no, I'm sorry.

9 I realize now that my copy of your motion actually excludes the  
10 reference to Willet completely and that's why I couldn't find it last time. Yeah,  
11 there's a couple pages missing in my motion, but I didn't mean to interrupt you.

12 MR. MERBACK: Okay. I didn't want to interrupt you. Are you still  
13 arguing or –

14 MS. ROUNDTREE: No, no, go ahead.

15 MR. MERBACK: Okay. And, Judge, I would just note that that case  
16 clearly shows factors that you consider, just like in this case there's factors you  
17 consider, and I don't think that for a common plan or scheme that the defendant had  
18 to take the job in order to have a common plan or scheme in this case, initially. He  
19 could be on the job and see opportunities while on the job and then have a common  
20 plan or scheme decided while already working there, and then commit the common  
21 plan or scheme, which there's no – there's nothing that says he has to have started  
22 the job in order to have a common plan or scheme.

23 And the other thing I would point out, Judge, and this is an argument we  
24 make all the time in trial, we talk about intent in a lot of the charges that we deal with  
25 when we go to trial, and we talk about how do you determine the defendant's intent,

1 you know, and we always say to juries, well, defendants don't stand up and say,  
2 hey, I'm a child molester, or, hey, I'm a drug dealer and I intended to sell these  
3 drugs. How do you know their intent? You look to the facts and circumstances  
4 surrounding the case, and that's what you do in this case.

5           There is a common plan or scheme and he does have to do these  
6 things under a common plan or scheme, but that doesn't mean he has to say, yeah,  
7 I had a common plan or scheme to do all this stuff. We look to the facts and  
8 circumstances. We look to what occurred. We look to the relationship between the  
9 victims. We look to the similarity between the victims. We look to the similarity  
10 between the circumstances. All that stuff is here in this case and that's what the  
11 Court looks to to make the decision. We don't have to have an announcement from  
12 the defendant that he did all these things as a part of a common plan or scheme.

13           I think it's clear, Judge, from the evidence, and I'll submit it on that.

14           THE COURT: All right. Anything else?

15           MS. ROUNDTREE: Well, Judge, if what Mr. Merback suggests is true,  
16 if he created this common –

17           THE COURT: Just remember, it's his motion, so whenever you talk he  
18 has to talk again unless he wants to take a pass.

19           MS. ROUNDTREE: I just want to point out. If he's – if he's changing  
20 the theory and saying, well, you know, he could've created the common plan or  
21 scheme after he took the job. If that's the theory, then I think this case is directly on  
22 point with Richmond, Mitchell, Weber and Tabish, wherein, you know, basically the  
23 defendant is taking advantage of whatever opportunities – criminal opportunities  
24 arise, and if that's what we have here then severance is warranted under the case  
25 law which is cited by both defense and the State.

1 THE COURT: All right.

2 MR. MERBACK: Judge, let me just say something. I'm not changing  
3 my theory. I said that last time, too. He doesn't have to start the job. What he has  
4 to do is decide that I have a common plan or scheme to do these things, and once  
5 he does that that's sufficient and the Court can look to a number of factors. There's  
6 no dispositive factor. The fact that he didn't -- that he didn't start -- have the  
7 common plan or scheme when he started the job isn't -- isn't a dispositive factor. I'm  
8 not saying he didn't; I'm not saying he did. I'm just saying it's not a dispositive  
9 factor. The factors the Court looks to are the things we already talked about.

10 THE COURT: It appears to me that my tentative conclusion from last  
11 time still holds, and that is that I think that they -- I see no reason why they can't be  
12 tried together except for the Frances Rose incident. I don't believe that common  
13 scheme or plan requires a great period of time; they may be close in time or they  
14 may be spaced further apart in time. I don't think that it requires that in order for -- if  
15 the theory and the thing which makes these able to be tried together is that the  
16 common scheme and plan is to take advantage of your position as a -- was the  
17 defendant a CNA or a PA?

18 MS. ROUNDTREE: CNA.

19 MR. MERBACK: Nurse --

20 THE COURT: PA. Did I get it right?

21 MR. MERBACK: A CNA, Judge.

22 THE COURT: He's a CNA. I'm sorry. I don't think that he must,  
23 therefore, make every person, or every woman that he has care over be a victim in  
24 order to qualify as a common scheme and plan. A lot of this, of course, a Court is  
25 required to determine in the blind, or at least in the sense that I haven't seen the

1 evidence, I haven't seen the reports and all of that, but my understanding is that the  
2 evidence would be that while engaged as a CNA at that particular hospital there  
3 were a series of events that amount to molestation and that, therefore, the State on  
4 that basis wants to bring them together. And I really don't see a reason why you  
5 can't do that under common scheme and plan.

6 I think that to the extent that, yeah, it becomes important to know when  
7 the intention, the plan, if you will, comes into effect it doesn't mean that you have to  
8 have had a preconceived plan before you ever accepted employment. It simply  
9 means that at some point in time you hatched the plan. That point in time could've  
10 been before or after the first reported incident. In this case there's allegations that  
11 there was similar conduct that took place with Frances Rose months before, so you  
12 could even key off of that and say sometime following that and before the time that  
13 the next event that will be the subject of this trial took place, this plan, which is  
14 nothing more than to use the employment as a way to get at the victims, is not a  
15 terribly involved, complicated plan.

16 It seems to me that the evidence that the State proffers that it's going to  
17 show is simply the fact that the defendant was a CNA, had the access, used that  
18 access, and that position as a CNA to gain access, that is enough to qualify as a  
19 common scheme and plan. It matters not one whit whether the women were all the  
20 same, all different; I don't see that that is relevant to a consideration of common  
21 scheme or plan.

22 The fact that there are different specifics exactly on how and when, I  
23 don't think they have to have all been EKG whatever it was, removing the monitors;  
24 they don't have to have been related that way at all. The common scheme – the  
25 duties of a CNA, as I understand it, are wide and varied and exactly what the guise

1 was that the State seeks to put evidence of in front of the jury would not matter, as  
2 long as it relates back to having been as a result of the position of employment in  
3 the hospital.

4           So, I just – I don't see that there's – that there is a problem. I recognize  
5 – I recognize that any time you try a defendant on more than one charge there is  
6 built-in a potential for prejudice to the defendant, but as you look at the way our case  
7 law plays out and how you balance the potential prejudice against all the other  
8 factors that weigh on the other side, I'm well satisfied that this case fits within our  
9 case law and, for that matter, federal case law and other – and United States  
10 Supreme Court case law that this qualifies as a common-scheme-and-plan situation,  
11 and, accordingly, I'm going to grant the State's motion as to everything except the  
12 Frances Rose incident and deny the defense motion to sever.

13           MS. ROUNDTREE: And, Judge, so that brings up sort of a  
14 housekeeping matter, if you will. Until I believe our last court date, perhaps just after  
15 or just before our last court date, the State had – we had not actually set a trial date  
16 in the Marcia Petersen case, which is currently in District Court XII. Certainly we  
17 had not begun to investigate that case because the case was originally prosecuted  
18 by a different district attorney whose thought was because of her medical condition  
19 and the real problems that they had getting her to court in the case involving Ms.  
20 Petersen – there were two times she didn't show for preliminary hearing and they  
21 had to go to the grand jury. Because of that, the State's thought was we'll go  
22 forward with this case first, the bulk of the charges.

23           If there's a conviction secured in this case then something can be done  
24 about the Petersen case. I don't know if the State was considering dismissal or  
25 something concurrent, I'm not sure, but at any rate none of us had geared up for

1 that case. What I'm pointing out is if the Petersen case is now going to be joined in  
2 this case we haven't really begun to much investigate that case, haven't done a  
3 discovery motion involving that case. She is the second victim who has filed a, I  
4 believe, multi-million-dollar lawsuit again Centennial Hills Hospital, and so of course  
5 there's a ton of investigation and documents and that kind of thing that we'll be  
6 seeking.

7 I don't know, while I was comfortable we would absolutely be prepared  
8 for our trial date if this case goes forward right now, I can't be positive whether or not  
9 we'll be prepared when Petersen is combined. And we'd also - we'll have to do like  
10 a discovery motion - I mean, that will bring that case - the State will file an  
11 amended joining Ms. Petersen to this case and then we'll probably file a discovery  
12 motion for that case and - you know.

13 THE COURT: So, are you indicating that you don't think you can be  
14 ready for the trial date then, is that what you mean?

15 MS. ROUNDTREE: Just not sure. I'm just not sure.

16 THE COURT: All right.

17 MS. ROUNDTREE: It's -

18 MR. MERBACK: Judge, I don't - I mean, I don't know what the Court's  
19 schedule will be, but I understand Ms. Roundtree's argument and if we get to that  
20 point I'm willing to - I mean, I don't want to be unaccommodating, so I'm willing to  
21 accommodate whatever way is necessary.

22 MS. ROUNDTREE: I just want to put you on notice and I - I don't want  
23 to go on record saying absolutely impossible, but I just want to put everybody on  
24 notice. So I appreciate you allowing me to.

25 THE COURT: Okay. What about the videotaped deposition motion? I

1 don't have an opposition to that yet, I don't believe. Do we need to -- what do you  
2 want to do about that? Do you want to just -- do you want to reset it and file an  
3 opposition or do you want to take it off for now? Or what do you want to do?

4 MR. MERBACK: I don't want to take it off, I'd like to have it decided so  
5 that I can decide what I'm going to do.

6 THE COURT: Okay.

7 MS. ROUNDTREE: My -- I sort of didn't have a great understanding of  
8 that motion, to be quite honest, no disrespect to any of the parties, but, you know,  
9 one of the things that must be shown is that that alleged victim has an unavailability  
10 for the trial date, is my understanding. Two things, we don't have any records,  
11 medical records, or anything like that which would show that that alleged victim has  
12 any condition which would make her appearance in court impossible or even  
13 difficult. So, that's first.

14 Secondly, the trial is set in November currently, so I think that perhaps  
15 that is a motion -- and the reason why we didn't file an opposition -- that's a motion  
16 that once we get a little closer to the trial date if the State feels for some reason that  
17 that --

18 THE COURT: Or we can deal with it now and if you're right on the law  
19 then they lose.

20 MS. ROUNDTREE: Either way.

21 THE COURT: So whichever way you want to take it.

22 MR. MERBACK: Either way is fine with me, Judge. I do -- I mean I -- if  
23 the Court -- we were to decide it later and the Court was to grant it, it would have to  
24 be prior -- sometime before the trial date because her seizure condition -- that's why  
25 she -- that's initially why the case wasn't put together by the first deputy because she



1 had these seizures and they had to go to the grand jury. Her seizure condition  
2 makes it such that the reality is – and I know I haven't provided these medical  
3 records to – and I don't have these medical records actually personally, I just know  
4 this from talking to her, and I think the public defender probably has this knowledge  
5 just without records, that she has these – when she's exposed to extreme situations  
6 she goes into these seizures to make it almost impossible for her to talk.

7           We would have to bring her down, have her stay here downtown, and  
8 then bring her in at kind of a quieter time and have her come in and then testify in  
9 front of the Court, have her testify here, have her cross-examined, and then have  
10 her testimony. And, you know, we can decide at a later point how we want to do  
11 that, but that's kind of the process. And the reason I'm telling the Court that is  
12 because if we're going to do the November trial date that motion has got to be  
13 decided with enough time to get that done.

14           MS. ROUNDTREE: And so I do – I'd ask the Court just to deny the  
15 motion because, as the State mentioned, we don't have any proof whatsoever that  
16 she has any condition which would make her unavailable at trial. So that's kind of  
17 like the first requirement, which I think is lacking here.

18           Secondly, and I –

19           THE COURT: Is the gravaman of the motion that she would be  
20 unavailable or simply that because of the stress it makes her unable to testify in  
21 open court?

22           MR. MERBACK: Because of her medical condition, and I can provide  
23 those medical reports to the defense. I can absolutely do that; that's not something  
24 – that's something I can totally do.

25           But my understanding is, from speaking with her, that there's a – there

1 is a good chance that if she comes down here she'll end up with a seizure. And if  
2 she does end up with a seizure then she can't speak for a couple of days, and my  
3 concern is is if we try to have her testify during trial and she has a seizure and she  
4 can't speak, then that necessitates a continuance. I mean, there's all kinds of  
5 problems that arise if that occurs.

6 And my thought is is that because of her condition, if we do a videotape  
7 deposition ahead of time, let's say she has a seizure, we could reschedule it, we  
8 could do it at another time, and that way when we go to trial we're not looking at  
9 starting a trial and having halfway through the trial this witness go into seizures.  
10 And -

11 THE COURT: I don't recall at the moment. Was there - was there a  
12 doctor's opinion attached as part of yours?

13 MR. MERBACK: You know, I don't think - I don't think it was attached,  
14 Judge, because I think what we kinda decided was this motion had to be decided  
15 first and so I kinda stopped and I filed it but I didn't provide any additional evidence  
16 to it, but I'll be happy to get that, Judge. I mean -

17 THE COURT: Well, here's what I'm going to do. I'm going to deny it at  
18 this point without prejudice. I think, though, that I would need to see something  
19 more than her supposition or her opinion as to the effect before I would grant it.

20 MR. MERBACK: Judge, can I just say this? I understand the Court's  
21 ruling. I totally agree with the Court. I would ask that instead of denying it that  
22 maybe the Court pass it and allow the defense to file an opposition and for me to  
23 obtain that information. I will say, Judge, I talked to Ms. Roundtree months ago and  
24 we kinda decided we would - this - the consolidation had to be decided first so I  
25 stopped doing any additional work on it.

1 THE COURT: Okay. Then let's do this. If you want to leave that on file  
2 then I would have you file a supplement before they respond.

3 MR. MERBACK: Okay. Absolutely

4 MS. ROUNDTREE: And I really --

5 THE COURT: And the supplement should have whatever --

6 MR. MERBACK: Medical. Absolutely

7 THE COURT: Well, whatever you think is the basis, you know --

8 MR. MERBACK: I will do that, Judge.

9 THE COURT: -- as opposed to the opinion of the lay person.

10 MR. MERBACK: I will do that.

11 MS. ROUNDTREE: Not to be difficult, but I do still think that it'd be  
12 really important to have this motion to be heard right before the trial date for the  
13 reason that one of the things they have to show is her unavailability for the trial date  
14 that she medically --

15 THE COURT: Well, but that can be addressed within the motion now.  
16 If they want to go ahead and file what they have and if you're right on the law that  
17 the witness's condition doesn't matter, it has to be true unavailability, such as absent  
18 from the jurisdiction or something, then you would be right on the law. Otherwise if  
19 there is a legal basis for their argument that upon a showing -- a proper showing that  
20 because of some, you know, I don't know -- because it would hold up the trial,  
21 because it's an adverse effect on a witness or some such thing, there's case law  
22 that says that the Court can do this, then maybe they're right on the law.

23 MS. ROUNDTREE: I certainly understand that, but my further concern  
24 is, you know, just considering the Crawford case, for example, if we do this too  
25 much in advance of the trial or even in advance of the trial at all, say a month, we

1 would have an inability to cross-examine Ms. Petersen on matters that we learned,  
2 you know, during the course of the trial. I know Ms. Clark – first of all Ms. Petersen  
3 has gone through the – through the –

4 THE COURT: Well, isn't that an argument you could raise now?

5 MS. ROUNDTREE: Yes. Yes, it is. I just – yes.

6 THE COURT: And I – you know, I can appreciate the argument, but I  
7 don't see any reason why you couldn't raise it, you know, four months before trial  
8 instead of one month before trial.

9 MS. ROUNDTREE: Understood.

10 THE COURT: That's all the same.

11 MS. ROUNDTREE: Yes. Okay. I understand.

12 MR. MERBACK: So, Judge, can I take it off calendar for now?

13 THE COURT: Yeah.

14 MR. MERBACK: I'll put together a supplemental motion. I'll file the  
15 supplemental motion, defense can respond to it, and then we can come in and  
16 argue that.

17 THE COURT: So we can come in and argue it.

18 MR. MERBACK: Okay.

19 MS. ROUNDTREE: Thank you.

20 MR. MERBACK: Thank you, Judge.

21 THE COURT: Okay. All right?

22 THE CLERK: And, counsel, for the trial date my understanding Count 1  
23 is severed in the lower case number for Ms. Rose?

24 MR. MERBACK: Yes.

25 THE CLERK: Does that need a different trial date or?

1 MR. MERBACK: Should we put like a status check – maybe make the  
2 calendar call a status check on that? I don't know.  
3 THE CLERK: Okay. At the November 22nd calendar call we will add a  
4 status check as to Count 1?  
5 MR. MERBACK: As to Frances Rose. And does that work for you  
6 guys?  
7 THE CLERK: Is that correct?  
8 MS. ROUNDTREE: That's fine.  
9 MR. MERBACK: Okay.  
10 MS. ROUNDTREE: And then at some point the State will – I don't  
11 know if you want to put it on calendar for this, but the State will need to file an  
12 amended bringing the other case into this department.  
13 MR. MERBACK: I'm gonna do that right away.  
14 MS. ROUNDTREE: Okay.  
15 THE CLERK: And the trial date in Department XII is vacated.  
16 MS. ROUNDTREE: Okay. You can do that?  
17 THE CLERK: Yes, ma'am.  
18 MS. ROUNDTREE: Okay. Thank you.  
19 THE COURT: All right?  
20 MR. MERBACK: Thank you, Judge.  
21 MS. ROUNDTREE: Thank you so much.  
22 THE COURT: Okay.  
23 THE CLERK: Was that the December trial date?  
24 THE COURT: Yes.  
25 THE CLERK: So that can be vacated?

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THE COURT: Yes.

PROCEEDING CONCLUDED AT 12:59 P.M.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.

  
\_\_\_\_\_  
BEVERLY SIGMUND  
Court Recorder/Transcriber



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

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Plaintiff,

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vs.

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STEVEN DALE FARMER

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Defendant.

13

CASE NO. 08C245739  
08C249693

DEPT. I

14

**BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

15

**WEDNESDAY, SEPTEMBER 1, 2010**

16

**RECORDER'S TRANSCRIPT RE:**

17

**STATE'S MOTION TO CONSOLIDATE WITH C245739/STATE'S NOTICE OF  
MOTION AND MOTION FOR VIDEOTAPED TESTIMONY OF VICTIM, MARCIA  
PETERSEN/ON CALENDAR PER DEPARTMENT**

18

19

**APPEARANCES:**

20

For the State:

21

JAKE MERBACK, ESQ.  
Deputy District Attorney

22

For the Defendant:

23

GREGORY COYER, ESQ.  
Deputy Public Defender

24

25

RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, September 1, 2010 at 10:08 a.m.

2  
3 THE COURT: State of Nevada versus Steven Dale Farmer, case C245739  
4 also case C249693. Defendant is present in custody.

5 THE COURT: I have no opposition to that at this point.

6 MR. COYER: That's true Judge. This was a motion that we had talked about  
7 earlier, and it was taken off calendar, and the State was going to re-file it. I just  
8 wasn't aware that they had re-filed it. So I would ask for a couple weeks to file an  
9 opposition and then we can get this motion heard.

10 MR. MERBACK: That's fine Judge. I have no opposition to that.

11 THE COURT: Two weeks then.

12 THE CLERK: For continuance?

13 THE COURT: We're doing the hearing in two weeks or do you need two  
14 weeks to file?

15 MR. COYER: Can I get two weeks to file if that's all right?

16 THE COURT: Okay.

17 MR. COYER: Thanks, Judge.

18 THE COURT: Three weeks then for the hearing. Does that work?

19 MR. MERBACK: That's fine, Judge.

20 THE CLERK: Opposition to be filed by September 15<sup>th</sup>. Matter continued  
21 three weeks, September 22<sup>nd</sup> at 9 o'clock. That's for both cases.

22 MR. MERBACK: Is that a Wednesday?

23 THE COURT: That's a Wednesday.

24 MR. MERBACK: Okay.

25 THE COURT: Will that work?



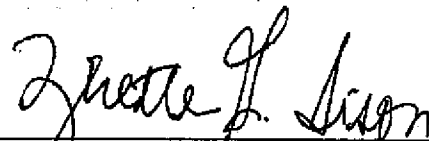
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MR. MERBACK: That's great.

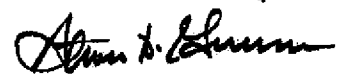
MR. COYER: Thank you very much.

[Proceedings concluded at 10:09 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison  
Court Recorder/Transcriber



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

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Plaintiff,

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vs.

CASE NO. 08C245739  
08C249693

11

STEVEN DALE FARMER

DEPT. I

12

Defendant.

13

**BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

14

15

**WEDNESDAY, SEPTEMBER 22, 2010**

16

**RECORDER'S TRANSCRIPT RE:**

17

**STATE'S NOTICE OF MOTION AND MOTION FOR VIDEOTAPED TESTIMONY  
OF VICTIM, MARCIA PETERSEN**

18

**APPEARANCES:**

19

For the State:

JAKE MERBACK, ESQ.  
BRETT KEELER, ESQ.  
Deputy District Attorneys

20

21

For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

22

23

24

25

RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, September 22, 2010 at 10:31 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739 and also case number  
4 C249693. The Defendant is present in custody.

5 MR. COYER: Judge, Mr. Merback from the DA's Office has this matter, and I  
6 think he wanted to be present for.

7 MR. KEELER: I've got the file, Your Honor, we can proceed.

8 THE COURT: Okay.

9 MR. COYER: Oh. I stand corrected.

10 THE COURT: Let's see.

11 MR. KEELER: Actually – I'm sorry – Court's indulgence, Your Honor.

12 THE COURT: All right.

13 MR. KEELER: No, I'm sorry he does want to be – I was looking at his notes  
14 in the file, it looks like he was asking for it to be continued, but I think he does want  
15 to be here for the argument, so if we can just trail it.

16 THE COURT: All right. How long do we need to put it off then?

17 MR. COYER: We're just going to trail it for Mr. Merback's presence.

18 THE COURT: Oh, just trail it?

19 MR. KEELER: Yes, trail it for Mr. Merback. He's just in Department 7, he  
20 should be up.

21 THE COURT: All right. We'll trail it.

22 [Case trailed at 10:31 a.m.]

23 [Case recalled at 10:59 a.m.]

24 THE CLERK: Steven Farmer, case number C245739. The Defendant is  
25 present in custody.

1 THE COURT: All right. It's your motion.

2 MR. MERBACK: Judge, the State has provided to the Court a recent note of  
3 2010, I think its August 2010 note from the victim's doctor indicating her seizure  
4 disorder brought on by travel.

5 Judge, the State is concerned that – the scenario that we're  
6 concerned about this. The trial gets started, the jury is impaneled, witnesses testify,  
7 and then this – Marcia Peterson, this particular witness/victim comes to court and  
8 has a seizure in the process of coming here. Now we've impaneled the jury,  
9 jeopardy is attached, and often times when she has a seizure disorder she's unable  
10 to talk for some point in time afterwards, and she's then not able to testify. That's  
11 this – that's the scenario that the State is concerned about having happened, and for  
12 that reason we filed this motion.

13 We think that because of that possible scenario – in fact probable  
14 scenario based upon, well it already occurred once when the State brought her into  
15 court, it's most likely to happen, that a videotaped testimony would be appropriate.

16 THE COURT: Okay. Mr. Coyer.

17 MR. COYER: Judge it is the State's motion and it's also the State's burden.  
18 Our opposition is two-fold. One, is that they just simply haven't provided enough in  
19 the way of proof to suggest that this is not merely possible but probable. She was  
20 able to travel and testify in front of the grand jury, although we have heard that she  
21 did end up having a seizure on her way out of that testimony. The other – and we're  
22 talking about the first prong here, the unavailability prong.

23 The second thing is that this note that they have is just a simple  
24 doctor's note that says; please excuse the patient from court due to seizure disorder  
25 brought on by travel. Well, that doesn't exactly solve the problem. I mean she's

1 going to have to travel to give a deposition. We're not going to have a situation here  
2 where we order the court reporters and all the attorneys to go to this woman's house  
3 and do a deposition in that forum, I mean that's not likely to happen. She's going to  
4 have to travel at some point even to do a deposition.

5           While I understand that there might be less ramifications if she seizes  
6 during this deposition as opposed to the jury trial, it's just simply – with this one  
7 singular note, we don't really know the nature of the disorder. We don't really know  
8 if it's improving. We're two months out from trial at this point, or maybe three  
9 months maybe.

10           Is it gonna continue to stay this bad? Is there any chance for  
11 improvement? Is there anything we can do to improve it so that she can travel? We  
12 just don't know enough based on this one single piece of paper that was produced  
13 to say; yes, she's definitely unavailable.

14           The other thing is, Your Honor knows, you've sat through countless jury  
15 trials. Trials are very fluid. They're very dynamic, and you're gonna have a situation  
16 inevitably at every trial where something happens or something is said or something  
17 is presented that we need to ask Marcia Peterson about.

18           Well now she's already been deposed. We've already fully cross  
19 examined her, and now there's this new piece of evidence or new piece of testimony  
20 that comes up; and then the second prong now which is the opportunity for cross  
21 examination. There's gotta be a stronger showing than this to trump Mr. Farmer's  
22 very important, very critical due process right – well in this case, it's actually the right  
23 to cross – confront and cross examine the witnesses.

24           So Judge, we just don't believe that there's been enough showing  
25 based on what's here.

1 THE COURT: Let me ask you – you both this question. It – I appreciate and I  
2 of course endorse the case law and the – based on the constitution of the United  
3 States, this would seem to mitigate towards requiring a live witness at the trial for all  
4 the reasons that Mr. Coyer has stated and some others. By the same token, I can  
5 appreciate the concern that the State has. What do we do if we just let it ride and  
6 wait to see what the condition of the witness is at trial if we've already got the jury  
7 impaneled? What if we did the deposition, and I ordered that it would not be used  
8 unless the Defendant was actually produced for trial and was unable to testify?

9 MR. MERBACK: Well Judge, obviously the State's request is that the  
10 deposition be taken and be used at trial. That's what we prefer. If the Court is not  
11 inclined to do that, I was actually going to suggest as a potential solution to the  
12 problem is – the Defendant's arguments against this deposition are that not enough  
13 proof had been provided that she's unavailable for trial. That's really the basis of  
14 their – you know, everything else, its effect on his rights.

15 The statute is clear. Once the State proves that she's not available  
16 the deposition can be used. And so I think if a deposition testimony was taken, you  
17 know, it might take a couple of tries. We might have to set this, try to bring her in,  
18 she might have a seizure, we have to continue it but we could get the deposition  
19 done, that way, if something happens on her way to court for trial, we're not standing  
20 there with jeopardy attached and no witness to testify and this huge problem on our  
21 hands.

22 THE COURT: Okay.

23 MR. MERBACK: And at that point in time, obviously the Defendant's concerns  
24 about her being unavailable would be alleviated because we'd all know she was not  
25 available.

1 THE COURT: Mr. Coyer what about that? You see any problem with taking  
2 the deposition but holding that it can only be used if indeed she continued to be or  
3 was demonstrated to be unavailable at trial?

4 MR. COYER: Two responses to that. One, I think it's appropriate to do the  
5 wait and see approach on her availability close to the trial.

6 The issue with taking the deposition is fine, with the understanding that  
7 Ms. Peterson was brought into this case a little bit later by way of consolidation. So  
8 there's an issue of discovery leading up to that. If you were to set that deposition  
9 out in 30 days, we would have an incredibly heavily expedited discovery process  
10 because we hadn't conducted a lot of discovery on her, on her medical records, on  
11 her trip to Centennial Hills where she encountered Mr. Farmer; because she has  
12 only recently become part of this case. So we have to be prepared for that  
13 deposition.

14 THE COURT: And that could be easily done. I mean a deposition can be set,  
15 and then if you're -- if you can't be ready, you guys could continue it yourselves  
16 couldn't you?

17 MR. MERBACK: And Judge actually -- the deposition would have to occur in  
18 here. It would have to occur under the conditions of the Court --

19 THE COURT: Oh that's right. That's right.

20 MR. MERBACK: -- with the Court here to rule on objections, with the court  
21 recorder. I mean, it would have to be done here so it could take some time to get it  
22 done. Last time we were in court, Ms. Roundtree brought up the statement Mr.  
23 Coyer had. And my position is, even though the case is old, the case was recently  
24 consolidated, I understand that throws a wrench in the Defense's ability to prepare  
25 for the trial.

1           So, if we come to a point where this is affecting our ability to get ready  
2 for trial, obviously I want them to be ready, and I understand the issue, and I  
3 wouldn't, you know, I'm not going to stand up here and say; no we gotta go on  
4 November 29<sup>th</sup> no matter what kind of thing. So I –

5           THE COURT: All right well let's –

6           MR. MERBACK: That's an issue we can deal with. If it has to be pushed  
7 back because of this, then it obviously has to be pushed back.

8           THE COURT: I think I'm inclined to do that – to order that the deposition be  
9 taken but be held in abeyance and only be used if the witness – and so we're clear,  
10 it would still require the State to make that showing at the time of trial unavailability.  
11 And in that event, then the Court would be inclined to allow the deposition at that  
12 point, barring any other issues being raised in connection with this. Let's set the  
13 deposition then.

14          THE CLERK: How much time do you need?

15          THE COURT: Yeah how long would you anticipate it would take?

16          MR. MERBACK: I think it can be done in a couple hours maybe, I don't know.  
17 Greg what do you think?

18          MR. COYER: I think that's – maybe two, two and a half. I don't see it going  
19 longer than three, but I'm – it always depends on how a witness is. We didn't get to  
20 see her testify at grand jury. I don't know if she's a difficult person and she's going  
21 to answer our questions easily and smoothly and – so there's an unknown variable  
22 there we have to contend with, Judge.

23          MR. MERBACK: She's not a difficult person, but she does have – there's  
24 kind of like a – she's got medical issues. I mean she's not like she has the quickest  
25 response in the world, so it could take a little bit of time.



1 THE CLERK: You want a Monday afternoon or a Friday morning?

2 THE COURT: Let's make it a Monday afternoon so that – if we – whatever  
3 we trial we have that week, we can start it on Tuesday.

4 THE CLERK: Counsel, I'll offer either November 11<sup>th</sup> or – excuse me, I'll offer  
5 either October 11<sup>th</sup> or October 25<sup>th</sup>. They're both Mondays.

6 MR. COYER: I would ask for more time to be able to get the discovery done  
7 between now and then. I'm sure Mr. Merback will help us with them.

8 THE COURT: Okay. More than that. You want to go into November then?

9 MR. MERBACK: That's fine. The 25<sup>th</sup> is fine.

10 THE COURT: How about November then? You're asking for beyond the  
11 October 25<sup>th</sup> Mr. Coyer is that –

12 MR. COYER: I just need as much time to get this discovery.

13 THE COURT: All right.

14 MR. COYER: This medical discovery takes a remarkably – it's painful to get  
15 these medical records.

16 THE COURT: Yeah.

17 MR. COYER: So, it's just an issue of practicality.

18 THE CLERK: November 15<sup>th</sup>.

19 MR. COYER: That's even better.

20 MR. MERBACK: Is that a Monday?

21 THE CLERK: I'm sorry?

22 MR. MERBACK: That's a Monday?

23 THE CLERK: That's a Monday at 1:30.

24 MR. MERBACK: Thank you, Judge.

25 MR. COYER: And Judge, just for the record, the motion is granted as to the

1 taking of the deposition but the ruling on whether it would be admissible at trial is still  
2 to be determined based on the unavailability shown?

3 THE COURT: Yeah. The State would have to show the unavailability at trial  
4 in order for the deposition to be used at trial.

5 MR. COYER: And I apologize. I didn't get the time for that deposition.

6 THE CLERK: It's at 1:30.

7 MR. COYER: Thank you.

8 THE CLERK: You're welcome.

9 [Proceedings concluded at 11:09 a.m.]

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
2 proceedings in the above-entitled case to the best of my ability.  
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5 Yvette G. Sison  
6 Court Recorder/Transcriber  
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*Yvette G. Sison*



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. 08C245739  
08C249693

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vs.

DEPT. I

11

STEVEN DALE FARMER

12

Defendant.

13

**BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

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**MONDAY, OCTOBER 25, 2010**

**RECORDER'S TRANSCRIPT RE:**

16

**STATUS CHECK: PENDING COURT DATES (BOTH)/FURTHER  
PROCEEDINGS/STATUS CHECK (BOTH)**

17

**APPEARANCES:**

18

For the State:

STACY KOLLINS, ESQ.  
Deputy District Attorney

19

20

For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender

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RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Monday, October 25, 2010 at 9:53 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739 and also case number  
4 C249693. The Defendant is present in custody.

5 MS. KOLLINS: Good morning, Judge, Stacy Kollins on behalf of the DA's  
6 Office for Mr. Merback.

7 MR. COYER: Gregory Coyer on behalf of Mr. Farmer, who's present in  
8 custody.

9 THE COURT: Need to reset?

10 MS. KOLLINS: That's my understanding Judge, Mr. Merback is in a trial right  
11 now, so reset at the Court's pleasure, and I – I know he was concerned about  
12 getting a date for a video deposition that was pending.

13 THE COURT: We have one I think for November 15<sup>th</sup>, is that date still going  
14 forward?

15 MR. COYER: That date is not – that date is not workable, no Judge.

16 THE COURT: Okay. Well let's get our trial date first and then we'll see what  
17 kind of time we have to work with shall we?

18 MS. KOLLINS: Okay.

19 MR. COYER: That makes sense.

20 THE COURT: How soon can you – do you want to go?

21 MR. COYER: I think we were probably both anticipating something into like  
22 the March area, I don't know if –

23 MS. KOLLINS: And I don't have a date for Mr. Merback. If the Court wants to  
24 set it, and something that's inconvenient for him, then I'll certainly let you know.

25 THE CLERK: I have March 7<sup>th</sup> or April 18<sup>th</sup>.

1 MS. KOLLINS: March 7<sup>th</sup> is fine.

2 THE CLERK: March 7<sup>th</sup>?

3 MR. COYER: Sure.

4 MS. KOLLINS: Yes ma'am.

5 THE CLERK: Jury trial March 7<sup>th</sup> at 1:30 with a calendar call March 2<sup>nd</sup> at 9  
6 a.m.

7 THE COURT: Now with that in mind, when do you want to do the videotape  
8 depo?

9 MS. KOLLINS: Is there a reason that the November 15<sup>th</sup> date is not viable.

10 MR. COYER: Yeah. Basically because the attorney who was primarily  
11 handling that and preparing for that is currently away from our office, and I don't  
12 know if she's going to be coming back Judge so -

13 THE CLERK: Your Honor, I'm sorry, but this is a three-week trial. I wasn't  
14 aware of that when I just gave that date.

15 THE COURT: Okay. Let's get a new date then.

16 THE CLERK: I apologize, but we need to go to April.

17 MR. COYER: April 18<sup>th</sup>?

18 THE CLERK: I'm sorry.

19 MR. COYER: That's fine.

20 THE CLERK: Jury trial will be - it's still three weeks for trial, correct?

21 MR. COYER: Correct.

22 THE CLERK: Three weeks?

23 MS. KOLLINS: Yes.

24 THE CLERK: Okay. Jury trial will be April 18<sup>th</sup> at 1:30 with a calendar call  
25 April 13<sup>th</sup> at 9 a.m.

1 THE COURT: Do you want to do the -- is December enough time to do the  
2 depo or do you need more than that?

3 MR. COYER: I think December will probably -- the wild card on it is how  
4 quickly and efficiently we get the medical records for this alleged victim who -- that's  
5 -- her medical condition is gonna be the primary issue where both sides are focused  
6 on at the deposition, and I just don't know if we can get those --

7 THE COURT: Well we'll set it in December, and if you run into a problem with  
8 that, then we'll deal with it.

9 MS. KOLLINS: When you say medical records, are you referring to a scan  
10 exam? What are you referring to?

11 MR. COYER: We're just -- we didn't have any records for her because her  
12 case just got consolidated into this one, so discovery on her basically hasn't even  
13 taken place yet.

14 THE COURT: Yeah.

15 MS. KOLLINS: Okay.

16 THE COURT: By the way, on that point, at some point -- should we set a  
17 status check date to deal with this indictment information thing?

18 THE CLERK: We can do that.

19 THE COURT: We need to set a date, a status check date to get both sides in,  
20 Mr. Merback -- because there's a question in my mind about the way that we've  
21 consolidated it --

22 MR. COYER: Uhuh.

23 THE COURT: We've got counts from an indictment, counts from an  
24 information merged, but one of the information counts is hanging out -- I think it's off  
25 the information right?

1 THE CLERK: Correct.

2 THE COURT: Because it was severed. The way it's been proposed by both  
3 sides to merge these in effect in front of the jury leaves us with a bit of a  
4 predicament on what? What case number apparently is on the one that hangs out  
5 there? So we need to just have a chance to have a little conference.

6 MS. KOLLINS: I discussed that with your clerk, Judge. I believe the  
7 information is the lower case number –

8 THE COURT: Right.

9 MS. KOLLINS: -- so the indictment counts would be filed in an amended  
10 information with the severed count being left off but still included in the same lower  
11 case number, because in effect, the indictment case would be dismissed.

12 THE COURT: Okay. So then you can – oh okay. That probably solves it  
13 then.

14 MS. KOLLINS: It works the same as an ex-felon in possession of a firearm.  
15 You know when we sever that –

16 THE COURT: -- yeah –

17 MS. KOLLINS: -- count out that remains in the same case number.

18 THE COURT: -- all right. Let's do a status check just to – just so we make  
19 sure we get all our I's dotted and T's crossed.

20 MR. COYER: We can probably do that the same day as the deposition. I  
21 don't really see why not.

22 THE COURT: Sure. When you're going to do the deposition, do I have to sit  
23 through the deposition?

24 MR. COYER: I think so, Judge.

25 MS. KOLLINS: Yes, I believe so. Sorry.



1 THE COURT: All right. We can do that.

2 THE CLERK: December?

3 THE COURT: Yes.

4 THE CLERK: It's two to three hours, is that correct counsel?

5 MR. COYER: Yes. That's we talked -- Mr. Merback and myself.

6 MS. KOLLINS: To my knowledge.

7 THE CLERK: December 6<sup>th</sup> at 1:30.

8 MR. COYER: Okay.

9 THE COURT: And we'll put that on status check for just the -- make sure we  
10 have our case numbers right.

11 MS. KOLLINS: And as it stands right now, what is filed is an amended  
12 information with the lowest case number, correct?

13 THE CLERK: Correct.

14 THE COURT: That's correct.

15 MS. KOLLINS: It has all the counts in it?

16 THE CLERK: Except the severed count.

17 MS. KOLLINS: Okay so you need a --

18 THE COURT: That's the problem. What was filed did not have the severed  
19 count in it, so we're left with --

20 MS. KOLLINS: -- okay so --

21 THE COURT: -- we're left with this charge out there, with no -- effectively no --  
22 no longer any charging document that has its own separate number or that I can  
23 relate.

24 MS. KOLLINS: My belief is he'll file a second amended information with the  
25 single count in it, but one case with the identical case number because it comes out

1 of that case.

2 THE COURT: Okay.

3 MS. KOLLINS: Thank you.

4 MR. COYER: All right.

5 THE COURT: All right. Thanks.

6 THE CLERK: The November 15<sup>th</sup> date is vacated. The jury trial for  
7 November 29<sup>th</sup> is vacated.

8 MS. KOLLINS: Thank you.

9 [Proceedings concluded at 9:59 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

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Yvette G. Sison  
Court Recorder/Transcriber

  
CLERK OF THE COURT

1 RTRAN

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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

CASE NO. 08C245739  
08C249693

11 STEVEN DALE FARMER

DEPT. I

12 Defendant.

13  
14 **BEFORE THE HONORABLE KEN CORY, DISTRICT COURT JUDGE**

15 **MONDAY, DECEMBER 13, 2010**

16 **RECORDER'S TRANSCRIPT RE:**

17 **STATUS CHECK: RESET VIDEO DEPOSITION (BOTH)/STATUS CHECK:**  
18 **AMENDED INFORMATION/CONSOLIDATION (BOTH)/FURTHER**  
19 **PROCEEDINGS: VIDEO DEPOSITION OF VICTIM (BOTH)/STATUS CHECK: AS**  
20 **TO SEVERED COUNTS (BOTH)**

21 **APPEARANCES:**

22 For the State:

JAKE MERBACK, ESQ.  
Deputy District Attorney

23 For the Defendant:

GREGORY COYER, ESQ.  
Deputy Public Defender  
JEFFREY MANINGO, ESQ.

24  
25 RECORDED BY: BEV SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada, Monday, December 13, 2010 at 10:23 a.m.

2  
3 THE CLERK: Steven Farmer, case number C245739 and case number  
4 C249693. The Defendant is present in custody.

5 THE COURT: Good morning.

6 MR. MANINGO: Good morning, Judge. We're just on this morning to reset  
7 the video deposition in this matter. We had – I had asked to continue the last date  
8 just because I'm still trying to get up to speed on this situation so – do you have a  
9 preference? I'm looking at a February date. We have a current trial date set  
10 through April.

11 THE COURT: That work for you Mr. Merback?

12 MR. MERBACK: If we could do – if we could do early in February like maybe  
13 in the first week of February, does that work?

14 MR. MANINGO: Yeah, that should be fine.

15 THE CLERK: Counsel, how much time do we need that day? About two  
16 hours?

17 MR. MERBACK: We probably need – I would say close to three hours.

18 THE CLERK: So, Monday afternoon, Your Honor?

19 THE COURT: Yes.

20 THE CLERK: February 7<sup>th</sup>, that's a Monday, at 1:30.

21 MR. MANINGO: Thank you.

22 MR. MERBACK: Thank you, Judge.

23 THE COURT: All right. We'll see you then. Oh let me ask you, I see we're  
24 also on a status check for amended information on this, consolidation. Is there  
25 anything we have to do on there?

1 MR. MERBACK: Judge there – I had done an amended. The problem is  
2 this, if the Court remembers, when the Court consolidated the case, there was one  
3 individual that was left out of the consolidation.

4 THE COURT: Yes.

5 MR. MERBACK: So, I have – I have an – I've done two amended  
6 complaints. One of them contains all the charges from the case that will go first, and  
7 then one of them contains just the one charge from the severed case. We were  
8 going to file both of them, but then your clerk informed us that if we file that second  
9 one, it will cancel out the first, which obviously we don't want to do, so we were  
10 thinking – we were gonna ask the court, however the Court wants to do this –  
11 maybe that's what we'll do. We need to file a new information that had all the  
12 charges from the first case and then put a, do not read to the jury like you would on  
13 a habitual case, and then put that last charge; but Mr. Maningo wanted to – he had  
14 some issues with that. I know Ms. Roundtree had some issues with that from  
15 before, so I don't know where we are at this point. I'm happy to do it however the  
16 Court orders.

17 THE COURT: Do we have a resolution for that or maybe we need to work on  
18 that?

19 MR. MANINGO: I think we're still working on that, Judge.

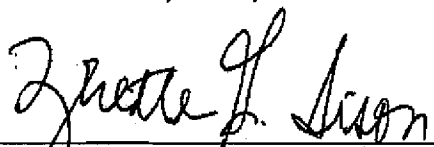
20 THE COURT: All right. Why don't we work on that for that February date,  
21 maybe we can get that resolved at the same time.

22 MR. MANINGO: Okay. Thank you.

23 [Proceedings concluded at 10:26 a.m.]  
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Yvette G. Sison  
Court Recorder/Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN DALE FARMER, ) No. 65935  
)  
Appellant, )  
)  
vi. )  
)  
THE STATE OF NEVADA, )  
)  
Respondent. )

**APPELLANT'S APPENDIX VOLUME IV PAGES 563-759**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 30<sup>th</sup> day of July, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
STEVEN S. OWENS

HOWARD S. BROOKS  
DEBORAH WESTBROOK

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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NDOC # 1121584  
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BY   
Employee, Clark County Public Defender's Office