

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

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

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

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

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

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

1 ARGUMENT

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

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

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

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

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

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

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

11 12 II 13 EVIDENCE OF THE MURDERS OF COOTE AND 14 GONZALEZ SHOULD BE ADMITTED

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

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

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

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

5 Id. at 948.

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 833.

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

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

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

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CONCLUSION

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

DATED this 2nd day of February, 2007.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s//LISA LUZAICH

LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

CERTIFICATE OF FACSIMILE TRANSMISSION

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

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

and

BRET WHIPPLE, ESQ.
543-3505

BY M. Warner

Employee of the District Attorney's Office

mmw/SVU

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

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Chaf
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant.

No. C228755

Dept. XIV

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

April 13, 2007

9:00 a.m.

Department XIV

APPEARANCES:

For the State:

MS. LISA LUZAICH

Deputy District Attorney

For the Defendant:

MR. RANDALL PIKE

Special Deputy Public Defender

Reported by:
Joseph A. D'Amato
Nevada CCR #17

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

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1 office.

2 THE COURT: I thought you were the
3 Defendant for a minute. Excuse me.

4 MS. LUZAICH: We informed Judge
5 Bonaventure of the other two, the murder of the two
6 individuals was set for trial when we discovered
7 that the Defendant was linked to the murder of the
8 third victim.

9 We informed Judge Bonaventure about
10 that and we indicated that we were doing a motion to
11 consolidate and we were under the impression that he
12 was then going to accommodate and when we did the
13 motion to consolidate he denied it.

14 We were all, I think, a tad surprised.

15 THE COURT: Well, notwithstanding that,
16 certainly I don't want to suggest any disrespect to
17 Judge Bonaventure. I'm the guy that's got to take
18 care of this now.

19 MS. LUZAICH: Correct.

20 THE COURT: I feel that I have it
21 within my authority to evaluate it in any way I care
22 to.

23 I don't know why you want to have two
24 trials when you could have one. Looks to me like
25 this is -- practically everything about this is

1 THE COURT: C228755, State versus
2 Norman Flowers. There's been a request to hear the
3 Flowers matter, at the outset.

4 Is there any problem?

5 MS. LUZAICH: I'm in trial.

6 THE COURT: I know you don't have a
7 problem with it. The record reflects the presence
8 of the defendant, in custody, we have Mr. Pike
9 present for the Defendant, Ms. Luzaich for the
10 State.

11 This matter is on for a Motion to
12 Suppress.

13 I have a couple preliminary questions
14 I'd like to ask. First of all, it's suppressed
15 unless there is a successful motion for bad acts.

16 We have this thing backwards, but
17 regardless, we're here.

18 Why is this matter not consolidated
19 for trial?

20 MS. LUZAICH: That's kind of a good
21 question.

22 MR. PIKE: Judge Bonaventure --

23 THE COURT: We have the defendant, in
24 custody. This gentleman is?

25 MR. PIKE: Clark Patrick from my

1 consistent. Correct me if I misstate something
2 here.

3 Allegedly, there was sexual assault of
4 the three victims. The first murder, allegedly, was
5 the 24th of March. Forty days later, the 3rd of of
6 May, two other murders, again, sexual assault in all
7 three, all three strangulation, all three little
8 pieces of memorabilia, comes, whatever, taken from
9 the victims and the Defendant is now charged with
10 all three, I believe.

11 MS. LUZAICH: Correct.

12 THE COURT: Counsel?

13 MR. PIKE: Well, procedurally, the
14 reason I filed this motion is because when the
15 Indictment came forward and it was not tracked to
16 Department VI and came to your department as a
17 separate case.

18 The State then, within the time limit
19 that they had, filed their notice of intent to seek
20 the death penalty which included reference to the
21 other cases.

22 So because he had invoked his right to
23 a speedy trial in those other cases and this came up
24 it was my impression that the State would bring a
25 repeat motion, and that they also intended to bring

1 in that evidence, if they were successful in
2 obtaining a first degree conviction, in a penalty
3 phase.

4 I needed to find out if we were in a
5 scenario where, in order to protect my Defendant's
6 due process rights from him invoking his right to a
7 speedy trial in Department VI, that the evidence of
8 the other cases as well as this case be tried
9 completely separate and that there not be any
10 cross-reference to those offenses to this offense.

11 And given that situation I thought it
12 was appropriate to bring the Motion in Limine prior
13 to the State bringing the motion, because if the
14 Court was going to deny the Motion in Limine, rather
15 than wait close to the time of trial, if it was
16 denied, I felt it was necessary to preserve that
17 issue so that if subsequent to your ruling that
18 you're going to allow it in anyway, then you're
19 right.

20 Then a consolidated trial -- the taint
21 is going to be there, the difficulty is going to be
22 there and we should at that point in time consider
23 whether or not the defense, in order to avoid the
24 potential prejudice of having two death penalty
25 hearings, death penalty trials -- it would be in

1 Mr. Flowers' benefit to -- for the extraordinary
2 motion for the defense to actually accommodate it
3 and to preview that in front of the jury.

4 The issue that's involved in this as
5 far as the time frame and the facts as the Court has
6 set them forth, there was a connection or knowledge
7 where Mr. Flowers knew these individuals.

8 The DNA specifically excluded him on
9 one of the other two and the only reason that the
10 second one in the Department VI case came to
11 light -- it was dismissed at a preliminary hearing,
12 then the State, through some jailhouse informants,
13 was able to obtain an indictment.

14 This case was brought to the attention
15 of the defense and basically it's just tied in with
16 DNA that was present on the deceased in the case
17 before Your Honor.

18 There is no -- nothing else other than
19 that DNA to suggest that Mr. Flowers was involved in
20 it and so I'm anticipating because of the nature of
21 the other two offenses in the other case, that they
22 would attempted to bring that in to prove identity
23 or motive or common scheme or plan.

24 That's why we're here. We didn't have
25 a ruling on this last time when it was not granted,

1 so we're asking for a ruling on this so we can then
2 evaluate whether or not we'll bring in the motion to
3 join that.

4 Again, we're not conceding these are
5 similar in any way, shape or form. They are only
6 tied together in that Mr. Flowers had knowledge of
7 or new people that knew these other people.

8 THE COURT: Ms. Luzaich, what about
9 this DNA?

10 In the case currently before the Court
11 the March incident, there was DNA?

12 MS. LUZAICH: Yes.

13 The Defendant's DNA is present in the
14 vagina of the victim who was murdered.

15 THE COURT: The other two, what's the
16 status of the DNA there?

17 MS. LUZAICH: In the other two there
18 were two murders committed on the same day in the
19 same apartment complex within hours of each other
20 and they were committed in exactly -- almost exactly
21 the same way.

22 His DNA is present in the vagina and
23 around the body of the first victim. He was -- he
24 was excluded from the second victim, but there were
25 also partial -- there were several different DNA

1 mixtures. However, although his DNA was excluded
2 from her body, after the preliminary hearing several
3 jailhouse informants came to us and testified at the
4 Grand Jury that the Defendant admitted to
5 participating in that murder, but that he did it
6 with another individual, which he also says he did
7 the other murder on that day with another
8 individual.

9 While his DNA is not present in victim
10 number three, in time, there are admissions by the
11 Defendant that he was present at the scene and
12 participated.

13 MR. PATRICK: If I may, the three
14 murders are really not that similar. The first one
15 that happened first in time which we're here for --
16 actually the cause of death was drowning.

17 The coroner did mention there may have
18 been some strangulation involved, but the cause of
19 death was actually drowning.

20 The second one where Mr. Flowers' DNA
21 was found was manual strangulation. The victim was
22 nude. They had had a sexual relationship in the
23 past.

24 The third victim, where Mr. Flowers'
25 DNA was not found, was strangled using ligatures,

1 was fully clothed on her bed. There.

2 Is a lot of objection -- there's more
3 dissimilarities in these three cases than
4 similarities.

5 I think the reason why Judge
6 Bonaventure didn't accommodate these is he was
7 looking at Tabish and the fact there was 41 days in
8 between the two incidences is too far in time to
9 make them a part of the same plan or scope.

10 MS. LUZAICH: With all due respect to
11 Judge Bonaventure, ever since he was referenced in
12 Tabish he doesn't accommodate anything anymore and
13 pretty much severs anything.

14 His comment was just because it's a
15 capital case and in an abundance of caution and
16 because of Tabish -- Tabish has nothing to do with
17 this case.

18 Tabish was overturned for completely
19 different reasons than we are seeking to bring in
20 bad acts in this case.

21 THE COURT: The first individual, the
22 indications of drowning; how does that go?

23 MS. LUZAICH: No.

24 She was strangled and she was in a
25 bathtub full of water so while the ultimate cause of

10

1 death was called drowning she was obviously
2 strangled as well.

3 That was a contributing factor to her
4 death, the coroner said.

5 THE COURT: This Court is going to
6 consolidate these matters for trial. That moots the
7 motion.

8 The trial date of the 26th of
9 November, is there a dual date here?

10 MS. LUZAICH: I don't believe so.

11 THE COURT: No, I guess not. Its
12 second on stack.

13 The 26th of November, as far as I'm
14 concerned, is the date. The 20th of November is
15 calendar call.

16 Now, I have a question. Is Mr.
17 Whipple involved in this or not?

18 MR. PIKE: He is.

19 We'd ask it be consolidated in the
20 earlier case which is in Department VI. That's an
21 earlier number and Mr. Whipple is counsel in that
22 case.

23 THE COURT: Well, let me back up back
24 up a minute. In all fairness, we should have

25 Mr. Whipple here and have that as an accommodation,

1 if nothing else.

2 MS. LUZAICH: Procedurally, I don't
3 know if you actually consolidate the cases, because
4 Judge Bonaventure has the lower case number. So if
5 they agree to the consolidation I guess that would
6 waive the actual procedural issue that you can admit
7 the bad acts.

8 THE COURT: You're correct in the sense
9 that, yes, if I'm going to consolidate and he's
10 going to try it, he has the last say in the matter.

11 That's true. We don't know who will
12 be trying it.

13 MS. LUZAICH: It won't be him any
14 longer.

15 THE COURT: That could be a problem.

16 MS. LUZAICH: It's my understanding
17 Mr. -- Judge Villani will be taking over his case
18 load.

19 MS. LUZAICH: That's true.

20 THE COURT: He has been qualified to
21 handle death cases? When did that occur?

22 MR. PIKE: He's already been sworn in.

23 THE COURT: Is he sitting?

24 MR. PIKE: Yes. He was sworn in early
25 by Judge Hardcastle so he could start right away.

12

1 The swearing in will not be for a while, but he's up
2 and going.

3 THE COURT: He's actually in Court
4 doing the business of the Court?

5 MR. PIKE: I was at the swearing in
6 ceremony.

7 MS. LUZAICH: The trial date in
8 District Court VI is in October.

9 MR. PIKE: I suggest we set a status
10 check in about 30 days. I'll file the motion -- if
11 you're denying my Motion in Limine.

12 THE COURT: I'm not.

13 Here is the problem. If I'm going to
14 allow this as a bad act, I'm going to have to have
15 testimony here to establish that it occurred through
16 clear and convincing evidence.

17 That means I'll have two little trials
18 going on here. That doesn't appeal to me.

19 What I'm going to do is remand -- I'm
20 going to not make a decision in this matter
21 currently at this point.

22 I'm going to announce on the record
23 that I consider this moot in that these cases should
24 be consolidated.

25 You are correct, Ms. Luzaich. Judge

1 Villani is going to have to make the decision,
2 because arguably I've got one case here.

3 It makes sense to consolidate them.

4 If he says no, then he's got his problem. I've got
5 mine, I suppose.

6 For judicial economy and for common
7 sense it looks to me like they should be
8 consolidated. I'm going to make no decision in the
9 matter without prejudice, certainly.

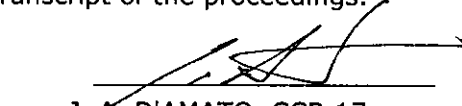
10 We can bring it up as it may come down
11 the pike.

12 No offense, Mr. Pike.

13 I'll remand this or -- I'll ask you,
14 Ms. Luzaich or Mr. Pike or Mr. Patrick, but get it
15 before Judge Villani as early as you can.

16 To be fair to everybody we need to
17 make a decision. You can place this back on
18 calendar at your pleasure, determining on what Judge
19 Villani says.

20
21 ATTEST that this is a true and
22 complete transcript of the proceedings.

23
24 
25 J. A. D'AMATO CCR 17

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CLERK OF THE COURT

0001

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN FLOWERS,
#1179383

Defendant.

Case No. C228755

Dept No. VII

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

DATE OF HEARING: 11/15/07

TIME OF HEARING: 8:30 A.M.

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

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

NOTICE OF HEARING

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

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

3 DATED this 31st day of October, 2007.

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

8
9 BY Pamela Weckerly
10 PAMELA WECKERLY
11 Chief Deputy District Attorney
12 Nevada Bar #006163

13 **STATEMENT OF FACTS**

14 A. Fact of Case C214390 in District Court XI

15 1. Marilee Coote

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

21 Initially, paramedics arrived, but Ms. Coote was already deceased. Police followed.
22 Ms. Coote was found lying on her living room floor, facing up and completely nude. Inside
23 her belly button were ashes from burnt incense. The skin between her upper thighs and her
24 pubic area was burned. Coote's apartment was locked, but her purse and keys were missing.
25 Inside Coote's washing machine, police found personal photos, bills, and identification
26 belonging to Coote. The items appeared to have been washed because they had a soap
27 residue on them. In the bathtub, under ten inches of water, police found other items of
28

1 paperwork, a phone book, and jewelry boxes covered with a towel. The apartment was
2 otherwise very neat and undisturbed.

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

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

10 2. Juanita Curry

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

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

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

6 3. Rena Gonzalez

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

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

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

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

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

28 ///

1 4. Mawusi Ragland

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

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

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

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

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

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

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

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

21 Sheila Quarles

22 Less than two months prior to the murders of Marilee Coote and Rena Gonzalez, on
23 March 24, 2005, Debra Quarles returned home from grocery shopping to her residence at
24 1001 North Pecos, Las Vegas, Clark County, Nevada, and found her eighteen year old
25 daughter, Sheila Quarles, unresponsive in a bathtub containing warm water. Debra had
26 returned home at 2:30 in the afternoon. She was able to remove Sheila from the tub with the
27 help of a neighbor who had helped her carry in groceries. Debra immediately called 911.
28

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

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

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

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

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

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

7 ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 In the instant case, evidence of Williams' sexual misconduct with other
11 persons was admitted as being relevant to prove his intent to have intercourse
12 with the victim without her consent. This evidence was introduced after
13 Williams admitted committing the act, but claimed to have done so with the
14 victim's consent. By acknowledging the commission of the act but asserting
his innocent intent by claiming consent as a defense, Williams himself placed
in issue a necessary element of the offense and it was, therefore, proper for the
prosecution to present the challenged evidence, which was relevant on the
issue of intent, in order to rebut Williams' testimony on a point material to the
establishment of his guilt.

15 Id. at 833.

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

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1 CONCLUSION

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

4 DATED this 31st day of October, 2007.

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

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

14 CERTIFICATE OF FACSIMILE TRANSMISSION

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

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

20 BY /S/D.Daniels
21 Employee of the District Attorney's Office
22
23
24
25
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28

ORIGINAL

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant.

CASE NO. C228755
DEPT NO. VII

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

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

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

POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

23 CONCLUSION

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

27 . . .

28 . . .

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

3 DATED this 6 day of November, 2007.

4 RESPECTFULLY SUBMITTED:

5
6 DAVID M. SCHIECK
7 SPECIAL PUBLIC DEFENDER

8 
9

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

18 **RECEIPT OF COPY**

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

22
23 
24

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

1 TRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

Chaf
CLERK OF THE COURT

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 NORMAN KEITH FLOWERS aka
11 NORMAN HAROLD FLOWERS III,

12 Defendant.
13

CASE#: C228755

DEPT. VII

14 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE
15 THURSDAY, NOVEMBER 15, 2007

16 **TRANSCRIPT OF PROCEEDING**
17 **STATE'S MOTION FOR CLARIFICATION OF COURT'S RULING**

18 APPEARANCES:

19 For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney

PAMELA G. WECHERLY, ESQ.
Deputy District Attorney

22 For the Defendant:

CLARK W. PATRICK, ESQ.
Deputy Special Public Defender

RANDALL H. PIKE, ESQ.
Assistant Special Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

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CLERK OF THE COURT

THURSDAY, NOVEMBER 15, 2007 AT 8:42 A.M.

MR. PIKE: Judge, if we could go to the bottom of page 10 for Mr. Flowers?

THE COURT: State of Nevada versus Norman Flowers, case C228755.

Flowers present in custody. Mr. Pike --

MR. PATRICK: Mr. Patrick from the Special Public Defender's office.

THE COURT: Patrick.

MS. WECHERLY: Wecherly.

THE COURT: Pamela Wecherly. On you on -- this is Elissa Luzaich for the State.

This is State's motion for clarification of Court's ruling. Ms. Wecherly, enlighten me. I can't tell whether your motion is a request for reconsideration of the denial by Judge Bonaventure of consolidation or a request to allow bad acts to be admitted in a non consolidated case after a *Petrocelli* hearing. Which is it?

MS. WECHERLY: The second one.

THE COURT: Okay. Why shouldn't they, at least, have the *Petrocelli* hearing so that we can listen to the bad acts outside the presence of the jury and determine, in accordance with the three prongs of *Petrocelli*, whether they're admissible or not?

MR. PATRICK: Well that's what we were going to ask for today, Judge, was that this looked like to us a *Petrocelli*. That's why we had to do a request.

THE COURT: Well I couldn't tell. So -- okay. Then the motion -- the motion is granted to the extent that I will have a *Petrocelli* hearing. That doesn't mean that I will admit the bad acts. Obviously, I've got to see what evidence the State's got. I'm thinking that's going to take more than ten or fifteen minutes. Is it going to take a couple of hours?

1 MS. WECHERLY: Yes, Your Honor, because of the -- there's several
2 witnesses in the case that occurred in May. So, I would think we'd probably put on
3 about six or seven witnesses for the hearing alone.

4 THE COURT: Well can we get it in here before -- I mean, this next week or
5 so?

6 MS. WECHERLY: No.

7 MR. PATRICK: Judge, we have some experts that we're going to want to call
8 for this *Petrocelli* hearing, and because of that, we would -- we were going to be
9 asking for a continuance. We'd like to -- we've talked to the State. We don't have a
10 set time when we're all good for trial. But what we'd like to do is keep the calendar
11 call next week to get -- that will give a chance to talk to the State and set a date
12 when we can have this. But because of this *Petrocelli* hearing and some other
13 things, we're not going to be ready to go this month.

14 MS. WECHERLY: That's fine, Your Honor, and whenever the Court wants to
15 set the hearing, we can do it before trial or once we get our new trial date, just
16 before it. But if you prefer to do it sooner --

17 THE COURT: But -- well a lot of times, what we do is just set aside a Friday
18 morning --

19 MS. WECHERLY: Okay.

20 THE COURT: -- and take as long as we need to take and get it done. I think
21 you're both better off doing it sooner or later because you're going to know how to
22 prepare for your trial.

23 MR. PATRICK: That's fine, Judge.

24 THE COURT: So, you know, I wouldn't even mind doing it next Wednesday if
25 you can get your witnesses in, but you can't; right?

1 MR. PATRICK: Yeah, Judge.

2 MS. WECHERLY: I think --

3 THE COURT: Fine. Let's do this. Mr. Flowers, is this all right with you, this
4 approach?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. The Court will vacate the trial date of 11/26. We'll
7 keep the calendar call of 11/20 on not for purposes of calendar call, but it will be for
8 setting a new trial date and setting a *Petrocelli* hearing.

9 You guys get your calendars together and figure out what day for trial,
10 because once we set this again, it's going to be etched in stone. We're going unless
11 one of the five of us dies, and it will be going number one. So, let's just pick a date
12 that we all know is good and then plan on it and move forward.

13 MS. WECHERLY: Thank you, Judge.

14 THE COURT: All right.

15 MR. PATRICK: Thank you, Judge

16 MR. PIKE: Thank you.

17
18 [Proceeding concluded at 8:45 a.m.]
19
20

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

23 
24 PATRICIA SLATTERY
25 Court Recorder/Transcriber

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CLERK OF THE COURT

0001
DAVID M. SCHIECK
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant.

CASE NO. C228755
DEPT. NO. VII

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

BENCH BRIEF

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

POINTS AND AUTHORITIES

FACTS

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

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DEFENDER

CLARK COUNTY
NEVADA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 ARGUMENT

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

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

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


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

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

8 DATED: July 30, 2008.

9 Respectfully submitted,

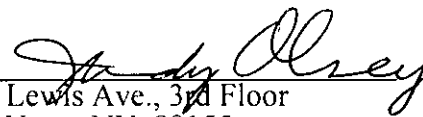
10 DAVID M. SCHIECK
11 SPECIAL PUBLIC DEFENDER

12 
13 By RANDALL H. PIKE
14 CLARK W. PATRICK
15 330 S. Third Street, Eighth Floor
16 Las Vegas, NV 89155
17 (702) 455-6265
18 Attorneys for Defendant

19 RECEIPT OF COPY

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

22 DISTRICT ATTORNEY'S OFFICE

23 
24 200 Lewis Ave., 3rd Floor
25 Las Vegas NV 89155
26
27
28

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CLERK OF THE COURT

1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 NORMAN KEITH FLOWERS,

9 Defendant.

CASE NO. C228755

DEPT. VII

12 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

13 FRIDAY, AUGUST 1, 2008

14 **RECORDER'S TRANSCRIPT OF**
15 **PETROCELLI HEARING AND**
16 **ALL PENDING MOTIONS**

17 APPEARANCES:

18 For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney
PAM WECKERLY, ESQ.
Deputy District Attorney

22 For the Defendant:

RANDALL H. PIKE, ESQ.
Special Public Defender
CLARK W. PATRICK, ESQ.
Special Public Defender

24 RECORDED BY: RENEE VINCENT, COURT RECORDER

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I N D E X

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WITNESS: ***KRISTINA PAULETTE***

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1 Friday, August 1, 2008 - 9:03 a.m.

2
3 THE COURT: This is for the *Petrocelli* hearing in Case Number
4 C228755, State of Nevada versus Norman Flowers. Do you have any
5 problem with him sitting at counsel table? Mr. Flowers, why don't you come
6 down here and sit with your lawyers. Mr. Flowers is present along with Clark
7 Patrick and Randy Pike, and Pam Weckerly and Lisa Luzaich for the State.

8 The record should reflect that I have read the preliminary
9 hearing transcripts provided that relate to three homicides, the two cases, the
10 case in this department and the case in -- the double case in Department XI.
11 You know, I'm getting older. Those little four-to-a-page transcripts are real
12 laborious.

13 MS. WECKERLY: So sorry.

14 THE COURT: No, that's all right. They're going to do it, but the
15 bigger ones are a lot easier. But I have read them so I have a general idea of
16 what the evidence is in all the cases. So, Ms. Weckerly, you're up.

17 MS. WECKERLY: Thank you, Your Honor. And the witness we have
18 for testimony is Kristina Paulette.

19 THE COURT: Okay.

20 MR. PIKE: That's correct. And for purposes of the hearing today, we
21 will stipulate to her training and expertise.

22 THE COURT: Okay.

23 MR. PIKE: So that that foundation need not be laid. We'll just direct
24 questions to the DNA analysis.

25 THE COURT: No, I'm familiar with her. I mean, obviously a jury

1 would need to hear that. We don't. So --

2 THE CLERK: Could you please stand and raise your right hand.

3 ***KRISTINA PAULETTE,***

4 having been first duly sworn as a witness, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 THE COURT: State your name, and spell your name for the court
7 recorder.

8 THE WITNESS: Kristina Paulette, K-r-i-s-t-i-n-a, P-a-u-l-e-t-t-e.

9 THE COURT: Go ahead, Ms. Weckerly.

10 MS. WECKERLY: Thank you. And, Your Honor, just one other thing:
11 I believe Mr. Pike will stipulate that we don't need to go through what is DNA,
12 sort of the windup because I'm sure it --

13 THE COURT: Got that.

14 MS. WECKERLY: Okay.

15 ***DIRECT EXAMINATION***

16 ***BY MS. WECKERLY:***

17 Q Ms. Paulette, you work as a DNA analyst for the Las Vegas
18 Metropolitan Police Department?

19 A I do.

20 Q And in preparation for your testimony today, did you review
21 DNA reports conducted by Tom Wahl and yourself associated with the
22 suspect by the name of Norman Flowers?

23 A I did.

24 Q I'd like to start first with a victim in this case identified -- or
25 actually in another case identified as Marilee Coot.

1 A Okay.

2 Q And in that particular case, that DNA analysis was conducted
3 by Tom Wahl; would that be correct?

4 A Correct.

5 Q Okay. And my understanding is that DNA was detected in
6 vaginal and rectal swabs taken from the victim, Marilee Coot?

7 A Correct.

8 Q And what were -- what are the findings with regard to her?

9 A The source of the semen detected on the vaginal and rectal
10 swabs is Norman Flowers.

11 Q Okay. In addition to those two swabs, was a swab or DNA
12 detected on a carpet stain removed from underneath the victim?

13 A It was.

14 Q And what were the findings with regard to that?

15 A Norman was also the source of the DNA -- the semen detected
16 on the carpet stain.

17 Q Okay. In addition, did Tom Wahl analyze swabs taken from a
18 victim identified as Rena Gonzalez?

19 A Yes.

20 Q And with regard to the vaginal swab taken from Rena Gonzalez,
21 what was the finding?

22 A It was semen positive; however, there were -- the DNA profile
23 came from that was consistent with Ms. Gonzalez.

24 Q Okay. And what does -- I mean, what does that mean in terms
25 of your work as a DNA analyst?

1 THE COURT: Hold on a second, Ms. Weckerly.

2 [Off record.]

3 THE COURT: I'm sorry, Ms. Weckerly. Go ahead.

4 BY MS. WECKERLY:

5 Q With regard to the vaginal swab of Rena Gonzalez, I think you
6 said it tested positive for semen, but the DNA that was tested matched to
7 herself?

8 A Correct.

9 Q Okay. So what does that mean in terms of DNA?

10 A In that particular instance, there were no sperm heads actually
11 detected. And in order to get a DNA profile from the male fraction, there have
12 to be sperm heads present because that's what contains the DNA.

13 Q Okay.

14 A But actually the semen positive is a semen-specific protein that
15 was detected on those swabs.

16 Q Okay. So there was semen, but there's no way to type that
17 DNA?

18 A Correct.

19 Q Okay. And the rectal swabs of Rena Gonzalez, what were the --
20 what were the findings there from Mr. Wahl?

21 A The rectal swabs, there was, in the epithelial fraction, which is
22 just the female portion, it was consistent with Ms. Gonzalez. And in the
23 sperm fraction, the major profile is consistent with Ms. Gonzalez, and then
24 there's a minor DNA -- minor male DNA profile.

25 Q And of that minor DNA profile, was Mr. Flowers excluded as

1 being the source?

2 A He was.

3 Q Okay. In addition, there's a third victim's DNA tied to Mr.
4 Flowers, and that's a victim by the name of Sheila Quarles?

5 A Correct.

6 Q And were you the analyst who did the work on her case?

7 A I was.

8 Q Okay. With regard to Sheila's vaginal swabs, what were your
9 findings?

10 A On the vaginal swabs, I detected a mixture of DNA consistent
11 with Ms. Quarles, and Mr. Flowers could not be excluded as a contributor.

12 Q And were you able to determine or generate any kind of
13 statistical frequency or percentage of the population that could be excluded?

14 A I was.

15 Q And what was that finding?

16 A In approximately 99.9934 percent of individuals are excluded as
17 possible contributors of that mixture of DNA.

18 Q But not Mr. Flowers?

19 A Correct.

20 Q With regard to Sheila Quarles' rectal swabs, what were your
21 findings?

22 A They were semen negative.

23 Q And is that the same situation where -- or, well, if they're
24 semen negative, then obviously there's no sperm and no DNA?

25 A Correct.

1 Q Right. Okay. Now, at a later point in time, did detectives and
2 our office ask you to go back and look at the rectal swabs from Rena
3 Gonzalez that were tested by Tom Wahl?

4 A Yes, and, actually I misspoke on the last thing. The rectal
5 swabs were positive for the presence of semen in the Quarles case; however,
6 again, I could not find sperm. So I wasn't able to do a DNA analysis on that.

7 Q Okay. With regard to Rena Gonzalez, did we ask you to go
8 back and look at a remaining sample or the rectal swabs taken from her, and
9 have you retest that sample essentially?

10 A Yes.

11 Q And did you do that?

12 A I did.

13 Q What were your findings then?

14 A I found that the DNA obtained from the rectal swab cutting was
15 consistent with Ms. Gonzalez, and there was no foreign DNA detected.

16 Q Okay. Now, based on that --

17 THE COURT: What does that mean? The minor DNA profile excluding
18 Flowers was not correct?

19 THE WITNESS: Correct.

20 THE COURT: Okay.

21 BY MS. WECKERLY:

22 Q And once you got that finding, did you take any steps to further
23 investigate how it was that Tom Wahl could've gotten that minor component
24 finding?

25 A I did. The first thing I did, because as any DNA analyst would

1 do, is if there's a foreign DNA present and it's not consistent with any other
2 of the individuals that you're testing, you check to see if there's
3 contamination, obviously. And the first thing you would do is go back and
4 check the person, the analyst who actually performed the DNA analysis. And
5 so I went back and checked Tom Wahl's DNA profile against to this profile
6 and found that they were consistent.

7 Q Okay. So he could've been -- Tom Wahl could've been the
8 foreign DNA in the original testing of the rectal swabs of Rena Gonzalez?

9 A That is correct. And since I went back and retested it and it
10 was no longer there, that seems to be a pretty fair hypothesis.

11 Q Did you analyze any other items of evidence collected in the
12 Rena Gonzalez case besides the rectal swabs?

13 A I did. I actually tested a piece of burnt rolling paper and a
14 Marlboro -- Marlboro cigarette butt.

15 Q And were those both retested by you to see if you could find
16 contamination?

17 A Yes. And those -- the underlying profiles in the original work
18 that was done by Tom was also consistent with the other minor DNA profile,
19 which was consistent with Tom. So when I went back and retested, I found
20 -- I was unable to obtain a DNA profile from the burnt cigarette paper. There
21 just wasn't enough left. And then on the Marlboro cigarette butt, I obtained a
22 partial female profile, and there was no underlying male profile in that one
23 either.

24 Q Again, suggesting possible contamination by the analyst, Mr.
25 Wahl?

1 A Yes.

2 MS. WECKERLY: Thank you. I'll pass the witness, Your Honor.

3 THE COURT: Mr. Pike.

4 MR. PIKE: Thank you.

5 **CROSS-EXAMINATION**

6 **BY MR. PIKE:**

7 Q So in reference to the initial examination that was done by -- by
8 Mr. Wahl, that was done locally here in Metro's lab?

9 A Yes.

10 Q Okay. And you're indicating that the source of contamination
11 may have been from Mr. Wahl. Would that have been just because of
12 procedures? How -- how would that happen?

13 A It can happen in several steps. Obviously, when I went back
14 and retested the evidence, there was no trace of him there. So he didn't
15 actually contaminate the evidence. It was probably in the processing of the
16 samples in which this contamination occurred.

17 Q And that's -- that's kind of an indication of how sensitive the
18 instrumentality that is used and how it may be affected by very small and
19 microscopic contaminants; correct?

20 A That's true.

21 Q In -- there were two findings that -- or two statements that you
22 made in reference to identifications. In relationship to the Marilee Coot, I
23 believe you stated that the DNA was Mr. Flowers?

24 A The semen, yes.

25 Q The semen, right. Okay. As opposed to it could not be

1 excluded. Is that based upon a database that is used by you?

2 A It's based on a statistical calculation, yes.

3 Q Okay. And statistical calculation is based upon the CODIS for
4 the State of Nevada? For the United States? Which database are you using?

5 A It's based off of a program called PopStats that was developed
6 by the FBI. It's their own database that they put together.

7 Q Okay. And that is a database that is -- that you use, but you
8 don't have any personal -- I won't say knowledge. It's -- what training have
9 you received in relationship to that?

10 A It's widely used in the DNA community, and I've been to several
11 classes involving the PopStats, how to use the program and how to interpret
12 the statistical data.

13 Q And -- but you don't have any personal control over that
14 database that is used or the statistics that come to you? You just take -- take
15 the matches, the number of alleles that match, and then you run it against
16 that, and you get a statistical amount where you can say, This is what I -- this
17 database makes it as a -- as a finding?

18 A It's a compilation of all the frequencies of the particular alleles
19 at the locations we're looking at and how often they occur in the population.
20 So I do enter a profile that I find a profile into this database and see how --
21 what the likelihood is that I would see that profile in the population.

22 Q And how many alleles did you need to match in relationship to
23 the Coote case in order to make that determination? How many matched?

24 A There's no limit to the number that you can match or non-match
25 because if you have a partial profile and it matches every location that you

1 have information for, you can enter those into a statistic because, obviously,
2 the more information you have, the more narrowed down your scope is going
3 to be. But in this particular instance, it was a 30 -- it would've been 15 loci,
4 so 30 alleles were entered in. The 15 loci, plus the sex-determining gene,

5 Q And of those how many matched?

6 A All of them.

7 Q Now, you don't have any personal knowledge about whether or
8 not the FBI database has gone through and done any self-checking against the
9 number of locis [sic] that may -- or loci -- which is correct?

10 A It's loci.

11 Q Loci. Okay. The loci that may match in the population, and you
12 don't have any personal knowledge of that, do you?

13 A There are -- that's not what the database is set. The database
14 is not saying --

15 Q That's what I'm ask -- the question I'm asking you is, you don't
16 have any personal knowledge whether or not they have self-checked the
17 number of matches that may arise out of a population?

18 A I don't know that.

19 THE COURT: I think what she's saying is, if it was a population of
20 100,000, that 993 or -- I mean, 99,993 or 99,994 would be excluded. If it
21 was a population of a million, then 999,000 would be excluded
22 mathematically; right? You're not looking at any specific population; you're
23 just saying statistically 99.9934 percent of any population is going to be
24 excluded because they're not going to have one of those 15; they're going to
25 have at least one of those 15 that doesn't match?

1 THE WITNESS: Well, that's in the mixture.

2 THE COURT: Okay.

3 THE WITNESS: In the mixture, it's slightly different.

4 THE COURT: Okay.

5 THE WITNESS: So just in a straight-up single-source profile where I
6 can pull out a major profile or I just have that single-source profile, what the
7 database is telling you is how likely it is that you're going to see that profile in
8 the population at all; not how likely that two profiles are going to match each
9 other. That's not what the statistic is saying.

10 BY MR. PIKE:

11 Q I understand. And in one -- the one on Coote, there was a
12 probable cause match where you had the -- the known donor, and you were
13 matching to a suspect, a scene?

14 A In that particular case, Mr. Flowers was listed as a suspect. On
15 this particular case, his bucal swab was submitted and then compared to the
16 evidence.

17 Q Okay. And that was a probable cause match as opposed to a
18 cold hit which was done on the Quarles matter?

19 A Correct.

20 Q And there's just different statistics, different ways that that
21 matters -- that's determined in that case, as a probable cause as opposed to a
22 cold hit?

23 A No, it's processed the same way.

24 Q Oh.

25 A Because I -- all I do is compare the evidence that I have to a

1 suspect, and once I was given the name Norman Flowers, I processed that. I
2 compared his swab to the other --

3 Q So you didn't -- you didn't take his DNA and then just run it
4 against the database and say, This is a -- this is close enough to it that we
5 need to check and see if he is a suspect?

6 A No. I uploaded the mixture DNA profile obtained from the
7 Quarles case into the database. It then hit to Mr. Flowers.

8 Q Okay. And that came out of Nevada's CODIS?

9 A It did.

10 THE COURT: It -- I mean, you actually then compared a known
11 sample of Flowers to the --

12 THE WITNESS: To the original evidence.

13 THE COURT: -- exemplar?

14 THE WITNESS: And then proceeded --

15 BY MR. PIKE:

16 Q You did the checking, which is a second step to it. You -- the
17 initial hit, and then you take that --

18 A There's a confirmation step to make sure that that, indeed, is
19 the person of interest, and then we have the original set -- sample from Mr.
20 Flowers that I compared to the evidence once more and made my report from
21 the actual physical sample of his DNA.

22 Q And that's the confirmatory step? Is that the term that you
23 use?

24 A There's a confirmatory step done in CODIS, so anytime there's
25 a hit, it's confirmed to make sure that the person that it hit against, that

1 there's no mistake in the data banking as you're processing samples. That
2 confirmation step is done. Then I do a second confirmation to compare it to
3 my DNA results in the case, so essentially there's two confirmations done.

4 THE COURT: Is it kind of like AFIS? You put a fingerprint in there, it
5 gives you something to look at, but then you actually take the fingerprint of a
6 potential suspect and the exemplar that you have and do the process just the
7 same as if you had done it by not having gone through AFIS; you just had a
8 person of interest and you made the comparison?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 BY MR. PIKE:

12 Q And with that you're relying up CODIS to be self-checking. Are
13 you familiar with Arizona where their CODIS system has -- has actually come
14 up with ten different people that match the same or similar DNA profiles?

15 A I am familiar with that article, and it was similarities between
16 their DNA profiles where there were nine locus matches. We're testing 15
17 loci, and of all -- when we entered this into CODIS, this was the only hit that
18 we came back with. So there were no other even profiles that were close to
19 being included into that particular mixture.

20 Q Well, how close were some? Did you check to see if they were
21 14 that matched?

22 A No, no, no, no, no.

23 Q That ten matched? That 13 matched? You didn't do that. You
24 just said -- you're saying there weren't any that came even close to it, but all
25 you were asked from what you testified was that the 15 matched and that

1 you checked for nothing lower than that.

2 A There's a moderate stringency search that's done in CODIS, and
3 so it doesn't have to have an exact match. It's just asking that we're only
4 matching it certain places. So at moderate stringency, it would kick out
5 anything that comes close to matching essentially, and so this is only profile
6 that was -- had anywhere close to being a contributor to this particular
7 sample.

8 Q But you're saying "anywhere close." Give me a number.

9 A I don't know for certain because I'm --

10 Q Well, then you're characterization as "anywhere close" then is
11 just a characterization; it's not numerically based, statistically based, and you
12 can't give that testimony right now?

13 A Apparently not.

14 Q So -- and with -- with the DNA in the Quarles case, that was the
15 mixture of two male DNA's?

16 A It was.

17 Q Were you able to distinguish between the two different male
18 DNA's and separate them from the female DNA of Sheila Quarles?

19 A I was able to separate out -- separate out the female DNA.

20 Q Now -- so the combination of the two male DNA's, were there
21 two different spermatazoas located within that male DNA, that mixture?

22 A There would've had to have been.

23 Q Okay. Were you able to identify the second male donor?

24 A I was not.

25 Q Were you able to take -- you've indicated that you can request

1 through CODIS a certain criteria of matches in the loci area, and you looked
2 for the highest level of match, so statistically it's higher? Is that -- would
3 that be a fair statement?

4 A We don't look for a specific match criteria. It's -- we leave our
5 CODIS -- everyone has their databases set up the same way, that it searches
6 at a certain criteria to make sure that you're not getting -- you know. Because
7 if you set your search criteria too low, you're going to get hundreds of
8 samples that are consistent with things that you're looking at because it
9 matches it one place or two places, and then you'd have so much data to
10 review.

11 So we set to where it's kicking out legitimate matches or, you
12 know, consistencies. And so I can't tell you as far as -- I mean, we don't go
13 in there and, Hey, I'm going to search this at a really high level because I think
14 that it's this guy. I mean, we don't change it. We leave it the same all the
15 time.

16 Q Well, but you -- but you could change it. If you were going
17 through and doing a -- with a contamination similar to what happened in the
18 first case that we're discussing and this case, if you have a second male DNA,
19 you could actually account for maybe some contamination, lower it down, the
20 criteria down, and potentially do that as a search engine in order to possibly
21 identify suspects that you could then give to the detective who may make a
22 determination whether they're related to it, whether they're in prison, whether
23 they're dead or whatever they are in CODIS, and you can use that actually as
24 an investigative tool in order to locate a suspect?

25 A We do use CODIS as an investigative tool, yes.

1 Q That's how the BTK killer was identified.

2 A I'm not sure.

3 Q So given that circumstance, that search was never done on the
4 second male DNA to your knowledge?

5 A No, that's not true. We uploaded the entire mixture profile, so
6 that second male was, indeed, included in that mixture. So any person in our
7 database that matched was included in that mixture would have been given to
8 us as a potential suspect. However, there wasn't a match, so that tells me
9 that the person who -- the second contributor, the second male contributor is
10 not in our database and -- anywhere, either as a convicted offender or as a
11 match to another forensic unknown, unsolved case.

12 Q Or that there was contamination, so that it didn't match at that
13 higher level, and there was not a search done at the lower level?

14 A No, that is actually not contamination.

15 Q Okay. So -- or it may have been DNA that was acquired, but
16 has not been processed yet?

17 A It's possible that it's still awaiting to be processed, yes.

18 Q And are you familiar with the backlog of CODIS -- or of DNA to
19 be processed in the state of Nevada for inclusion in the CODIS system?

20 A I know there's a backlog. I'm not aware of how many samples
21 exactly.

22 Q But in -- in this case or in all three of these cases, were you ever
23 asked to determine whether or not -- or you or any of the other DNA -- since
24 you're a represent -- a representative of all of them, whether or not there was
25 any fingernail scrapings that were tested for DNA?

1 A There were.

2 Q Did any of those come back positive or did they all come back
3 negative for any foreign DNA from the deceased?

4 A There was no foreign DNA detected.

5 Q So with the identification of the semen positive and the protein
6 identifier that indicates that there was semen present, but no DNA had
7 through any of the spermatozoa or anything like that. Is there to your
8 knowledge a manner in which you can examine or compare the nature of the
9 protein from one person to the next -- to another person to determine whether
10 that protein matches?

11 A There is no protein matching, but there is Y-STR testing, which
12 is a male specific test because it targets the Y chromosome. And in cases
13 where there aren't spermatozoa present, occasionally -- and there is an
14 indication of semen, obviously, it's possible that we could get a Y-STR DNA
15 profile from that and make comparisons as we would with STR testing.
16 However, it's not as sensitive -- well, actually, it is more sensitive, but
17 statistically since the male chromosome is passed down from generation to
18 generation unchanged, it would mean that anybody in the same male line
19 would have the same Y-STR profile.

20 Q And that testing wasn't done in this case? It wasn't requested?

21 A It was not. We don't have that capability at our lab. It would
22 have been sent out to an outsource lab.

23 Q Was there DNA to your knowledge in this case that was sent to
24 an outsource lab for examination?

25 A I'm not aware of any.

1 Q Finally, in reference to the mixture of DNA that was located in
2 the Quarles matter, was there any testing that was done or any confirmatory
3 testing that could have been done to determine whether or not the DNA that
4 was -- that was unmatched, the amount in the mixture was greater than that
5 which actually matched to or came back as not excluding Norman Flowers?

6 THE COURT: I don't understand the question. Do you?

7 MR. PIKE: Okay.

8 THE WITNESS: No. Thank you.

9 BY MR. PIKE:

10 Q It is a long question. I apologize. Could you tell of the two
11 males that are mixed together which -- which was larger and which was the
12 smaller amount?

13 A Actually, it appeared to be about dead even, the mixture, so I
14 can't tell.

15 Q And the DNA testing that you performed cannot generally tell
16 you when that DNA may have been introduced into another person or how old
17 that DNA is?

18 A It wasn't. The only thing about semen that's slightly different is
19 obviously -- and there's been lots of papers written -- that after about 24
20 hours, the odds of actually getting a DNA profile from a vaginal swab or
21 something like that, after -- if it's taken 24 hours after the assault or the
22 sexual encounter decreases tremendously. Semen can be detected usually up
23 to two, maybe three days depending on how active the person is, but -- so, I
24 mean, you can make assumptions that it was within 24 or 36 hours that that
25 semen was left.

1 Q Okay. And part of your training -- if I can ask you if this is a fair
2 question. When there were two -- two male DNA's and two spermatazoas in
3 this, could you possibly tell which was older based upon the activity or the
4 movement of the semen?

5 A Once the semen stain has dried, the semen become inactive.
6 They're no longer -- they usually don't have the tails on them anymore, so
7 they don't move, and when you mount them on the slide, they're completely
8 static. So there is no motility or age or anything we can tell from them.

9 Q The motility or the ability to determine whether or not they are
10 moving, whether it's an old DN -- or old spermatozoa or a newer one, is that
11 affected by a refrigeration of a body prior to the collection of the sample, if
12 you know?

13 A When we get samples in the lab, they're never motile. I mean --

14 Q I understand that.

15 A Okay.

16 Q But as part of your training, have you received any training
17 about what is optimum to collect it, whether -- from a dead body, whether or
18 not it's better to collect it prior to the time that the body is refrigerated and it
19 should be collected prior to the time of the autopsy or prior to the refrigeration
20 and holding the body over for a period and the time of an autopsy?

21 A I don't actually collect DNA evidence in autopsies or anything of
22 that nature. I do know about what's the best way to preserve evidence,
23 what's not a great way to preserve evidence, but as far as refrigeration of a
24 body or preservation of that such, I don't know.

25 Q Okay. And the statistical -- the statistical information that you

1 gathered from a probable cause hit as opposed to a cold hit is what allows
2 you to in one case say it is his spermatozoa and then in another case say it
3 does not exclude it?

4 A No, it has nothing to do with that. It's simply based on the --
5 because there's a mixture in one and there is a single-source major profile in
6 the other, and because there's a major profile, I can do a random match
7 probability statistic on that, which gives me the 1 in 650 billion, which then
8 lets me assume identity.

9 In the mixture, I can only say that this person cannot be
10 excluded, but this is how many -- this is the percentage of the population that
11 can be excluded from -- being a contributor into this mixture. So in that
12 particular instance, because I couldn't pull out a major profile, I can't do a
13 random match probability stat, which means I can't assume identity.

14 Q So -- and of the two mixtures in the Quarles case, were you
15 able to obtain a greater mixture for the as-yet unidentified DNA or were the
16 matches of the same or similar quality?

17 A The -- I believe you're referring to the panties because there's
18 also a mixture of the same two individuals on the panties, and -- [looking
19 through documents]. Sorry. The mixture is relatively the same. It's a pretty
20 even mixture of both male individuals.

21 Q And that was in the panties on the Quarles case?

22 A Yes.

23 Q Was there any DNA that you observed on any other areas or
24 any other items that were requested to examine on that case? On bed,
25 bedding?

1 A I wasn't asked to examine bedding. I examined a Gatorade
2 bottle. I took a swabbing from the mouth of the bottle, and the partial DNA
3 profile obtained from that was actually consistent with Ms. Quarles. But all
4 the rest of the items -- I tested a beef and cheese snack and then a beefsteak
5 residue swab, and both of those were insufficient to yield DNA results.

6 Q And they only -- so the only physical evidence in the Quarles
7 case that you examined -- well, let me correct that and say, does the physical
8 evidence of the panties then have the same mixture that was found -- that
9 was provided to you from what you believe was obtained during the autopsy?

10 A From the vaginal swabs, yes.

11 Q Vaginal swabs. Okay.

12 MR. PIKE: I don't have any further questions.

13 THE COURT: Is that it?

14 MR. PIKE: Sorry. I'm sorry. Just one more question.

15 **BY MR. PIKE:**

16 Q You indicated that you believe that there may have been a
17 contamination by -- during the processing of Mr. Wahl. Did you check -- do a
18 verification against his DNA to determine whether or not that matched to --
19 to --

20 A To the unknown male in the other case?

21 Q No, not the unknown male in the other one. But was there a
22 way on the testing to determine whether or not that -- your suspicion that
23 there may have been some contamination by Mr. Wahl's presence during that,
24 is there any way to double check that to determine whether that's accurate or
25 not?

1 THE COURT: I thought she said that she did, but she actually took
2 that and compared it to Tom Wahl, and it was consistent. Is that --

3 THE WITNESS: By the retest --

4 BY MR. PIKE:

5 Q Okay.

6 A Well, the retesting -- no. Just looking at the data, it was
7 consistent with his profile, but I retested the items, and then there was no
8 underlying male, which leads me to believe that it, in fact, was him. So when
9 I reprocessed the samples, his DNA obviously wouldn't have been in my
10 samples because he didn't contaminate the actual original evidence. It was
11 the extracts or something along the way. We still should have extracts in the
12 lab that he worked, and I could go back and re-run those and confirm that I'm
13 getting the same profile that he got with the contamination still there.

14 Q But did you have his DNA to compare it to that so that you
15 believe it is his?

16 A I did, yes.

17 MR. PIKE: All right. Thanks.

18 MS. WECKERLY: Just a couple of questions.

19 **REDIRECT EXAMINATION**

20 **BY MS. WECKERLY:**

21 Q You mentioned that when you enter unknown -- an unknown
22 DNA profile or a mixture into CODIS, there's a certain stringency that is sort
23 of a lab standard that's used; is that correct?

24 A Yes.

25 Q Can you explain what you mean by that.

1 A There is -- you can do low stringency, mod stringency, which is
2 a medium-sized stringency, and high stringency match. With a high
3 stringency match, basically I would have to have one or more alleles at each
4 locus that match that particular person. Now, if I drop it down to a moderate,
5 it would be less --

6 Q Discriminating?

7 A Less discriminating, and then low, obviously, more
8 discriminating than that.

9 Q But the mixture that was obtained from Sheila Quarles, it
10 wasn't just that one possible male profile that was entered into CODIS; the
11 mixture itself is entered into CODIS, and then CODIS comes back out and
12 says, This person, Norman Flowers, could be a source in that mixture?

13 A Correct.

14 Q Okay. And then after that, you look at the actual evidence and
15 at his actual profile; you just don't depend on CODIS to spit out the right
16 result; you actually take his profile and compare it with the original evidence?

17 A Correct.

18 Q In your analysis of the Sheila Quarles case, was Robert Lewis
19 excluded as a source of this mixture in Sheila?

20 A He was.

21 Q And that was done with a bucal swab sample from Robert
22 Lewis?

23 A Correct.

24 Q And the mixture that was found in Sheila Quarles vaginally, and
25 then also you mentioned on the underwear, was that a -- were those full male

1 profiles meaning there was information at each of the loci or was it like a
2 situation where you only had maybe three loci present on the sample?

3 A No. It was a mixture of -- the first mixture actually in the sperm
4 fraction was a mixture of Ms. Quarles and then two males.

5 Q Correct.

6 A And the second one from the panties was actually just the two
7 males, and in both instances, they were full profiles, the first, a mixture of
8 three people, the second, a mixture of two people.

9 Q Okay. And so when you have the full profile, but you're still in
10 a situation where you have a mixture, it's -- is it the fact of it being a mixture
11 that makes the statistical frequency less -- less discriminating than when you
12 have a single profile? Is it the fact that there's a mixture?

13 A Yes, because in your statistical calculation, instead of at every
14 location entering two alleles for a particular mixture, you're entering anywhere
15 from one to -- for four people it would be -- or two people it would be four at
16 the most. So instead of entering two at every location, you're actually
17 entering four, so obviously that makes the number --

18 Q The numbers are going to --

19 A -- be -- less discriminating, yes.

20 MS. WECKERLY: Thank you. I have nothing further.

21 THE COURT: Anything else, Mr. Pike?

22 MR. PIKE: Oh, no. Yes. I'm sorry.

23 **RECROSS-EXAMINATION**

24 **BY MR. PIKE:**

25 Q Were you ever asked to determine whether or not it matched an

1 Anthony Lewis?

2 A Let me refer to my notes.

3 Q Okay. While you're referring to your notes, maybe you can just
4 -- if there were any names or any individuals whose DNA profiles that you
5 were given to -- as potential suspects, maybe you could just provide those for
6 the record, too.

7 A I was asked to compare Qunese Toney, Robert Lewis --

8 Q And for the court reporter, is that spelled Q-u-i-n-t-e T-o-n-e-y?

9 A It's Q-u-n-i-s-e.

10 Q S-e.

11 A And Toney is T-o-n-e-y.

12 Q Thank you.

13 A You're welcome. [Looking through documents]. I was also
14 asked to compare Alba Jackson, Angel Mendez, Vanessa Mendez and Shane
15 Baker. And Mr. Wahl was also asked to compare profiles on Randy Ureno,
16 Caesar Hernandez, Kenneth Riley, Marsha Parker, and that's all.

17 MR. PIKE: Thank you very much.

18 THE COURT: Okay. Thanks. Appreciate it.

19 MR. PIKE: She can be excused. We won't be recalling her, if you
20 want to get back to the lab.

21 THE WITNESS: Thank you.

22 THE COURT: Okay. She's got to go back and compare Anthony.
23 Okay. What else?

24 MR. PIKE: Your Honor, we don't have any witnesses. Because the
25 Court has read -- has been provided all the transcripts and has read the

1 testimony, we would just like to argue the factual differences and make a
2 proffer in reference to the testimony of the snitches that were involved in this
3 case.

4 THE COURT: Are the snitches the two inmates that actual testified at
5 the Grand Jury?

6 MR. PIKE: Yes.

7 THE COURT: I read that.

8 MS. LUZAICH: There were three inmates who testified.

9 THE COURT: Three inmates. One who testified as a demand by the
10 Defense for exculpatory evidence and two that gave arguably inculpatory
11 evidence. I read that.

12 MR. PIKE: Right. And the proffer would be that we went up and
13 interviewed them, and their statements changed and -- but they are currently
14 located, I think, up in Tonopah and up north also, so if we can do just do that.

15 THE COURT: They are what they are, you know. They're inmates.

16 MR. PIKE: So --

17 THE COURT: Do we need Pamela or --

18 MS. LUZAICH: No, no, we're fine.

19 THE COURT: Okay. What's your pleasure? Do you want to do the
20 *Petrocelli* hearing first and the motions or the motions first and the *Petro* --
21 what are we going to do?

22 MR. PIKE: Let's -- I think as far as finishing up the argument on the
23 *Petrocelli* hearing, if we could just have Mr. Patrick argue that.

24 THE COURT: All right.

25 MR. PIKE: The facts on that.

1 THE COURT: Well, let's hear from Ms. Luzaich.

2 MS. LUZAICH: You know what, it's actually their motion to exclude,
3 not our motion to admit, which is interesting.

4 THE COURT: They have some motions, but isn't this your motion for
5 bad acts?

6 MS. LUZAICH: No, the Defense filed a -- in XIV the Defense filed a
7 motion to exclude the evidence of bad acts, and we opposed their motion to
8 exclude evidence of bad acts. That was my understanding.

9 MR. PIKE: All right. There had been a --

10 MS. LUZAICH: We didn't file a motion to admit. They beat us to it.

11 MR. PIKE: Well, they -- they've already been in another department,
12 and so, you know, I can see that they're writing --

13 THE COURT: Well, let me ask you this. Let me ask you this: In
14 Department XI, apparently Judge Gonzalez granted the bad acts motion, I
15 assume pursuant to 48.045, that said the evidence in the Quarles case can
16 come in in the Coote/Gonzalez trial; correct?

17 MR. PIKE: Yes, sir.

18 MS. LUZAICH: That is correct. That was based on their filing a
19 motion to exclude it --

20 THE COURT: Okay.

21 MS. LUZAICH: -- because they did it before we did.

22 THE COURT: Regardless of which way it goes, what specifically did
23 she find in terms of making that decision?

24 MS. LUZAICH: We did not actually have a *Petrocelli* hearing. We did
25 not put evidence on in that case. She just said that it was relevant that, in

1 her opinion, the --

2 THE COURT: Well, how can you -- under the law, how can you have
3 it admitted without doing a *Petrocelli* hearing?

4 MS. LUZAICH: We hadn't gotten that far yet. A lot of the judges will
5 say it's admitted pending your proving it up. She said it's admitted and then
6 kind of just went on to the next issue. So I expect at some point --

7 THE COURT: That sounds --

8 MS. LUZAICH: -- there will be a *Petrocelli* hearing in Gonzalez'
9 department.

10 THE COURT: Sounds to me like it's -- like if there isn't, it either won't
11 be admitted or it'll be tried twice.

12 MS. LUZAICH: Well, no, it shouldn't impact. The Supreme Court has
13 said that if we don't actually have the *Petrocelli* hearing, that's not fatal if
14 there is sufficient evidence.

15 THE COURT: Well, I mean, sometimes -- for example, you know, even
16 if you didn't have the hearing, if the evidence happens to be a judgment of
17 conviction or something, it's pretty clear that that's clear and convincing or if
18 -- whatever, but --

19 MS. LUZAICH: Well, right. And her -- her trial is after yours, so there
20 will be, hopefully, a guilty verdict.

21 THE COURT: Well, let me ask you -- then let me ask you this: How
22 does the evidence, I guess, in the Coote case because I'm not -- are you
23 seeking to introduce the evidence in the Coote and Gonzalez cases, which is
24 the same case but two incidences, in the Quarles case?

25 MS. LUZAICH: Yes.

1 THE COURT: Right. How is that -- you know, I'm satisfied with the
2 clear and convincing standard, but how is it relevant, how does the probative
3 outweigh the prejudice, and what specifically in NRS 145.045 (2) does it go
4 to prove other than general disposition?

5 MS. LUZAICH: Most specifically, it goes to intent and kind of like
6 absence of mistake or accident or whatever. In this particular case, Sheila
7 Quarles is an 18-year-old lesbian. She is actively involved in a lesbian
8 relationship with Qunise Toney, who you just heard about. She was
9 excluded. She is ill at the time. She has a urinary tract infection.

10 THE COURT: I read that, yes.

11 MS. LUZAICH: She is at home. There is conversation with her, with
12 her mother and Qunise Toney --

13 THE COURT: Phone goes off.

14 MS. LUZAICH: Up until -- right. So there's a two-hour time window
15 where there's no contact, and then she's found dead. When she is found
16 dead, in her -- well, one, she is violently sexually assaulted as was the
17 testimony of Dr. Simms at the Grand Jury; and, two, there is semen in her
18 vagina. I would submit that --

19 THE COURT: By all accounts, it probably isn't there on a normal
20 basis.

21 MS. LUZAICH: Exactly. So we have to prove what is the intent of
22 the individual or individuals who deposited the semen in the vagina, especially
23 in light of not only is there a violent sexual assault, but she is strangled as
24 well and found underwater. You know, recognize that the actual cause of
25 death is drowning, but the significant contributing factor is strangulation.

1 We cannot call Sheila Quarles to the stand to say, I did not
2 consent, so we have to demonstrate it in another way, and specifically -- and I
3 know the motion is not being heard at this moment. In their motion --

4 THE COURT: Well, can you demonstrate that by medical testimony of
5 Dr. Simms?

6 MS. LUZAICH: Well, we can demonstrate it by the medical testimony
7 of Dr. Simms, but the defense at this point has to be consent. And, in fact, in
8 their motion they make a -- in one of the motions that the Court is going to
9 hear in a moment, they actually make a comment about a consensual
10 relationship between the Defendant and Sheila. She obviously can't take the
11 stand and say it was not consensual. So the evidence that he has done it to
12 Marilee Coote, that he has done it to Rena Gonzalez viscerates the consent
13 argument of his or the lack of accident or whatever --

14 THE COURT: Do you think it makes a difference --

15 MS. LUZAICH: -- as well as demonstrates what --

16 THE COURT: Do you think it makes a difference that those two came
17 afterwards?

18 MS. LUZAICH: No.

19 THE COURT: I mean, is this something that runs both ways or just
20 one way? In other words --

21 MS. LUZAICH: I believe the case law says both ways, prior or
22 subsequent bad acts are admissible. I mean, you can't use it to demonstrate
23 that he's got bad character, but what he did before demonstrates what he
24 might do now. But just the same, what he does in the future demonstrates
25 just -- under the same theory what he would have done in the past.

1 THE COURT: So intent. It's there for intent.

2 MS. LUZAICH: Intent, lack of accident, mistake; to demonstrate not
3 consensual. And I would submit that because he has taken the life of Sheila
4 and caused her to not be able to take the stand -- and these are very similar.
5 You know, she is found underwater in the tub. In Marilee Coote's situation --

6 THE COURT: The tub --

7 MS. LUZAICH: -- there is, again, the water and the stuff in there. In
8 both Marilee Coote and Rena Gonzalez property is taken. From Sheila Quarles
9 property is taken as well, her stereo and CD's and things of that nature.
10 Marilee Coote and Rena Gonzalez both know the Defendant through
11 somebody. Sheila Quarles knows the Defendant through her mother, who
12 was previously dating him.

13 So the probative value of the evidence of Marilee Coote's murder
14 and sexual assault and Rena Gonzalez' sexual assault is so huge that it is no
15 way substantially outweighed by the danger of prejudice, and that's what the
16 standard is. It's not, is it prejudicial? I mean, all evidence is prejudicial,
17 obviously.

18 THE COURT: Only inculpatory evidence is prejudicial.

19 MS. LUZAICH: Okay. That is true.

20 THE COURT: Exculpatory evidence is not prejudicial.

21 MS. LUZAICH: Only inculpatory evidence is prejudicial. But the
22 standard the Court must find in order to exclude it is that the prejudice
23 substantially outweighs the probative value, and in this situation, the probative
24 value is just tremendous.

25 THE COURT: Mr. Patrick.

1 MR. PATRICK: Actually, Judge, there is absolutely zero probative
2 value in letting this in. You know, to start off with saying that because in
3 Coote's apartment there was a tubful of water and because Quarles was
4 drowned that obviously shows intent is bizarre. I mean, there is absolutely no
5 evidence that Coote was in that tub of water, no evidence that Coote was
6 drowned. The differences in the three cases are astronomical. One was a
7 drowning, one was manual strangulation, and one was strangulation by
8 ligature.

9 THE COURT: I understand, but when you're talking about modus
10 operandi, aren't we talking about the identity prong of 45 -- 48.045, that it's
11 identity because in each case when the guy did the armed robbery wore a
12 make of Bozo the Clown kind of thing? I mean, isn't that -- I mean, they're
13 arguing it doesn't go to identity. They're saying that the sexual interaction
14 was rape, and the way you know it was rape is there's rape, after rape, after
15 rape.

16 MR. PATRICK: Well, that's not true. First of all, in the Gonzalez case,
17 there's actually -- absolutely no evidence that Mr. Flowers was the one that
18 had sex with her. In the Coote case --

19 THE COURT: That's true.

20 MR. PATRICK: -- we have somebody that he admits to having an
21 ongoing sexual relationship with. And in the Quarles --

22 THE COURT: That would be an exculpatory statement by the
23 Defendant not given in court that probably isn't coming in unless he takes the
24 stand.

25 MR. PATRICK: Well, I understand that, but this is -- you know, a

1 further provider --

2 THE COURT: And I think that the carpet DNA is very damning. I
3 mean, that isn't the same thing as, Yeah, I was over to her house yesterday.
4 I mean, when you put the vaginal swab with the carpet under her, that's --
5 that's pretty powerful evidence that he was the guy there at the time that the
6 -- of the last incident.

7 MR. PATRICK: Well, the carpet --

8 THE COURT: I'm not saying it is, but I'm saying, to me the carpet
9 evidence is the strongest piece of evidence I've seen in any of these three
10 cases.

11 MR. PATRICK: Yes, Judge. But also in the carpet evidence, there is
12 evidence of another male. There's another male's DNA on that carpet, which
13 is the same thing as with Ms. Quarles. There's two males had sex with Ms.
14 Quarles prior to her death. Now, the fact that Mr. Flowers may be one of
15 them because of the DNA evidence that they found, there's another one and --

16 THE COURT: Well, carpet evidence is in the Coote case, not the
17 Quarles case.

18 MR. PATRICK: Well, I understand, but they're saying -- yeah. I mean,
19 they're saying that Ms. Quarles had sex with two men before she died, and,
20 according to the carpet evidence, with two male DNA's --

21 THE COURT: Probably the other way around, Mr. Patrick. Probably
22 two men had sex with her before she died as opposed to she had sex with
23 two men before she died.

24 MR. PATRICK: Well, it's the same thing in the -- in the Coote case.
25 On that carpet sample, there is two male DNA's.

1 THE COURT: So what would you conclude?

2 MS. LUZAICH: Well, actually not.

3 THE COURT: I didn't hear that. I heard there was, you know, a single
4 male -- major profile or something and --

5 MR. PATRICK: No, there was other DNA on that carpet sample that
6 was not --

7 MS. WECKERLY: There's one foreign allele that's foreign to all of
8 them.

9 MR. PATRICK: Well --

10 MS. WECKERLY: But it's not necessarily male. That means there's
11 one other speck of DNA in the carpet.

12 MR. PATRICK: Well, it's another person's DNA, whether it male or
13 female. But the thing is, there's way more differences in these cases than
14 there are -- you know, like I said, we can't even -- there's no evidence that
15 Mr. Flowers ever had sex with Ms. Gonzalez.

16 THE COURT: Well, bad sex -- bad sex. Bad acts based upon
17 commonality or modus operandi really only relates to the State saying, We're
18 going to prove identity in this case by showing that the person that did these
19 other cases where the M.O. was exactly the same is this guy. In other words,
20 he gets caught in a third robbery with the Bozo the Clown mask kind of thing.
21 They're not -- they're not saying that.

22 MR. PATRICK: But --

23 THE COURT: They're not saying that's the case. They're saying, We
24 have other bad acts which show that any sex that was had with Quarles was
25 non-consensual.

1 MR. PATRICK: They can't prove that.

2 THE COURT: Well, they're going to try to have to prove that. I mean,
3 they've charged him sexual assault.

4 MR. PATRICK: But bringing in -- well, first of all, there's no proof that
5 -- like I said, there's no proof that Mr. Flowers ever sexually assaulted Rena
6 Gonzalez, so they can't use that. There's believable evidence because not
7 just Mr. Flowers' words, but Ms. Ragland's words that she was suspecting
8 that Mr. Flowers and Ms. Coote were having a sexual relationship. So that
9 also shows that it's very possible that he did not have -- sexually assault Mrs.
10 Coote. That sex could absolutely have been consensual, not by his words,
11 but by the words of his ex-girlfriend. Ms. Quarles, we have no idea whether
12 or not --

13 THE COURT: Wouldn't that be just speculation on her part?

14 MR. PATRICK: Well, this whole thing is speculation on the State's
15 part, Judge. There's no -- and when we go to Quarles, there's no way to
16 know whether the sex of either men that had sex with Ms. Quarles was
17 consensual or not consensual. The whole --

18 THE COURT: Well, there's some ways to know. I mean, one way, if
19 they don't win, is that the medical examiner and you've got Nurse Ebbert,
20 who is going to say, Look, I've seen 10,000 of these cases, and when you
21 have a tear here and a tear there, it ain't consensual, period. She's a pretty
22 damn good witness. I've had her as a witness dozens of times.

23 MR. PATRICK: Well, there's also that, but there's also other
24 consensual sex acts that could cause that kind of tearing, and I think that you
25 can't say in a case where you have a witness who can't testify to say it was

1 -- I mean, you know, we may not practice it, but there's all kinds of fetishes
2 and marital aids like the one that was found in Ms. Coote's apartment that
3 would cause those exact same tears and damages even though the sex was
4 consensual.

5 THE COURT: Well, I mean, that's -- that's what the Defense does, is
6 point those things out. Whether that's a reasonable doubt or speculation,
7 that's what the jury decides.

8 MR. PATRICK: Yeah. The other thing is, in looking at cases like
9 *Tabish* where the time frame is just way too far to put this into any kind of
10 intent or lack of mistake, we're talking several -- and that's part of the reason
11 why this case wasn't joined when Judge Bonaventure had it. And I think
12 going through the reasons that Judge Bonaventure had when he would not
13 join these two cases is a lot of the very same reasons why the bad acts
14 because all -- all this is is, since it can't be joined, the State is trying to get
15 these bad acts in, which is a *de facto* joinder. If the jury listens to all three of
16 these cases and all those bad acts, it's no different than Judge Bonaventure
17 granting a joinder.

18 And all it's going to do is completely inflame the jury because
19 when they look at the Quarles case by itself, there's some doubt. Maybe not
20 to the height of reasonable doubt, but there is some doubt. If you put in the
21 evidence from Gonzalez and Coote, that's going to erase any chance -- any
22 doubt, any chance Norman will ever have of getting a fair trial on just the
23 Quarles matter. And that's why Judge Bonaventure refused to join them, and
24 I think it's the same reason why we cannot let these bad acts in.

25 It's hugely more prejudicial than probative. The minute the jury

1 hears anything about Gonzalez or Coote, they're going to convict Mr. Flowers
2 on Quarles. There's no way around that, which is why we thought to keep
3 the cases from being joined and why these bad acts shouldn't come in. and
4 why Judge Bonaventure agreed that these cases shouldn't be joined.

5 If you let it in, we're going to do -- what we're going to end up
6 doing is two trials, one here and one in Department XI. They're going to be
7 exactly the same trial. They're going to be a month apart, but we're going to
8 have to go through it twice because looking at the 9th Circuit, if joinder issues
9 and severance issues are constitutional issues where Mr. Flowers, if needed,
10 could have some play on an appeal issue. Bad acts is not. So if you let this
11 in, we cannot agree to join the trials.

12 THE COURT: I don't care whether you join the trials. I'm just not
13 going to --

14 MR. PATRICK: Well, I understand that, Judge, but --

15 THE COURT: That's a strategic decision the Defense has to make
16 because, you know, when it's a death penalty case, if you try -- if both
17 sides -- both judges let it in -- I'm not yet convinced. But if that were to
18 happen, then you've got two juries that hear this evidence, and, you know,
19 the State only has to hit one out of two to get the death penalty; whereas,
20 one out of one is a lot tougher for the State.

21 MR. PATRICK: And that's why it's patently unfair, Judge, is because
22 -- exactly that reason because the State is going to have two bites of the
23 exact same apple.

24 THE COURT: Well, I'm saying -- I'm saying, if, in fact, Judge
25 Gonzalez rules that way, and it sounds like she's leaning there, and, in fact, I

1 were to, and I'm not sure I will yet, then if I were defending him, I might just
2 try this case once and say, I understand I'm giving up something on these
3 joinder issues, but at this juncture, Judge, I'll just stipulate. We'll try it all at
4 once. That is a strategic decision a defense lawyer might want to make, and I
5 probably would, but that doesn't mean that you would.

6 MR. PATRICK: Well, I think you're right, Judge. I think that there's --
7 and I think you're leaning the right way. The prejudice -- the prejudice --

8 THE COURT: I'm not -- I'm not leaning --

9 MR. PATRICK: Well --

10 THE COURT: I'm not leaning either way. What I'm saying right now
11 is, Mr. Patrick, I'm not -- I'm not yet persuaded by the State. I'm not saying
12 I'm leaning not to, but there is some evidence of intent, the medical evidence,
13 the evidence of Nurse Ebbert, the stuff about this is what happens in terms of
14 sexual assault; plus, you've got the woman strangled and drowned in a
15 bathtub in a two-hour window. It is pretty unlikely that somebody came over
16 and had consensual sex and then left, and then somebody else came over and
17 had unconsen -- had no sex, just drowned her, whatever. I mean, pretty
18 much the person that had sex with her killed her, and if he killed her, probably
19 she wasn't having a good time with the sex either.

20 MR. PATRICK: Well, there's no evidence and the State cannot point
21 out which one of those two semen deposits were placed first. It's very
22 probable by your -- the way you just laid it out is that Mr. Flowers could've
23 had consensual sex with her and left, and in that two-hour window, the
24 second donor came in and raped and killed her.

25 THE COURT: I don't think so, Mr. Patrick. Given the fact that she

1 doesn't like sex with men and she likes sex with women, I don't think
2 anybody had consensual sex with her. I mean, it may well have been that
3 two defendants, only one of whom is now before the Court, went in there and
4 had sex and raped her. That sounds like a very probable possibility.

5 MR. PATRICK: Okay. Well, that's still --

6 THE COURT: That's where we're at.

7 MR. PATRICK: That's still doesn't bring us to the intent part because,
8 again, Gonzalez, we don't know who had sex with her, except for the fact we
9 know it wasn't Mr. Flowers. Coote --

10 THE COURT: I don't think we know that yet. Based on what she
11 testified today, I agree with the first part of your statement, we don't know
12 had sex with her. I don't agree with the last part, that we know it isn't Mr.
13 Flowers because what she said was, there was -- it was semen specific, but
14 there were no sperm heads detected, and we need that for DNA, and we
15 don't have anything. And after I went back, the only thing that seemed to be
16 inconsistent with Mr. Flowers now turns out to be Mr. Wahl. So what we
17 really have as to Gonzalez is nothing.

18 MR. PATRICK: Well, that's not --

19 THE COURT: We don't have anything that is inculpatory of Mr.
20 Flowers, and we don't have anything that is exculpatory of Mr. Flowers.

21 MR. PATRICK: That's not entirely true, Judge, because they also did
22 DNA on the ligatures that was around Ms. Gonzalez' neck, and the ligatures
23 had Ms. Gonzalez' DNA on them. They also had a male's DNA on them that
24 wasn't Mr. Flowers. There was no testimony today that that was retested, so
25 we have to assume that it was retested, and it still comes out to be not Mr.

1 Flowers. Or that it wasn't retested, and we have to go with Mr. Wahl's
2 report, which says it wasn't Mr. Flowers. So there is still evidence on Ms.
3 Gonzalez that it wasn't Mr. Flowers who killed her.

4 Going back to Ms. Quarles, Ms. Quarles was sexually active not
5 only with women, but with men. She was absolutely bisexual, and we have
6 that from statements from several witnesses.

7 THE COURT: Okay. Well, Ms. Weckerly is obviously surprised to hear
8 that.

9 MS. LUZAICH: So is Ms. Luzaich because none of them are in
10 evidence.

11 THE COURT: Well, you were facing the other direction, but Pamela
12 was facing me.

13 MR. PATRICK: Well, anyway, Judge, there's not enough here, and
14 the --

15 THE COURT: Well, let me ask you this, Mr. Patrick: You don't have
16 to divulge your defense, but if your defense would be consent, then I think
17 this probably makes a lot of sense that this does come in. But if you are
18 asserting a defense of consent, then I'm not sure it would. In other words, I
19 could see me making a ruling that says it doesn't come in in the State's case
20 in chief until or unless you intimate or put on any evidence that there may
21 have been some consent, in which case it all comes in. I think that is a third
22 possibility.

23 I don't mean the Defendant necessarily has to take the stand
24 and say that. I'm just saying if you ask Nurse Ebbert, Couldn't this have been
25 consensual and blah, blah, blah, blah, blah, then it may come in to show

1 intent and lack of accident. I see that as a real possibility, but I don't -- I
2 don't expect you to disclose your defense to me nor to the State.

3 I'm just saying you're arguing. I got to tell you, I'm not
4 persuaded one way or the other yet. I'm listening. I'm just throwing out
5 stuff. I see that as a possibility as opposed to it's all in or it's all out because
6 if you don't take -- if you never even broach the possibility of consent, then
7 maybe this coming in for the purposes of intent, maybe the prejudice does
8 outweigh the probative value in that sense if you don't -- if you don't contest
9 that issue or if you don't suggest that's a possibility.

10 MR. PIKE: That -- well, that --

11 THE COURT: I'm not telling -- Randy, you don't have to -- you don't
12 have to tell me what it is or what you're doing, and I don't expect you to.

13 MR. PIKE: Right.

14 THE COURT: I'm just saying that is a way in weighing the probative
15 and prejudice to just say hey, you know, if you think -- if you're going to
16 suggest that this is consent in any manner by any question, then by putting
17 this other stuff in, it would certainly have a lot of probative value as to intent.
18 But if you aren't going to even make that suggestion, then maybe the
19 probative isn't as effective as the prejudice.

20 MR. PIKE: And I think that in a kind way, Ms. Luzaich kind of pointed
21 that out in reference to the manner in which it was brought in or ruled by
22 Judge Gonzalez in that case as opposed to this case. The facts -- the facts
23 are very different, the way it may be brought in, whether their statements.
24 And if we open the door, then definitely it puts him in a position where they
25 can exploit that. Unfortunately, that's happened to all of us as defense

1 attorneys on occasion.

2 But to come in and issue a blanket ruling at this point in time
3 would be inappropriate because as the Court indicates, there's a number of
4 scenarios that may make it very probative and -- and then the weighing test
5 may be effected, and we may -- we may open the door, and we may --

6 THE COURT: Let me ask you this, Ms. Luzaich: I mean, if intent is
7 the issue and you have, you know, some fairly good solid evidence on intent
8 with your -- with your medical examiner and SAINT nurse, why wouldn't the
9 probative outweigh the prejudice if you put that evidence on, and they never
10 attack it; they never even suggest it, and they're not going to argue it?

11 MS. LUZAICH: Well, you know, it's not only the murder that he's
12 charged with. He's charged with sexual assault.

13 THE COURT: Right.

14 MS. LUZAICH: We have the burden of proving not only that he
15 strangled her and killed her and that he put his penis in her, but we have the
16 burden of proving --

17 THE COURT: That it wasn't consensual.

18 MS. LUZAICH: -- that it was against her will.

19 THE COURT: And so what you have -- I mean, I'm just asking. What
20 you have is, you have a medical examiner and you have a SAINT nurse who
21 are going to say the vaginal injuries and stuff are consistent with sexual
22 assault, and they are generally -- not 100 percent impossible -- but generally
23 inconsistent with consensual sex.

24 Now, if they are not going to even say, well, it could be that
25 they used a marital aid or they -- they're not even going to even suggest or

1 take the position that consent is a defense, they're not going to ask a
2 question, they're not going to have the Defendant say it on the stand and
3 they're not going to argue it in their argument, why doesn't then the prejudice
4 outweigh the probative?

5 MS. LUZAICH: Well, I'm sorry. I just -- I don't see how they can
6 possibly not mention the word "consent."

7 THE COURT: Well, they might not mention it if, in fact, they think
8 that if by mentioning it, I then think the probative value of this outweighs the
9 prejudice, and I say, Okay, if you say the word "marital aid," if you say the
10 word "consent," if you even question the integrity of Ms. Ebbert or the doctor
11 that pretty much this is a sexual assault, I'm going to let the Coote killing in
12 and --

13 MS. LUZAICH: Well, but there's still -- there's a mixture of two
14 different DNA's, and, unfortunately, try as we might to pick a very intelligent
15 jury, we are not going to get a jury that is as intelligent as the Court.

16 THE COURT: Well, you might.

17 MS. LUZAICH: And a jury is going to see --

18 THE COURT: You might.

19 MS. LUZAICH: -- two different DNA's--

20 THE COURT: Probably on average they got me.

21 MS. LUZAICH: But they're still -- they're going to see two different
22 DNA's in her vagina and very well can say that it wasn't -- that we didn't
23 prove beyond a reasonable doubt that it was him; that it could just very well
24 have been the other person who did the violent part of it and did the killing.
25 So, I mean, I do think that the probative value is huge in this case because

1 you know what? We have here three woman, all of whom were violently
2 sexually assaulted --

3 THE COURT: Let me ask you a second question.

4 MS. LUZAICH: -- and strangled.

5 THE COURT: Let me ask you a second question: You would concede,
6 would you not, that there isn't any DNA evidence that says he sexually
7 assaulted Gonzalez?

8 MS. LUZAICH: Okay. There's no DNA evidence that links the
9 Defendant to Rena Gonzalez --

10 THE COURT: Well, there's the fact that he was in --

11 MS. LUZAICH: You know, what, Judge? I've tried tons of sexual
12 assault cases with no DNA.

13 THE COURT: I'm not saying that.

14 MS. LUZAICH: I don't need DNA.

15 THE COURT: I know that there's the neighbor, and he goes for the
16 drink of water and all that stuff, and I know the jail testimony and all that
17 stuff, but I'm saying as far as DNA evidence. So if it were the case that I
18 thought that additional probative value was there and it outweighed the
19 prejudice, why wouldn't -- why shouldn't it be the order that only the Coote
20 case comes in? I.e., here's a woman who has the same kind of tearings, the
21 same kind of problems, appears to have been sexually assaulted, appears to
22 have been strangled, and it has some value, what is the -- what does the
23 Gonzalez case add in terms of proving intent?

24 I mean, how is it the case that you can draw a line there and
25 say, Well, okay, the Coote case, I can see pretty clear; I mean, this is him. I

1 mean, it's 100 percent him, and it's on the carpet. I mean, he did that one.

2 MS. LUZAICH: Well --

3 THE COURT: The Gonzalez case is him because two women and the
4 same thing, you know, theory that he saw the -- him coming out -- she saw
5 him coming out of the apartment. He's around there all day. You've got the
6 jail stuff, but nothing --

7 MS. LUZAICH: I think that the Gonzalez case is more probative as
8 well in this situation because it demonstrates the lengths to which Norman
9 Flowers will go to avoid detection. You know, in Sheila, he --

10 THE COURT: Wait a minute. That ain't in 48.045. 48.054 says it
11 comes in for proof of motive, opportunity, intent, preparation, plan,
12 knowledge, identity or absence or mistake.

13 MS. LUZAICH: Motive, motive, avoid detection. I mean, you know,
14 he rapes her --

15 THE COURT: Avoiding detection is not motive. Motive is why you
16 commit the crime. Avoiding detection is why you run to California.

17 MS. LUZAICH: If the Court thinks that, you know, just Marilee Coote
18 is more prejudicial -- or more probative and not --

19 THE COURT: We're just -- we're just talking here. I can see a whole
20 bunch of possibilities. I would like to get the right ruling. I would like to make
21 sure that Mr. Flowers has a fair trial and due process. I would like to think
22 that if there is a decision that's favorable to the State, that the Supreme Court
23 agrees with me. You know, my job is to try to apply the law in the way that
24 the law is written. So I'm just talking.

25 I can see distinctions between Coote and Gonzalez. I mean,

1 you're talking about, you know, intent on the sexual assault. Well, again, if
2 you bring in Coote, you've got, you know, similar vaginal findings. I think
3 arguably similar. You've got -- I mean, it is him. That's the guy that did it.
4 When you put it together, there isn't any doubt. You've got a similar manner
5 of death.

6 MS. LUZAICH: Right.

7 THE COURT: But then when you bring in Gonzalez, why isn't that
8 throwing gasoline on the fire where you tip the scales to the point that that is
9 extremely prejudicial without adding a lot of probative value because you can't
10 show other than by inference that he's the person that raped Gonzalez?

11 MS. LUZAICH: Well, I mean, I disagree. I think that we can show
12 circumstantial evidence is just as good as direct evidence. So I think that we
13 can show and we can prove beyond a reasonable doubt --

14 THE COURT: Well, I think you may well -- in the trial --

15 MS. LUZAICH: -- but I don't have DNA.

16 THE COURT: In the trial in Department XI, I think you may well show
17 it when you put all the stuff together and that he's in there and around and
18 getting a drink of water and by the car and all that stuff, and even though
19 they're a little bit inconsistent, what limited value the inmates have and two
20 of the same -- you know.

21 Logically, to me, if I were the trier of fact, I wouldn't have any
22 difficulty with it, but at the same time, it doesn't have the same clear-cut
23 evidentiary value that the Coote would have. And when you pile a third
24 murder on, fourth murder on, fifth murder on, each one becomes more
25 prejudicial to the Defendant in terms of getting a fair shot on Quarles.

1 MS. LUZAICH: Right. I mean, if the Court believes that it's more fair
2 to only allow Marilee Coote's incident into the Quarles case, obviously, we,
3 you know, would accept that, and that's fine.

4 THE COURT: Ms. Luzaich --

5 MS. LUZAICH: However, if they bring in consent in any way, shape
6 or form, I would submit that that allows Gonzalez.

7 THE COURT: But here's the problem. Even -- well, why? I mean,
8 again, they don't -- if you try the whole case and you bring in the neighbor on
9 Gonzalez and you bring in the inmates and you bring in all that stuff, you
10 know, you have something. But, you know, you can just bring in a detective
11 and, you know, your medical examiner and your SAINT nurse on Coote and
12 say, Hey, 50 days later, we found this woman who also has some nexus to
13 this Defendant, you know, raped, and we can tell that by the -- we've got the
14 DNA there that's 100 percent, and she was strangled.

15 MR. PATRICK: Judge, I think that's a little -- a little bit of that goes
16 to the proffer that Mr. Pike was trying to address at the beginning. When we
17 -- when we talked to the two snitches in prison, Shawnta Robinson said that
18 his whole story came word for word from George Dunlap, and he told it to the
19 police because he felt threatened by George Dunlap and that the only way
20 that George Dunlap knew anything about Norman's case was that he
21 happened to get ahold of Norman's discovery while they were in CCDC.

22 George Dunlap is a career snitch. He makes a living out of
23 getting out of trouble by snitching on other cases. I think -- you know, and I
24 think, again, maybe they put that out in the -- in the Gonzalez/Coote trial to
25 try and get a --

1 THE COURT: Yeah, but --

2 MR. PATRICK: It has no place --

3 THE COURT: I'm not -- what I'm saying is, you almost need that if
4 this came in as bad acts to prove arguably that he did the Gonzalez one. But
5 to prove that he did the Coote one, you can put the DNA lady on who's going
6 to testify anyway, you could put the coroner/medical examiner on who's going
7 to testify anyway, Nurse Ebbert and the detective, and those four, without all
8 that other crap or without even the fact that Gonzalez died may, you know,
9 establish intent, and the evidence becomes irrelevant.

10 I mean, you don't even talk about Gonzalez. You don't bring in
11 the inmates, you don't bring in any of that because it doesn't got to that, but
12 they can say, Hey, by the way, we had a very similar rape and killing. She
13 was raped. She was strangled. It's 100 percent him, and, you know, he
14 knew -- he used to date the mother of Victim Number 1, and he dated a lady
15 that was a neighbor of and installed the stereo and blah, blah, blah of Victim
16 Number 2, and you don't even get to that other stuff. Well, that certainly
17 helps them in terms of intent because you've got the similar vaginal damage,
18 and it helps them somewhat on identity because you have 100 percent
19 instead of 99.9934 percent. Where are we?

20 MR. PIKE: Well, the Court's interpretation and the concern over
21 bringing in Gonzalez, I think, is warranted, and as we're just talking through
22 this is all being learned counsel, hopefully, that if the Court is going to make a
23 decision that -- as far as identity or motive, if we open that door, then -- then
24 it would make sense to allow it --

25 THE COURT: Well, these are two different things I'm talking about

1 and the same thing.

2 MR. PIKE: Right.

3 THE COURT: One is, I'm saying I think the State wins, but it's cut off
4 at Coote, and we don't get into the jail snitches or we don't get into Gonzalez
5 and all the evidence and him hanging around. You can tie him to each of the
6 victims. You can talk about the medical vaginal evidence. You can talk about
7 the DNA, and, you know, the detective can talk about the similarities between
8 the two and go no farther. That's one way to do it, and regardless of whether
9 you open the door, don't bring in Gonzalez. I mean, if you want to talk about
10 consent, tee it up.

11 The other thing I was talking about is, there is another way to
12 look at it that says, okay, if it's only for intent, then if you don't dispute intent
13 and -- I mean, if you come in say, in essence, Listen, we agree that she was
14 raped, and so if you think Norman is the guy just because it's 99.9934, go
15 ahead and convict him on the rape because there's no consent here, there's
16 no need to put in those others. See what I'm saying?

17 MR. PIKE: Or -- or if the finding --

18 THE COURT: We're not -- we don't -- or I'm not suggesting there's
19 any consent here, ladies and gentlemen.

20 MR. PIKE: No, but does the finding -- without the finding being of the
21 rape, they would still have to establish the identity of the person who
22 committed the sexual assault.

23 THE COURT: Right.

24 MR. PIKE: Right. Now, the -- which is different than just saying --

25 THE COURT: I mean, what they have -- what they have on Flowers --

1 what they have on Flowers is that he used to date the mother. He's been
2 there, he knows his way around, and in a limited two-hour window, somebody
3 got in and somebody did this and got out, very likely somebody that was let in
4 because they knew the victim.

5 And, you know, it takes a little while to do this and to have sex
6 and to fill the tub and to strangle and drown somebody, and they probably
7 started right when the phone went dead, and it certainly ended before mom
8 came home two hours later, and it's a 99.9934 percent chance it was Mr.
9 Flowers, maybe, and somebody else. Maybe not. And that sort of is the
10 mirror image or the opposite of saying that only six out of any 100,000 people
11 could have done it, and, by the way, one of those happens to be the boyfriend
12 of the ex-mother.

13 MS. LUZAICH: Ex-boyfriend of the mother.

14 THE COURT: Anything else?

15 MR. PIKE: No, Your Honor.

16 THE COURT: All right. I find that as to intent and identity, the
17 evidence in the Coote case is sufficiently similar and nexus in time and
18 otherwise that it is admissible, particularly, in fact, that the DNA is 100
19 percent, and I will allow that to be admitted. As to the Gonzalez case, it is
20 excluded without the DNA. And I'm not going to try that case, and I don't
21 need the snitches, and I don't need any of that.

22 You can put on the Coote case to show intent and to show
23 identity by talking to the detective about the similarities in the case, the nurse
24 and the coroner/medical examiner about the way she died, the similarities in
25 the vaginal tearing, and the DNA profile person, and then that's as far as the

1 State is going.

2 MR. PIKE: Thank you.

3 THE COURT: There's no open the door, nothing. You can -- I mean,
4 since I've made that ruling, you can say anything you want, Randy, in terms
5 of consent. It isn't going to stretch it, but they can do it whether you do it or
6 not.

7 MR. PIKE: All right. Thank you.

8 THE COURT: All right. Motions.

9 MR. PIKE: We brought a motion in limine to admit the evidence of the
10 Crimestopper's report. The State has filed an opposition in reference to that.

11 THE COURT: Yeah, you did. Actually, when you filed it originally, I
12 was kind of intrigued because I thought if it was a report from the victim and
13 she indicated some -- you know, some genuine afraidness of another
14 individual, that you might come within it, but after they -- and I had written
15 down, I need to see the report. Then Ms. Luzaich submitted something, and I
16 had the report, and this is an anonymous third party that had -- I mean --

17 MR. PIKE: It's a hearsay statement from her to an anonymous third
18 party that we can't find.

19 THE COURT: Yeah, but the theory of the catchall in hearsay is
20 inherent credibility, that you find inherently credible something that is
21 otherwise hearsay, and it's fair to bring it in. I mean, somebody is calling the
22 police and talking to them directly, and they give this information to the
23 police. I thought that had some real logic to it, and I might've given it to you.
24 I didn't need to see the report. But an anonymous call has zero inherent
25 credibility. Has zero.

1 Now, they did eliminate Mr. Robert Lewis. As a result of your
2 questioning today, I'm sure by the time we get to trial, they will have also
3 eliminated Mr. Anthony Lewis. But I can't grant that motion after Ms. Luzaich
4 showed me the report because it just isn't what it seemed to me when I read
5 your motion. It is some anonymous call. That couldn't be far from -- any
6 farther from inherently credible. Okay. Now, you've got your motion on
7 the DNA evidence. I've read it and understand --

8 MS. LUZAICH: You know, that was never served on us. I pulled it off
9 the computer this morning, but --

10 THE COURT: That's all right.

11 MR. PIKE: I did. I think the testimony that we had here just indicated
12 the nature of the way in which they took the sample, how she ran it, and she
13 put everything together. And, in all candor, the Court, as I'm required to do,
14 there was -- after I finished and filed the motion, then there was a -- I got
15 notice of a ruling in California that dealt with this cold hit issue altogether.

16 THE COURT: And I think it would be different -- it may be different;
17 maybe not -- but arguably different if all they did was run it, get the cold hit
18 and say, That's our thing. It's like running somebody through AFIS and you're
19 getting a name. But what happens is, that gives them a place to go.

20 Then they actually do the sample from the suspect against the --
21 against the unknown sample just like they take a print from AFIS, and they
22 put it against the exemplar, so the testing is really the same. And it's kind of
23 a like chicken and egg. If you have testing and then it comes up with
24 Defendant X, and Defendant X lives in Hoboken, New Jersey, has never been
25 to Vegas and has no nexus with anything, then you've got to say something

1 is wrong with this testing. But when you do testing and it comes up with a
2 defendant who was at the scene on the day in questioning, off and on,
3 hanging around, acting unusual, knows both of these women, da, da, da, da,
4 da, da, what's the difference whether you have that and then examine his
5 DNA and compare it directly or you examine his DNA, compare it directly, and
6 you have it. I don't think there's any difference. I think that you might be
7 right if they just did the one thing, but that's not what happened here.

8 MR. PIKE: No. And we've got the testimony, and she actually offered
9 the testimony that it could not exclude on the one part where they could
10 match the other one.

11 THE COURT: Right.

12 MR. PIKE: So she made the distinction, and I think so long as she
13 sticks to that distinction, I disagree. Statistically, I don't think she should be
14 able to come in and offer the statistics on the second one because there is the
15 mixture, but she can say it did not exclude him.

16 THE COURT: I thought about -- I thought about that. And when I'm
17 thinking about that, here's what occurs to me. What happens when a victim
18 of a bar robbery goes to a physical lineup and says, It's the guy in the yellow
19 tie; I'm 90 percent sure? Does that mean that they can't testify because
20 they're not 100 percent sure? I mean, it seems to me it goes to weight, and
21 both sides argue.

22 What if she says, Well, you know, it's -- you know, I'd bet my
23 house that it's Norman Flowers, but I'm not allowed to as a scientist say that
24 it is Norman Flowers. They're 99.9934 percent of the people that are
25 excluded, so there aren't very many. And you can say, so, okay, if we have a

1 population of, you know, 10,000 people in prison, there's going to be at least
2 five or six people in the prison that are going to potentially be the same as
3 them, and, you know, I think it just goes to weight.

4 I mean, I think that's what you can do, just like if somebody
5 says, It's the guy in the yellow tie versus somebody saying, It's the guy in the
6 yellow tie; I'm 90 percent sure of that. I think -- I think when you're getting
7 into that category, it doesn't become excluded as a matter of law. It's just
8 becomes a matter of weight, and you've got some ammunition, and Ms.
9 Weckerly has got some ammunition.

10 MR. PIKE: But -- and she's relying upon a database of which she
11 has received some information about, but doesn't have any personal
12 knowledge about, so --

13 THE COURT: But you can -- you can apply this statistical number to
14 any database. In other words, you can say, Okay, if we have a million people,
15 there could be X that would be this. I mean, to me if I were defending him,
16 I'd get -- I mean, there's ten, 12,000 people in prison. I'd say, Well, okay, so
17 six people in the prison system. You know, I mean, that's your number. But
18 it doesn't matter what database you apply it to. That's still the percentage of
19 likelihood that it's Norman Flowers is pretty damn high because most of the
20 people in that database will be excluded.

21 If you apply it to 100 people, it's Norman. You know, if you
22 apply it to 1,000 people, there's -- it's still Norman. If you apply it to 10,000
23 people, now it's still Norman. But if you apply it 100,000 people, there might
24 be another four or five that it could be. If you apply it to a million, it's starting
25 to get up there to 40 or 50, but there's a million people, and those 40 or 50,

1 some of them might be living in China. Some might be living in India, you
2 know.

3 Anyway, you're a good lawyer. You know how to take what
4 you've got, but it just has to go to weight. It can't be the case that you can
5 say that that is so inherently unreliable that it doesn't have value, that a jury
6 can't hear it and that you can't argue it, and a jury can't make it just like an
7 identification where they're percentage sure. It's just got to be the case.

8 MR. PIKE: Thank you, Your Honor.

9 THE COURT: Okay.

10 MS. LUZAICH: Thank you.

11 THE COURT: So we're still dancing; right? We're thinking we're
12 going?

13 MS. LUZAICH: Oh, yeah.

14 MR. PIKE: Yes.

15 THE COURT: And how long is it going to take?

16 MS. WECKERLY: A week.

17 MS. LUZAICH: A week.

18 THE COURT: A week. And that includes penalty?

19 MS. LUZAICH: Well, no.

20 MR. PIKE: No.

21 MS. WECKERLY: Probably a week and a day then.

22 THE COURT: A week and a day? Do you have a lot of penalty
23 evidence or not so much?

24 MS. WECKERLY: Oh, yeah.

25 MS. LUZAICH: Yeah.

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THE COURT: You do?

MS. LUZAICH: Uh-huh.

THE COURT: Norman's a bad guy?

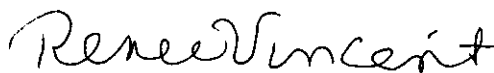
MS. WECKERLY: Yeah.

MS. LUZAICH: A lot of priors.

THE COURT: Okay.

[Proceeding concluded at 10:30 a.m.]

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



RENEE VINCENT, Transcriber
District Court, Dept. VII
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IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 68140

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Oct 05 2015 01:10 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

NORMAN KEITH FLOWERS

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Elizabeth Gonzalez, District Court Judge
District Court Case No. C228755

APPENDIX TO APPELLANT'S OPENING BRIEF

VOLUME I

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VI	Opposition to Defendant's Motion for New Trial, Filed March 9, 2010	AA1155
I	Opposition to State's Motion for Clarification of Court's Ruling, Filed November 6, 2007	AA0165

I	Opposition to State's Motion to Consolidate, Filed January 2, 2007	AA0104
VI	Order, Filed September 17, 2012	AA1204
VI	Order, Filed February 26, 2013	AA1270
V	Order Denying Defendant's Motion for New Trial, Filed November 18, 2008	AA1035
VI	Order Denying Defendant's Motion for New Trial, Filed April 24, 2010	AA1168
VI	Petition for Writ of Habeas Corpus (Post-Conviction), Filed October 9, 2012	AA1205
V	Recorder's Transcript of Hearing Re: Sentencing, Held January 13, 2009	AA1037
I	Recorder's Transcript of Petrocelli Hearing and All Pending Motions, Held August 1, 2008	AA0185
V	Recorder's Transcript of State's Request, Clarification On the Sentence, Held January 29, 2009	AA1048
VII	Reply to State's Response and Motion to Dismiss Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), Filed November 10, 2014	AA1349
II	Reporter's Transcript Jury Voir Dire Volume 1-B, Held, October 15, 2008	AA0308
II	Reporter's Transcript of Jury Trial Volume 2-A, Held, October 16, 2008	AA0365
III	Reporter's Transcript of Jury Trial Volume 2-B, Held, October 16, 2008	AA0411

III	Reporter's Transcript of Jury Trial Volume 3-B, Held October 17, 2008 ¹	AA0538
III	Reporter's Transcript of Jury Trial Volume 4-A, Held, October 20, 2008	AA0577
IV	Reporter's Transcript of Jury Trial Volume 5, Held, October 21, 2008	AA708
IV	Reporter's Transcript of Penalty Hearing Volume 5-B, Held October 23, 2008	AA0811
V	Reporter's Transcript of Penalty Phase Volume 7-A, Held October 23, 2008	AA0856
V	Reporter's Transcript of Penalty Phase Volume 8, Held October 24, 2008	AA0925
I	Reporter's Transcript of Proceedings, Held April 13, 2007	AA0148
I	Reporter's Transcript of Proceedings Volume 1, Held December 5, 2006	AA0001
I	Reporter's Transcript of Proceedings Volume 2, Held December 13, 2006	AA0043
II	Reporter's Transcript of Proceedings Volume 1-A, Held, October 15, 2008	AA0253
III	Reporter's Transcript of Proceedings Jury Trial Volume 3-B, Held, October 17, 2008	AA0492
IV	Reporter's Transcript of Proceedings Jury Trial Volume 4-B, Held October 20, 2008	AA0623

¹ Although there appear to be two (2) transcripts labeled "3-B," one transcript is the October 17, 2008 morning session, and the second "3-B" transcript is the afternoon session. The court reporter labeled both sets of for October 17, 2008, as "3-B."

IV	Reporter's Transcript of Verdict Volume 6 Held, October 22, 2008	AA0797
VI	Respondent's Answering Brief, Filed February 19, 2010	AA1105
V	Special Verdict Mitigating Circumstances, Filed October 24, 2008	AA0970
V	State's Opposition to Defendant's Motion for New Trial, Filed November 10, 2008	AA1023
I	State's Opposition to Defendant's Motion in Limine To Preclude Evidence of Other Bad Acts and Motion To Confirm Counsel, Filed February 2, 2007	AA0132
VI	State's Renewed Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Filed March 5, 2013	AA1273
VI	State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Filed October 30, 2012	AA1221
VII	State's Response and Motion to Dismiss Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), Filed August 25, 2014	AA1328
VII	Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), Filed July 7, 2014	AA1293
I	Transcript of Proceeding, Held November 15, 2007	AA0170
VII	Transcript of Proceedings, Held April 29, 2015	AA1369
IV	Verdict, Filed October 22, 2008	AA0809
V	Verdict, Filed October 24, 2008	AA0972

V	Verdict(s) Submitted to Jury but Returned Unsigned, Filed October 24, 2008	AA0973
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 5, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ Rachael Stewart
An Employee of Oronoz & Ericsson LLC

EIGHTH JUDICIAL DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

ORIGINAL

2007 JAN -8 A 10:05

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID
DISTRICT COURT

Shirley B. D. Jones
CLERK

THE STATE OF NEVADA,

Case No. 06AGJ103X

Plaintiff,

C 228255

-vs-

NORMAN KEITH FLOWERS, aka

Norman Harold Flowers, III,
Defendant.

Taken at Las Vegas, Nevada

Tuesday, December 5, 2006

1:30 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 1

Reported by: Danette L. Antonacci, C.C.R. No. 222

1 GRAND JURORS PRESENT ON DECEMBER 5, 2006:

2
3 MARY JANE BURKHALTER, Foreman

4 DAREL BLUM, Deputy Foreman

5 KERRY DICESARE, Secretary

6 CASSANDRA MORISHITA, Assistant Secretary

7 GARY BUTCHER

8 MARY EVERBACK

9 PHILLIP FISCHBEIN

10 BILL FRITZ

11 ERNEST GOLLIHER

12 GLENN KENNARD

13 JOHN KREMER

14 PAUL KURZNOWSKI

15 KAY LONG

16 SHARRON NORTINGTON

17 ANNETTE TSOULOGIANNIS

18
19 Also present at the request of the Grand Jury:
20 Pamela Weckerly,
21 Deputy District Attorney

22 Lisa Luzaich,
23 Chief Deputy District Attorney
24
25

INDEX OF WITNESSESExamined

LARY SIMMS	7
QUNISE TONEY	13
DEBRA QUARLES	20
GEORGE SHERWOOD	31

INDEX OF EXHIBITSGrand Jury ExhibitsIdentified

1 - proposed Indictment

5

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 5, 2006

2 * * * * *

3
4 DANETTE L. ANTONACCI,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 MS. WECKERLY: Good afternoon. My name is Pam
10 Weckerly, my co-counsel is Lisa Luzaich, we are here to
11 present the State of Nevada versus Norman Flowers. That's
12 Grand Jury case number 06AGJ103X. I believe you all have a
13 copy of the proposed Indictment which we can mark as
14 Exhibit 1. We'll be continuing the presentment of this
15 case probably next week so we won't be asking you to
16 deliberate on this case this afternoon.

17 In this proposed Indictment the State
18 has charged burglary, murder, sexual assault and robbery.
19 It's my understanding that this Grand Jury has been
20 instructed on those crimes probably several times. Next
21 week we'll read you the instructions just before we ask you
22 to deliberate, but right now we'll start with the
23 witnesses. The first witness is Dr. Simms.

24 THE FOREPERSON: Please remain standing and
25 raise your right hand.

1 Do you solemnly swear that the testimony
2 you are about to give upon the investigation now pending
3 before this Grand Jury shall be the truth, the whole truth,
4 and nothing but the truth, so help you God?

5 DR. SIMMS: I do.

6 THE FOREPERSON: Please be seated.

7 You are advised that you are here today
8 to give testimony in an investigation pertaining to the
9 offenses of burglary, murder, sexual assault and robbery,
10 involving Norman Flowers. Do you understand this
11 advisement?

12 DR. SIMMS: Yes.

13 THE FOREPERSON: Would you please state your
14 first and last name and spell both for the record.

15 DR. SIMMS: My first name is Lary, L-a-r-y, my
16 last name is Simms, S-i-m-m-s.

17 THE FOREPERSON: Thank you.

18
19 LARY SIMMS,
20 having been first duly sworn by the Foreperson of the Grand
21 Jury to tell the truth, the whole truth, and nothing but
22 the truth, testified as follows:

23
24 ///

25 ///

EXAMINATION

BY MS. WECKERLY:

Q And how are you employed, sir?

A I'm a forensic pathologist at the Clark County Coroner's Office.

Q And Dr. Simms, can you briefly explain your educational and professional background that allows you to work in that capacity?

A Well, I went to medical school and I've been in medicine close to twenty-eight years, been doing autopsies for about fifteen. I went through special training in pathology and also specialized training in forensic pathology. I'm board certified in anatomic pathology, clinical pathology and forensic pathology and I'm licensed in Nevada.

Q And I take it from that description you've testified before as an expert in the Eighth Judicial District Court?

A That's correct.

Q And that would be in the area of forensic pathology?

A Correct.

Q Doctor, in preparation for your testimony this afternoon, did you review an autopsy report that was dated

1 March the 25th, 2005, authored by Dr. Ronald Knobloch?

2 A Yes.

3 Q And who is he?

4 A He was a forensic pathologist that was at our
5 office for, I think he was there about eighteen months and
6 he's, he went back into training for hemato-pathology and
7 he's working at Sunrise Hospital.

8 Q Is it the normal practice at the Clark County
9 Coroner's Office for doctors to prepare a report once they
10 conduct an autopsy of an individual?

11 A Yes.

12 Q And are photographs also taken in conjunction
13 with the preparation of the report?

14 A Yes.

15 Q And have you reviewed the report and
16 photographs in preparation for your testimony today?

17 A Yes.

18 Q And that would be of a decedent identified in
19 the report as Sheila Marie Quarles?

20 A Yes.

21 Q Doctor, what were Dr. Knobloch's findings with
22 regard to the external examination, what injuries were
23 observed?

24 A Well, he found a number of hemorrhages in her
25 eyes, there was also some hemorrhages in the lower lip,

1 there were a number of vaginal injuries, there was a
2 contusion on her left abdomen, there was an abrasion on the
3 back of her left knee, is all the external findings.

4 Q What were his findings after the internal
5 examination?

6 A He found some hemorrhages on the back of the
7 head on the right side, behind the voice box there were
8 hemorrhages, and around the voice box and muscles on the
9 neck there were a number of hemorrhages. And also in the
10 muscles at the back of the neck, back of the spinal cord,
11 there was a large area of hemorrhage.

12 Q Concentrating on the injuries that I think you
13 described as sort of being in the neck and actually the
14 head area, when you see findings such as those, what is
15 that indicative of?

16 A Well, a pattern of hemorrhages in the eyes
17 along with multiple hemorrhages in the neck is indicative
18 of strangulation.

19 Q Are you able to tell if it's manual
20 strangulation versus a ligature or is that, you're not able
21 to tell that from reviewing this report?

22 A There was no ligature impressions so it wasn't
23 that. There weren't any external fingernail injuries or
24 oval bruises on the neck, so whether it was actually using
25 the hands or whether it was using an arm bar or a chokehold

1 or a knee or things like that, there was definitely
2 compression on the neck but I can't really go any farther
3 than that.

4 Q Okay. And the injuries that you're describing
5 in the head and the neck area, would they appear from your
6 review to have been contemporaneous with each other?

7 A Definitely.

8 Q And at or near time of death?

9 A Definitely.

10 Q You also mentioned I think that there were
11 some injuries to this victim's genital or vaginal area.

12 A Yes.

13 Q Can you describe what those were and what that
14 is indicative of?

15 A There were several lacerations in the back of
16 the vagina and there was hemorrhage in the picture that I
17 reviewed and that's indicative of a violent sexual assault.

18 Q And in your review of the picture, coupled
19 with the description in the report, are you able to make
20 any kind of determination if the sexual assault was
21 postmortem or ante mortem?

22 A Well, the photograph showed hemorrhage so that
23 would indicate it was ante mortem.

24 Q Before death?

25 A Before death.

Q Were there any other significant findings by Dr. Knobloch in terms of the cause of death of this individual?

A He found a frothy fluid in the airway which is a soft sign of drowning and I think you put that together with the way that the decedent was found and also believed that drowning was a major cause of death.

Q And what was, what were Dr. Knobloch's conclusions regarding the cause of death?

A He stated that the cause of death was drowning and that strangulation was a significant contributing condition.

Q Did he reach a conclusion regarding the manner of death?

A Yes, homicide.

Q Based on your review of the photographs and the report, do you concur with those conclusions?

A Definitely.

MS. WECKERLY: Thank you, sir.

I have no other questions of this witness.

THE FOREPERSON: Questions?

By law these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements

presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a gross misdemeanor punishable by a year in the Clark County Detention Center and a \$2,000 fine. In addition, you may be held in contempt of court punishable by an additional \$500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: Yes.

THE FOREPERSON: Thank you. You are excused.

MS. LUZAICH: The State's next witness is going to be Qunise Toney.

THE FOREPERSON: Please remain standing, raise your right hand.

Do you solemnly swear the testimony you are about to give upon this investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

MS. TONEY: Yes.

THE FOREPERSON: Please be seated.

You are advised that you are here today to give testimony in an investigation pertaining to the offenses of burglary, murder, sexual assault and robbery,

1 involving Norman Flowers. Do you understand this
2 advisement?

3 MS. TONEY: Yes.

4 THE FOREPERSON: Would you please state your
5 first and last name and spell both for the record.

6 MS. TONEY: Qunise Toney. Q-u-n-i-s-e, Toney,
7 T-o-n-e-y.

8 THE FOREPERSON: Thank you.

9
10 QUNISE TONEY,
11 having been first duly sworn by the Foreperson of the Grand
12 Jury to tell the truth, the whole truth, and nothing but
13 the truth, testified as follows:

14
15 EXAMINATION

16
17 BY MS. LUZAICH:

18 Q Qunise, do you know a lady named Sheila
19 Quarles?

20 A I do.

21 Q How did you know Sheila?

22 A We were dating.

23 Q And do you know for about how long you knew
24 Sheila?

25 A A year.

Q For about how long were you in a dating relationship?

A About seven, eight months.

Q Now did her mom know as far as you know that you were in a dating relationship?

A Yeah.

Q Was her mom --

A Well, I don't know. I just knew she used to always be with me so I'm not sure she actually knew.

Q Was her mother not very happy with the sense of your relationship?

A At first, no.

Q Okay. It took her a while to understand?

A Right.

Q And I'm going to ask you specifically, on March 23rd of 2005, a Wednesday, were you with Sheila?

A That evening, yes, I was.

Q Had you worked earlier that day, Wednesday?

A Yes.

Q What do you do?

A Paratransit, bus driver.

Q And about what hours do you work back then, did you work?

A If I can remember it was like six to six.

Q Six in the morning to --

1 A To six at night.

2 Q On Wednesday, March 23, 2005, did you pick
3 Sheila up when you finished work?

4 A Yes.

5 Q Where did you pick her up?

6 A At her mother's house.

7 Q Is that located at 1001 Pecos?

8 A I believe, yes.

9 Q Okay. And when you say her mother's house, is
10 that actually an apartment?

11 A Correct.

12 Q Did you bring Sheila back to your home?

13 A Yes.

14 Q And were you and Sheila together all night
15 that Wednesday night?

16 A Yes.

17 Q And then did you take Sheila somewhere on
18 Thursday?

19 A To her mother's house in the morning.

20 Q About what time was it Thursday morning?

21 A I don't know, 5:30, something like that.

22 Q 5:30, six o'clock maybe?

23 A Yeah.

24 Q Was that because you were going to work?

25 A Correct.

3 1 Q Did Sheila have something going on that day?

2 A Not that I know of.

3 Q That was a bad question. Did she have an

4 issue?

5 A Like --

6 Q Was she working?

7 A She was not at work at the time.

8 Q Why was she not working?

9 A She was sick, had a bladder infection I

10 believe.

11 Q Did she work Wednesday the 24th, or Thursday?

12 A No.

13 Q And was she planning on working Thursday the

14 25th -- 24th, sorry, March 24th of 2005?

15 A No.

16 Q When you dropped her off at home, at her

17 mother's home, did you then go to work?

18 A Correct.

19 Q And while you were at work did you have

20 occasion to speak with Sheila throughout the course of the

21 day?

22 A Yes.

23 Q How did you do that?

24 A Cell phone.

25 Q Did you talk to her one time or more than one

1 time?

2 A Periodically, more than once.

3 Q Okay. And as you were with her Wednesday
4 night, what was her mood?

5 A She was fine, she was happy. We really didn't
6 see each other because she was sick so she was at her mom's
7 house.

8 Q Thursday when you dropped her off how was her
9 mood?

10 A She was sleepy somewhat. She was fine.

11 Q She wasn't depressed?

12 A No.

13 Q Sad, nothing like that?

14 A No.

15 Q And when you spoke to her throughout the
16 course of the day, what time was it the last time you
17 actually spoke with Sheila on Thursday, March 24th?

18 A Around my lunch break, about say twelve
19 something to one.

20 Q Noonish?

21 A Noon.

22 Q As opposed to midnight?

23 A Right.

24 Q How did she sound when you talked to her?

25 A Happy.

1 Q Did you hear anything in the background?

2 A Music.

3 Q Okay. And did you find out later that day
4 that something had happened to Sheila?

5 A Yes, I did.

6 Q And what did you find out had happened to her?

7 A She got killed.

8 Q Okay. Had you, after you found that out did
9 you have occasion to talk to police officers a couple of
10 times?

11 A Yes.

12 Q And while you were talking to police officers
13 did they ask you for a sample of your DNA, like saliva?

14 A Yes.

15 Q Did you give it to them?

16 A Yes.

17 Q How did they do that?

18 A Swab with, against my jaws.

19 Q Like a Q-tip in your mouth kind of thing?

20 A Yeah.

21 MS. LUZAICH: Okay. Thank you.

22 I have no more questions of Qunise.
23 Anybody?

24 THE FOREPERSON: Any questions?

25 By law these proceedings are secret and

3 1 you are prohibited from disclosing to anyone anything that
2 has transpired before us, including evidence and statements
3 presented to the Grand Jury, any event occurring or
4 statement made in the presence of the Grand Jury, and
5 information obtained by the Grand Jury.

6 Failure to comply with this admonition
7 is a gross misdemeanor punishable by a year in the Clark
8 County Detention Center and a \$2,000 fine. In addition,
9 you may be held in contempt of court punishable by an
10 additional \$500 fine and 25 days in the Clark County
11 Detention Center.

12 Do you understand this admonition?

13 THE WITNESS: Yes.

14 THE FOREPERSON: Thank you. You are excused.

15 MS. LUZAICH: Thank you Qunise.

16 THE FOREPERSON: Please remain standing and
17 raise your right hand.

18 Do you solemnly swear the testimony you
19 are about to give upon the investigation now pending before
20 this Grand Jury shall be the truth, the whole truth, and
21 nothing but the truth, so help you God?

22 MS. D. QUARLES: Yes.

23 THE FOREPERSON: Please be seated.

24 You are advised that you are here today
25 to give testimony in an investigation pertaining to the

1 offenses of burglary, murder, sexual assault and robbery,
2 involving Norman Flowers. Do you understand this
3 advisement?

4 MS. D. QUARLES: Yes.

5 THE FOREPERSON: Would you please state your
6 first and last name and spell both for the record.

7 MS. D. QUARLES: Debra, D-e-b-r-a, last name
8 Quarles, Q-u-a-r-l-e-s.

9 THE FOREPERSON: Thank you.

10

11

DEBRA QUARLES,

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

15

16

EXAMINATION

17

18 BY MS. WECKERLY:

19 Q Miss Quarles, you are the mother of Sheila
20 Quarles?

21 A Yes.

22 Q Back in March, like March the 24th of 2005,
23 where were you living?

24 A We were living at 1001 North Pecos, apartment
25 63.

Q And did your daughter Sheila live there as well?

A Yes.

Q Anybody else live in that apartment with you two?

A Yeah, my other children.

Q Okay. And what are their names?

A I have Marquid, M-a-r-q-u-i-d, Devrick, D-e-v-r-i-c-k, Miracle, M-i-r-a-c-l-e, and Xavier, X-a-v-i-e-r.

Q And all of you lived in that apartment together?

A Yes.

Q And how old was Sheila at that time?

A Eighteen.

Q On March the 24th of 2005, did you see your daughter in the morning?

A Yes.

Q Had she stayed the night in the apartment or had she stayed elsewhere?

A She stayed elsewhere.

Q So she comes home in the morning of the 24th?

A Yes.

Q Do you recall about what time it was that she came home?

1 A Maybe like 6:30 because I was getting ready,
2 we were in passing of each other, she was knocking at the
3 door and I let her in, she ran to the bathroom.

4 Q You were getting ready to go to work?

5 A Yes.

6 Q Were you aware at that time if your daughter
7 had been sick or if she had been to the doctor recently?

8 A Yeah, she had been to the doctor. She was
9 sick. He said she had a kidney or a bladder infection and
10 she was on antibiotics.

11 Q Sheila comes home about 6:30 and you leave for
12 work sometime after that?

13 A Uh-huh.

14 Q Is that yes?

15 A Yes.

16 Q While you were at work did you ever
17 communicate with Sheila?

18 A Yes, I talked to her maybe like five or six
19 times because we did that daily, talked all the time on the
20 phone.

21 Q And that would be by phone?

22 A Yeah.

23 Q When was the last time that you think you
24 talked to her on the 24th?

25 A Maybe at, maybe going onto twelve o'clock or

1 around that time. And when I was talking to her the phone
2 went dead and when it went dead I'm thinking the batteries
3 went out and I called her on the cell phone, no answer, I
4 called the phone back and no answer, I'm thinking maybe the
5 phone is just dead.

6 Q As you were talking the phone just went out?

7 A Yes.

8 Q You said that was at about noon or so on the
9 24th?

10 A Yes.

11 Q And that was the last time you spoke to her?

12 A Yes.

13 Q Did you come home from work?

14 A Yes.

15 Q That night or that --

16 A That evening.

17 Q What time was it?

18 A Maybe about three something, maybe 3:10, 3:15,
19 because I only work right up the street.

20 Q In the afternoon I take it?

21 A Yes.

22 Q When you got home did you have to unlock
23 the --

24 A No.

25 Q -- the front door? It was open?

4 1 A Yes.

2 Q And what happened?

3 A It was closed but I had to turn it to get in.

4 Q The door was closed but you didn't have to

5 unlock it with a key?

6 A Right.

7 Q What happened as you entered your residence?

8 A When I went in the house I called her name,

9 because I called her Pooka, Pooka, no answer, but I had

10 already called her prior to that outside for her to help me

11 with the bags I had. So a neighbor was looking out

12 upstairs, I asked him to come help with me the bags and he

13 goes yeah.

14 Q Let me slow you down a little bit. You called

15 her by the nickname --

16 A Pooka.

17 Q How do you spell that?

18 A P-o-o-k-a.

19 Q So when you came home you had some bags and

20 packages with you?

21 A Uh-huh.

22 Q Is that yes?

23 A Yes.

24 Q And you open the door and you called her name?

25 A Yeah.

1 Q Did you get any response?

2 A No.

3 Q And you see a neighbor where?

4 A When I, the parking lot is right here in front
5 of my apartments, when I look out to the left, he stayed
6 upstairs, and I asked him, can you help me with my bags,
7 and he said yes, he came downstairs, he got some of the
8 bags, he walked behind me, I take, open the door, go in, I
9 said Pooka, no answer. So I sit the bags to my right which
10 when you go around the corner I had something like a little
11 wet bag, I set the bags up there, he set the bags up there,
12 he's standing in there, I'm like Pooka, nobody. I look
13 over to my left and it's just a blank wall and I'm like
14 something missing from over there, I'm talking to him
15 because he's still standing in my house.

16 Q You're talking to your neighbor?

17 A Yeah. I'm like something missing from over
18 there and I'm looking and I'm like somebody stole my
19 stereo.

20 Q Now explain that. What's this stereo that
21 you're talking about that was missing?

22 A I had just purchased a stereo maybe like,
23 maybe three days to a week. I had a stereo, it was, if you
24 just look at it it looks like a computer facing, but it was
25 about this big, about that tall, but when you pushed the

1 power button it lit up blue, and I had three disks in it,
2 three disk player.

3 Q You said about this big and about this tall.
4 For the record, because we're taking down the words you
5 say, when you say this big, are you talking about eighteen
6 inches or two feet?

7 A Yeah.

8 Q By what dimension?

9 A It might have been about eighteen and
10 eighteen.

11 Q Okay. And that's the actual stereo itself?

12 A That's the stereo itself. And then it came
13 down onto a stand, it had like a stand under it and the
14 legs went out like in a V.

15 Q Were there speakers?

16 A Yeah, it was two speakers. And the stereo was
17 glass, like in the front it had glass doors, when you push
18 it they automatically open back, and it has speakers. The
19 speakers probably was like two feet tall because I had them
20 sitting up on something and they also had the same stand up
21 under them that matched the stereo itself.

22 Q A V-shaped stand?

23 A Uh-huh.

24 Q Is that yes?

25 A Yes.

5 1 Q And this stereo and the speakers were missing,
2 you noticed that?

3 A Right, right off.

4 Q Okay. After you noticed that the stereo was
5 missing, what did you do next?

6 A I went around to my room, took my shoes off,
7 and I could hear water dripping, drip, drip, so, but the
8 bathroom door is closed, I go to open the door and when I
9 open the door I could feel moisture, I'm thinking maybe my
10 baby was here and she left because I could still feel the
11 moisture from the shower or whatever, so I pull the shower
12 curtain back to turn off the water and I found my baby.

13 Q I know this is hard, where was your daughter?

14 A In the tub of hot water.

15 Q In the tub of hot water. Was she face up?

16 A She was like this.

17 Q And when you say like this --

18 A Face up.

19 Q Face up?

20 A Yes.

21 Q Leaning back?

22 A Yes.

23 Q Was her head out of the water?

24 A Yes.

25 Q Could you tell like how far the water went up

5
1 on her body?

2 A Up here, because she was short.

3 Q It went up above her chest?

4 A Uh-huh. Yes.

5 Q And did she respond when you called her name?

6 A No. No.

7 Q What did you do then?

8 A I shook her, Pooka, and when I shook her she
9 went all the way over to the side of the tub, and the
10 neighbor was still in there and I asked him can you please
11 come help me get her out of the water. He came in there
12 and helped me.

13 Q Did you two get her out of the water?

14 Is that yes?

15 A Yes.

16 Q And once you two got her out of the water what
17 did you do next?

18 A I ran outside and his sister, she called the
19 paramedics. Another neighbor.

20 Q And after, I assume the police arrived at some
21 point after that?

22 A And I put a dress like over her.

23 Q You put something on to cover her?

24 A Yes.

25 Q Before the police got there?

1 A Yes.

2 Q And they got there and you gave them the
3 information that you had talked to her during the day and
4 that sort of thing?

5 A Yes.

6 MS. WECKERLY: Thank you.

7 I have no other questions of this
8 witness.

9 THE FOREPERSON: By law these proceedings are
10 secret and you are prohibited from disclosing to anyone
11 anything that has transpired before us, including evidence
12 and statements presented to the Grand Jury, any event
13 occurring or statement made in the presence of the Grand
14 Jury, and information obtained by the Grand Jury.

15 Failure to comply with this admonition
16 is a gross misdemeanor punishable by a year in the Clark
17 County Detention Center and a \$2,000 fine. In addition,
18 you may be held in contempt of court punishable by an
19 additional \$500 fine and 25 days in the Clark County
20 Detention Center.

21 Do you understand this admonition?

22 THE WITNESS: Yes.

23 THE FOREPERSON: Thank you. You are excused.

24 THE WITNESS: Thank you.

25 MS. LUZAICH: The State is also going to call

1 Detective Sherwood.

2 THE FOREPERSON: Please raise your right hand.

3 You do solemnly swear that the testimony
4 you are about to give upon the investigation now pending
5 before this Grand Jury shall be the truth, the whole truth,
6 and nothing but the truth, so help you God?

7 MR. SHERWOOD: I do.

8 THE FOREPERSON: Please be seated.

9 You are advised that you are here today
10 to give testimony in an investigation pertaining to the
11 offenses of burglary, murder, sexual assault and robbery,
12 involving Norman Flowers. Do you understand this
13 advisement?

14 MR. SHERWOOD: Yes.

15 THE FOREPERSON: Would you please state your
16 first and last name and spell both for the record.

17 MR. SHERWOOD: George Sherwood. G-e-o-r-g-e,
18 S-h-e-r-w-o-o-d.

19 THE FOREPERSON: Thank you.

20

21 GEORGE SHERWOOD,

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

25

EXAMINATION

BY MS. LUZAICH:

Q Sir, are you a police officer with the Las Vegas Metropolitan Police Department?

A Yes, I am.

Q How long have you been with Metro?

A Just under eighteen years.

Q Where are you currently assigned?

A To the homicide section.

Q How long have you been in homicide?

A Approximately five and a half years.

Q And I'm going to direct your attention specifically to March 24th of 2005. Were you assigned to investigate a death at 1001 North Pecos, apartment number 63?

A Yes, I was.

Q Is that here in Las Vegas, Clark County, Nevada?

A It is.

Q And did you actually go to the scene?

A Yes, I did.

Q Did you go alone or did you go with others?

A I went with my teammates which consists of approximately five other detectives.

5
6
1 Q And is that the normal course of how an
2 investigation might go involving a homicide?

3 A Yes, it is.

4 Q Is that because some people need to
5 investigate the scene and others need to interview
6 witnesses, things of that nature?

7 A That's correct.

8 Q And when you went there who was already
9 present?

10 A When I arrived there initially patrol was
11 already present as were a couple of my teammates who had
12 beat me to the location.

13 Q And when you say patrol was present, do they
14 get there and put up crime scene tape so that other people
15 won't come in and basically mess up your scene?

16 A Yeah, they're the first responders. They
17 handle the initial call for service, they respond to the
18 location, determine that it's special circumstances
19 surrounding the, in this case the death that occurred, and
20 then notified the homicide section which contacts each
21 detective individually and send us enroute to the specific
22 location.

23 Q And when you got there and went inside, did
24 you see a young lady that you came to know was Sheila
25 Quarles?

1 A Yes, I did.

2 Q Where was she located when you went in?

3 A She was located in the bathroom area with her
4 head what would be to the west and her feet basically
5 hanging over the bathtub to the east.

6 Q Okay. East west confuses me. So was her,
7 like the back of her body, the head up to here but on the
8 floor, and then her legs hanging over the tub?

9 A She was laying on her back with her head
10 closest to the bathroom entry door.

11 Q Was there anything on her?

12 A There was a towel and a shirt that was later
13 determined was put over her by her mother upon finding her
14 deceased.

15 Q And did you also find out that her mother had
16 moved the body before you got there?

17 A Yes, I did.

18 Q And what about the tub, was there water in the
19 tub still when you got there?

20 A There was water in the tub which was cool to
21 the touch. There was a wash rag which was being used as a
22 stopper in the tub. There was an additional wash rag,
23 yellow bandana and small container of lotion present in the
24 tub.

25 Q And about what time was it that you arrived

1 and felt the water cool to the touch?

2 A I was dispatched at 1510 hours which is 3:10
3 p.m. and arrived at 3:38 p.m.

4 Q Was it your understanding that it had been
5 awhile after her mom got there and found her before you
6 arrived?

7 A Yes.

8 Q Did you walk around the apartment to determine
9 what if anything was awry?

10 A Yes.

11 Q Did you do that with her mom?

12 A At the conclusion of my scene documentation I
13 did do that with the mother. We never bring anybody into
14 the scene while we're doing the scene documentation because
15 they could be a potential suspect and we don't want them to
16 see the scene as it appears to us.

17 Q And when you say you walked around to do your
18 scene documentation, did you also have a crime scene
19 analyst with you to photograph the scene?

20 A Yes, I did.

21 Q Did you cause the scene to be photographed
22 before anything other than Sheila's body was moved or
23 touched?

24 A Yes.

25 Q And that's to protect the integrity of what

1 you observed when you got there?

2 A That's correct.

3 Q Did you also look around to see whether there
4 was any type of forced entry?

5 A I did.

6 Q What did you notice?

7 A I noticed that all of the windows to the
8 apartment were closed and in the locked position. I
9 noticed that the front door to the apartment had what
10 appeared to be damage on the inside of the doorjamb. The
11 damage did not appear to be fresh. There was no paint
12 chips, there was no sawdust, anything that would indicate
13 this was something recent. So it appeared that at some
14 point perhaps the door had been knocked in but not that
15 day.

16 Q Okay. Did you find anything that would
17 indicate on that day someone had forced entry?

18 A Absolutely nothing.

19 Q Nothing on the doors, windows, nothing like
20 that?

21 A No.

22 Q Did you notice anything else or -- well, did
23 you come to find out that anything was missing?

24 A Yes.

25 Q What was that?

1 A We found out, and by we I mean myself and my
2 teammates, through our investigation, that there was a
3 recently purchased stereo by Debra Quarles which was
4 located in the northwest, or the left corner when you go
5 in, the left corner of the apartment, and it was brand new.
6 It was a three disk CD player with AM/FM radio, kind of the
7 stackable ones that you see, it was missing, the speakers
8 were missing, approximately forty CDs were missing, there
9 were a couple CDs that were obviously out of place and
10 there was some speaker wire present on the floor.

11 Q When you say obviously out of place, what do
12 you mean?

13 A We were told that the compact disks were kept
14 in a little carrier case and these were basically just kind
15 of thrown on top of the stereo, on top of the speaker which
16 housed the stereo.

17 Q In addition to documenting the scene, did you
18 cause neighbors and people in the area to be interviewed to
19 see if they had noticed anybody lurking or something of
20 that nature?

21 A Yes.

22 Q And the other detectives that were with you
23 would have done that?

24 A Yes. One of us, which in this case was
25 myself, was responsible for the scene, my teammates were

1 responsible for contacting and interviewing witnesses.

2 Q And of the people that were interviewed, was
3 there somebody that was potentially a suspect that you
4 wanted interviewed and to get a DNA sample from?

5 A Yes. Our team received information while
6 enroute to the investigation that prior to our arrival a
7 black male subject was seen loitering about the area. We
8 basically were pointed in the direction of an individual
9 named Robert Lewis who lived in the apartment complex.
10 Detective Long obtained a taped statement from Mr. Lewis
11 and a buccal swab kit.

12 Q When you say a buccal swab kit, what is that?

13 A A buccal swab kit is in this case an oral,
14 basically an oral swab that is done inside the mouth on
15 each side of the cheek and gum. It basically goes in and
16 removes cell tissues so it can be compared at a later date.

17 Q Did you also discover that Sheila Quarles was
18 having a relationship with a lady named Qunise Toney?

19 A Yes, I did.

20 Q And did you speak with her?

21 A I spoke to Qunise Toney. Actually Detective
22 Wildemann interviewed Qunise Toney at the scene and relayed
23 the information that he received from her to me. I called
24 Qunise Toney at a later date to reinterview her to confirm
25 that her story was consistent.

1 Q Okay. And was she even considered a suspect
2 at a point?

3 A She was initially considered a suspect but
4 after both interviews, she was very up-front, very honest,
5 basically everything she told us we were able to prove to
6 be correct.

7 Q You were able to corroborate things that she
8 told you?

9 A Yes.

10 Q But did you still obtain a buccal swab from
11 her throughout your, during the course of your
12 investigation?

13 A Yes, we did.

14 Q And is the reason that you obtain buccal swabs
15 from individuals so that you could compare to any DNA
16 sample that may be found on or in Sheila Quarles?

17 A That's correct.

18 Q And in fact did you attend an autopsy
19 conducted on Sheila Quarles on March 25th of 2005?

20 A Yes, I did.

21 Q During the course of the autopsy did you
22 discover that there was something going in Sheila Quarles'
23 vagina?

24 A Yes.

25 Q Did you cause a sexual assault kit to be

1 obtained, that would be swabs taken from the vaginal and
2 rectal area of Sheila Quarles?

3 A Yes, I did.

4 Q And as the detective in this case did you
5 request that those swabs be compared with Qunise Toney and
6 Robert Lewis?

7 A Yes, I did.

8 Q Did you also develop an individual by the name
9 of Norman Flowers as a suspect?

10 A Yes, I did.

11 Q And did you cause a buccal sample from Norman
12 Flowers to be compared with the swabs that were taken from
13 Sheila Quarles?

14 A Yes.

15 MS.LUZAICH: Okay. Thank you.

16 I have no more questions of the
17 detective at this time.

18 THE FOREPERSON: Questions?

19 BY A JUROR:

20 Q Did any of the swabs match up with the
21 previous buccal swabs?

22 A JUROR: She doesn't know.

23 MS. LUZAICH: I'm sorry, with all due respect
24 to the members of the Grand Jury, this is something that
25 this witness can't answer. The DNA analyst will come in

1 next week and testify.

2 A JUROR: Okay. Thank you.

3 THE FOREPERSON: By law these proceedings are
4 secret and you are prohibited from disclosing to anyone
5 anything that has transpired before us, including evidence
6 and statements presented to the Grand Jury, any event
7 occurring or statement made in the presence of the Grand
8 Jury, and information obtained by the Grand Jury.

9 Failure to comply with this admonition
10 is a gross misdemeanor punishable by a year in the Clark
11 County Detention Center and a \$2,000 fine. In addition,
12 you may be held in contempt of court punishable by an
13 additional \$500 fine and 25 days in the Clark County
14 Detention Center.

15 Do you understand this admonition?

16 THE WITNESS: Yes, I do.

17 THE FOREPERSON: Thank you. You are excused.

18 THE WITNESS: Thank you. I appreciate it.

19 MS. LUZAICH: Ladies and gentlemen, that's the
20 end of the presentment today. We'll come back next week
21 with some more witnesses and ask you to deliberate at that
22 time.

23 (Proceedings adjourned at 2:05 p.m, to
24 reconvene at a later, undetermined time.)

25 --ooOoo--

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript constitutes a
full, true and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, December 5, 2006.


Danette L. Antonacci, C.C.R. No. 222

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Transcript
(Title of Document)

C 228755

filed in District Court Case number 06A9J103X

☒ Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Danette L. Antonacci 1-2-07
Signature Date

Danette L. Antonacci
Print Name

Court reporter
Title

EIGHTH JUDICIAL DISTRICT COURT **FILED**

CLARK COUNTY, NEVADA

2007 JAN -8 A 10:06

ORIGINAL

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID
DISTRICT COURT

THE STATE OF NEVADA,

Case No. 06AGJ103X

Plaintiff,

C228755

-vs-

NORMAN KEITH FLOWERS, aka
Norman Harold Flowers, III,
Defendant.

Taken at Las Vegas, Nevada

Wednesday, December 13, 2006

8:29 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

1 GRAND JURORS PRESENT ON DECEMBER 13, 2006:

2

3 MARY JANE BURKHALTER, Foreman

4 DAREL BLUM, Deputy Foreman

5 KERRY DICESARE, Secretary

6 CASSANDRA MORISHITA, Assistant Secretary

7 GARY BUTCHER

8 MARY EVERBACK

9 PHILLIP FISCHBEIN

10 BILL FRITZ

11 ERNEST GOLLIHER

12 GLENN KENNARD

13 JOHN KREMER

14 PAUL KURZNOWSKI

15 SHARRON NORTINGTON

16 ANNETTE TSOULOGIANNIS

17 TYRONE YOUNG

18

19

Also present at the request of the Grand Jury:

20

Pamela Weckerly

Deputy District Attorney

21

Liza Luzaich,

22

Chief Deputy District Attorney

23

24

25

INDEX OF WITNESSESExamined

DONALD TREMEL

7

CHRISTINA PAULETTE

10, 34

DEBRA QUARLES

19

INDEX OF EXHIBITSGrand Jury ExhibitsIdentified

1A - amended proposed Indictment

6

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 13, 2006

2 * * * * *

3
4 DANETTE L. ANTONACCI,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 THE FOREPERSON: Let the record reflect that I
10 have canvassed the waiting area and no one has appeared in
11 response to the Notice of Intent to Seek Indictment.

12 MS. LUZAICH: Good morning. I am back this
13 morning, we're going to finish the presentation of the
14 State of Nevada versus Norman Flowers. We have three
15 witnesses and then we're going to instruct you and ask you
16 to deliberate. Does anybody have any questions before we
17 get started?

18 I see a hand.

19 A JUROR: Yeah. I wasn't here for I guess the
20 5th, but I read the transcript.

21 MS. LUZAICH: You did. Okay. Thank you very
22 much.

23 Everybody else, were you either here for
24 the first presentation or did you read the transcript?

25 I see every head going up and down.

1 And just so that you know we also have
2 an amended proposed Indictment. Do you guys have it?

3 Oh, I'm sorry. Will you mark at as 1A I
4 guess.

5 I'm just going to pass them around if
6 that's okay.

7 Can I call my first witness?

8 Nobody is saying no so I'm going to
9 anyway.

10 THE FOREPERSON: Please raise your right hand.

11 Do you solemnly swear the testimony you
12 are about to give upon the investigation now pending before
13 this Grand Jury shall be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 MR. TREMEL: I do.

16 THE FOREPERSON: Please be seated.

17 You are advised that you are here today
18 to give testimony in an investigation pertaining to the
19 offenses of burglary, murder, sexual assault and robbery,
20 involving Norman Keith Flowers. Do you understand this
21 advisement?

22 MR. TREMEL: Yes.

23 THE FOREPERSON: Would you please state your
24 first and last name and spell both for the record.

25 MR. TREMEL: Donald Tremel, D-o-n-a-l-d, last

1 name is T-r-e-m-e-l.

2 THE FOREPERSON: Thank you.

3

4 DONALD TREMEL,

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

8

9 EXAMINATION

10

11 BY MS. LUZAICH:

12 Q Sir, you are you a police officer with the Las
13 Vegas Metropolitan Police Department?

14 A Yes, I am.

15 Q How long have you been with Metro?

16 A Twenty-six years.

17 Q And where are you currently assigned?

18 A Homicide.

19 Q Are you familiar with an individual known as
20 Norman Keith Flowers?

21 A I am.

22 Q And in your capacity as a detective in May of
23 2005, did you obtain a buccal swab from Norman Keith
24 Flowers?

25 A I did.

1 Q And did you bring a kit with you to do that?

2 A Yes.

3 Q And did you swab the inside of his mouth with
4 it?

5 A He did.

6 Q Oh, he did, sorry. In your presence?

7 A Yes.

8 Q And did you then package it in a sealed
9 condition?

10 A Yes, I did.

11 Q And did you book it into evidence?

12 A I did.

13 MS. LUZAICH: Thank you. I have no more
14 questions.

15 THE FOREPERSON: By law these proceedings are
16 secret and you are prohibited from disclosing to anyone
17 anything that has transpired before us, including evidence
18 and statements presented to the Grand Jury, any event
19 occurring or statement made in the presence of the Grand
20 Jury, and information obtained by the Grand Jury.

21 Failure to comply with this admonition
22 is a gross misdemeanor punishable by a year in the Clark
23 County Detention Center and a \$2,000 fine. In addition,
24 you may be held in contempt of court punishable by an
25 additional \$500 fine and 25 days in the Clark County

1 Detention Center.

2 Do you understand this admonition?

3 THE WITNESS: I do.

4 THE FOREPERSON: Thank you. You are excused.

5 THE WITNESS: Okay.

6 MS. LUZAICH: The State is going to call

7 Christina Paulette next.

8 THE FOREPERSON: Please remain standing, raise
9 your right hand.

10 Do you solemnly swear the testimony you
11 are about to give upon the investigation now pending before
12 this Grand Jury shall be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 MS. PAULETTE: I do.

15 THE FOREPERSON: Please be seated.

16 You are advised that you are here today
17 to give testimony in an investigation pertaining to the
18 offenses of burglary, murder, sexual assault and robbery,
19 involving Norman Keith Flowers. Do you understand this
20 advisement?

21 MS. PAULETTE: Yes, I do.

22 THE FOREPERSON: Would you please state your
23 first and last name and spell both for the record.

24 MS. PAULETTE: Christina Paulette,
25 C-h-r-i-s-t-i-n-a, P-a-u-l-e-t-t-e.

2
1 THE FOREPERSON: Thank you.

2
3 CHRISTINA PAULETTE,

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

7
8 EXAMINATION.

9
10 BY MS. WECKERLY:

11 Q How are you employed?

12 A I'm a criminalist with the Las Vegas
13 Metropolitan Police Department forensic laboratory in the
14 biology DNA unit.

15 Q How long have you worked in that capacity?

16 A I've been with Metro approximately a year and
17 a half.

18 Q And what's your educational background that
19 allows you to work in that job?

20 A I received a bachelor's degree in biology from
21 the University of Texas. I then went onto the University
22 of Alabama at Birmingham where I received a master's degree
23 in forensic science with a concentration in DNA studies.

24 Q And have you testified before as an expert in
25 the area of DNA analysis and comparison?

2
1 A Yes, I have.

2 Q And that would be in Las Vegas, Clark County?

3 A Yes, I have.

4 Q Okay. Can you explain to the members of the
5 Grand Jury just briefly what DNA is?

6 A Sure. DNA is a substance found in the body
7 that allows genetic information to be passed down from
8 generation to generation. Half of our DNA comes from our
9 moms and the other half comes from our dads and except for
10 identical twins we each have a unique DNA pattern.

11 Q What sort of substances have someone's or have
12 DNA in them?

13 A Any substance from the body can actually have
14 DNA in it, blood, saliva, semen, breast milk, any sort of
15 substance like that.

16 Q Okay. And what is meant by the term a genetic
17 profile?

18 A A genetic profile is basically the information
19 that we gather in scientific terms to determine what your
20 DNA pattern is basically.

21 Q Okay. So there is certain portions of
22 people's DNA that I assume among all human beings is common
23 and then there is a portion of the DNA that is unique among
24 individuals?

25 A Correct.

2
1 Q And I assume in the forensic setting you are
2 concentrating on the component of the DNA that is unique?

3 A Correct.

4 Q And differentiates people?

5 A Correct.

6 Q In the forensic setting how is DNA used in
7 terms of having a known sample and a questioned piece of
8 evidence or a questioned sample?

9 A What we do is any time we receive a piece of
10 evidence, we obtain a DNA profile from that, and then we
11 obtain a DNA profile from a person of interest, and then
12 once we have both of the profiles we compare them and see
13 whether or not they match or they do not match.

14 Q Okay. And when you're doing this comparison
15 it's at that portion of the DNA strand that is unique to
16 individuals?

17 A Correct.

18 Q And are there thirteen or fifteen loci on that
19 part?

20 A We're actually looking at fifteen specific
21 areas of DNA that are unique to the individual.

22 Q Okay. And on the basis of that comparison
23 someone is either included as a possible donor to the
24 questioned sample or excluded?

25 A Correct.

2
1 Q In this particular case were you asked to do
2 some DNA analysis involving a murder case with a victim by
3 the name of Sheila Quarles?

4 A Yes, I was.

5 Q And where was the sample, the questioned
6 sample obtained from that you were analyzing?

7 A The questioned sample that I was asked to
8 examine was from the vaginal swab of Sheila Quarles.

9 Q And was that obtained from the medical
10 examiner's kit at autopsy?

11 A May I refer to my notes?

12 Q Yes.

13 A Yes, it was.

14 Q And these were, this was a swab of her vaginal
15 area?

16 A Correct.

17 Q And were you able to detect DNA from those
18 swabs?

19 A Yes, I was.

20 Q And what were your findings in terms of what
21 you detected?

22 A I detected spermatozoa on the vaginal swabs
23 and then when I obtained a DNA profile I obtained a DNA
24 mixture.

25 Q And how is it that you're able to see in your

2 1 results that you have a mixture?

2 A When we do the analysis, each of us at the
3 unique markers of DNA that we're looking at have two
4 alleles, one from our mom and one from our dad, and it is
5 possible to have the same allele, I could have a twelve
6 from my mom and a twelve from my dad, and so what happens,
7 if we see more than two at a particular allele and more
8 than one instance we know that we in fact have a mixture.

9 Q So that means that at least two people
10 contributed to the DNA sample?

11 A Correct.

12 Q In this particular case from the vaginal swabs
13 of Sheila Quarles were you able to determine if there was a
14 major or minor component of the DNA?

15 A There was a major component of the DNA and it
16 belonged to or is consistent with Sheila Quarles.

17 Q So you had her known profile and compared it
18 to the sample obtained from the autopsy and she's the major
19 component of that DNA?

20 A Correct.

21 Q Now I want to talk about the minor component
22 of the DNA. Are you able to, were you able to develop a
23 genetic profile or get DNA information in terms of the
24 minor component?

25 A Yes, I was.

3 1 Q What were your findings?

2 A There were two additional individuals and
3 Norman Flowers is consistent with this DNA mixture, so when
4 I compared his DNA profile reference standard to this
5 mixture he could not be excluded.

6 Q Okay. And when you say he could not be
7 excluded, is there any kind of statistical calculation or
8 probability estimate that you're able to give the members
9 of the Grand Jury regarding his profile being in that
10 sample?

11 A Yes. 99.9934 percent of the population is
12 excluded from this mixture.

13 Q But he is not?

14 A He is not.

15 Q His profile is consistent with the mixture?

16 A Correct.

17 Q And you mention as well that there is a third
18 individual besides the victim and Norman Flowers that is
19 also present in that DNA?

20 A Yes, there is.

21 Q Were you able to identify who this person was
22 or who a possible source of this DNA was?

23 A No, I was not.

24 MS. WECKERLY: Thank you. I have no other
25 questions of this witness.

3
1 THE FOREPERSON: Any questions?

2 BY A JUROR:

3 Q You said the third you can't, you have no idea
4 who the third person might be?

5 A Correct. Now if I were given a reference
6 standard from someone I could compare it to this mixture
7 and decide whether or not they were included or excluded,
8 but as of right now I don't have a reference standard to
9 include or exclude anyone from.

10 Q But there is a third?

11 A There is a third person.

12 Q Okay.

13 THE FOREPERSON: Any other questions?

14 By law these proceedings are secret and
15 you are prohibited from disclosing to anyone anything that
16 has transpired before us --

17 MS. LUZAICH: Can we have one second? I'm
18 sorry.

19 MS. WECKERLY: Can I just ask one question of
20 this witness before we excuse her.

21 BY MS. WECKERLY:

22 Q Did you compare the known DNA profile of
23 Qunise Toney to the DNA sample that you obtained from the
24 vaginal area?

25 A Yes, I did.

3
1 Q Was she excluded as a possible donor?

2 A Yes, she was.

3 Q Did you also compare a known profile of an
4 individual by the name of Robert Lewis?

5 A Yes, I did.

6 Q What were your findings as regard to him in
7 terms of being a possible donor?

8 A He was also excluded.

9 MS. WECKERLY: Thank you.

10 That's it.

11 THE FOREPERSON: By law these proceedings are
12 secret and you are prohibited from disclosing to anyone
13 anything that has transpired before us, including evidence
14 and statements presented to the Grand Jury, any event
15 occurring or statement made in the presence of the Grand
16 Jury, and information obtained by the Grand Jury.

17 Failure to comply with this admonition
18 is a gross misdemeanor punishable by a year in the Clark
19 County Detention Center and a \$2,000 fine. In addition,
20 you may be held in contempt of court punishable by an
21 additional \$500 fine and 25 days in the Clark County
22 Detention Center.

23 Do you understand this admonition?

24 THE WITNESS: Yes, I do.

25 THE FOREPERSON: Thank you. You are excused.

3 1 MS. LUZAICH: And finally we're going to
2 recall Debra Quarles.

3 THE FOREPERSON: Please remain standing, raise
4 your right hand.

5 Do you solemnly swear the testimony you
6 are about to give upon the investigation now pending before
7 this Grand Jury shall be the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 MS. QUARLES: Yes.

10 THE FOREPERSON: Please be seated.

11 You are advised that you are here today
12 to give testimony in an investigation pertaining to the
13 offenses of burglary, murder, sexual assault and robbery,
14 involving Norman Keith Flowers. Do you understand this
15 advisement?

16 MS. QUARLES: Yes.

17 THE FOREPERSON: Would you please state your
18 first and last name and spell both for the record.

19 MS. QUARLES: Debra, D-e-b-r-a, first name,
20 last name is Quarles, Q-u-a-r-l-e-s.

21 THE FOREPERSON: Thank you.

22 DEBRA QUARLES,

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

EXAMINATION

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BY MS. LUZAICH:

Q Debra, I know you testified last week and I'm sorry to bring you back. There are just a few things that I would like to ask you about.

Do you know an individual by the name of Norman Keith Flowers?

A Yes.

Q What name do you know him by?

A Keith.

Q And how did you know him?

A He used to be my boyfriend.

Q At what point in time?

A Like 2004, in like the beginning of 2004.

Q Okay. And would he take you home from work --

A Yes.

Q -- on occasion?

Is that a yes?

A Yes.

Q And where did you work at the time?

A Family Food Market, H Street, 1602.

Q Were you still working there at the time of the death of your daughter?

A Yes.

3 1 Q After the death of your daughter did you, or,
2 I'm sorry, at the time of the death of your daughter was
3 Keith your boyfriend?

4 A No.

5 Q Had he not been your boyfriend for a long
6 period of time?

7 A Right, he had not been.

8 Q But you were you still friendly?

9 A Yes.

10 Q And he would take you home from work
11 periodically?

12 A Yes.

13 Q After Sheila's death did you come into contact
14 with Keith again?

15 A Yes.

16 Q And how long after her death?

17 A Maybe a couple of weeks.

18 Q And did you have a conversation with him about
19 how you were feeling?

20 A Yes. I told him did you hear what happened to
21 my baby, and he said yeah, I heard what happened to Pooka.

22 Q So he knew of Sheila?

23 A Yeah.

24 Q And did you talk about feelings in general and
25 something to do about them?

4 1 A Yeah. He told me that his sister seen a
2 psychiatrist and he would get the number and take me up
3 there to it. And I went up there a couple of times but he
4 took me.

5 Q He took you to see the psychiatrist?

6 A Yes.

7 Q A couple of times?

8 A Yes.

9 Q And while you were either driving -- did he
10 drive you there?

11 A Yes.

12 Q And wait for you and drive you home?

13 A Yes.

14 Q And while you were either driving there or
15 driving home did you have conversations with him about --

16 A No.

17 Q -- what was going on?

18 Okay. Did there also come a time after
19 the death of your daughter that he came to where you were
20 working?

21 A Yes.

22 Q And did that happen one time or more than one
23 time?

24 A More than once.

25 Q Did you have conversations with him about your

4 1 daughter?

2 A Yes.

3 Q And what were those conversations?

4 A He came up and he asked me how are you doing,
5 I said the same, and he hugged me, he said I'm sorry about
6 what happened to your daughter, that's messed up that
7 somebody did that to her, she didn't deserve that, she was
8 a nice little girl, do they got who did it, do they know
9 who did it, and I'm like no.

10 Q Did he ask you questions like that the one
11 time or more than one time?

12 A Every time he seen me he would ask me, well
13 did they get who did it, do they know anything. I'm like
14 no.

15 Q Okay. And I'm sorry, we had forgotten to ask
16 you earlier, when you were able to go back into the
17 apartment after the police were done with the apartment,
18 did you notice was your daughter's cell phone there?

19 A Her cell phone wasn't there, her jewelry
20 wasn't there, my stereo wasn't there.

21 Q Do you know did she have her cell phone
22 earlier in the day?

23 A Yes.

24 Q And it was gone after you came back?

25 A Yes.

4 1 Q Did you ever see the cell phone again?

2 A No. Her bank card was missing also.

3 Q Her bank card. Is that also called a debit

4 card?

5 A Yes.

6 Q And have you seen the debit card since?

7 A No.

8 Q And I'm sorry, Debra, were you convicted of a

9 felony trafficking in 1998?

10 A Yes.

11 MS. WECKERLY: Okay. Thank you, Debra. I

12 have no more questions.

13 THE FOREPERSON: Questions?

14 BY A JUROR:

15 Q Did Mr. Flowers have a key to your apartment?

16 A No, ma'am, but he worked in my apartments as

17 maintenance.

18 Q Thank you.

19 THE FOREPERSON: Any other questions?

20 BY A JUROR:

21 Q Were there any withdrawals on the debit card

22 after it became missing?

23 A I don't know.

24 Q Thank you.

25 ///

4
1 BY A JUROR:

2 Q Did you cancel the card?

3 A No. But I told Mr. -- the investigator, I
4 told him.

5 Q Thank you.

6 THE FOREPERSON: By law these proceedings are
7 secret and you are prohibited from disclosing to anyone
8 anything that has transpired before us, including evidence
9 and statements presented to the Grand Jury, any event
10 occurring or statement made in the presence of the Grand
11 Jury, and information obtained by the Grand Jury.

12 Failure to comply with this admonition
13 is a gross misdemeanor punishable by a year in the Clark
14 County Detention Center and a \$2,000 fine. In addition,
15 you may be held in contempt of court punishable by an
16 additional \$500 fine and 25 days in the Clark County
17 Detention Center.

18 Do you understand this admonition?

19 THE WITNESS: Yes.

20 THE FOREPERSON: Thank you. You may go.

21 THE WITNESS: Thank you.

22 MS. LUZAICH: Ladies and gentlemen, I have no
23 more witnesses. I know that you have in the past been
24 instructed regarding most of these crimes, but just in an
25 abundance of caution, I'm sorry, I'm going to instruct you

4
1 again.

2 As you can see from the proposed or the
3 amended proposed Indictment the defendant is charged in
4 Count 1 with burglary. A burglary occurs when someone
5 enters a dwelling or a building with the intent to commit a
6 crime on the inside. In this case we've charged it as with
7 the intent to commit assault and/or battery and/or murder
8 and/or robbery and/or a sexual assault.

9 The second count in this Indictment is
10 murder. In this state murder is defined as the unlawful
11 killing of a human being with malice aforethought, either
12 express or implied. The unlawful killing may be affected
13 by any of the various means by which death may be
14 occasioned.

5
15 Malice aforethought is defined in this
16 state as the intentional doing of a wrongful act without
17 legal cause or excuse or what the law considers adequate
18 provocation. The condition of the mind described as malice
19 aforethought may arise not only from anger, hatred, revenge
20 or from particular ill will, spite or grudge toward the
21 person killed, but also may result from any unjustifiable
22 or unlawful motive or purpose to injure another.

23 If you look at this Indictment you can
24 see that the defendant is charged with what we would call a
25 couple of theories of liability. The first one is a

5 1 willful, deliberate and premeditated murder. And that is,
2 what the definition of first degree murder is here. In
3 order to qualify for a first degree murder there are three
4 elements which must be present. That is the killing must
5 be willful, deliberate and premeditated.

6 Willfulness is defined as the intent to
7 kill, although there need be no appreciable space of time
8 between the formation of the intent to kill and the act of
9 killing.

10 Deliberation is the process of
11 determining upon a course of action to kill as a result of
12 thought, including weighing the reasons for and against the
13 action and considering the consequences of the action. A
14 deliberate determination may be arrived at in a short
15 period of time, but in all cases the determination must not
16 be formed in passion, or if formed in passion it must be
17 carried out after there has been time for the passion to
18 subside and deliberation to occur. Mere unconsidered and
19 rash impulse is not deliberate even though it includes the
20 intent to kill.

21 Premeditation -- I'm sorry, I lost my
22 train of thought -- is defined as a design, a determination
23 to kill, distinctly formed in the mind by the time of the
24 killing. It need not be for a day, an hour or even a
25 minute, it may be as instantaneous as successive thoughts

5 1 of the mind. If you believe from the evidence that the act
2 constituting the killing has been premeditated by and has
3 been the result of premeditation, no matter how rapidly the
4 act follows premeditation, it is premeditated. In the
5 State of Nevada the law does not undertake to measure in
6 units of time the length of period during which the thought
7 must be pondered before it can ripen into an intent to kill
8 which is truly deliberate and premeditated. The time will
9 vary with different individuals and under varying
10 circumstances. The true test is not the duration of time
11 but rather the extent of reflection. A cold, calculated
12 judgment and decision may be arrived at in a short period
13 of time, but a mere unconsidered and rash impulse, even
14 though it includes an intent to kill, is not deliberation
15 and premeditation and that will not qualify as a first
16 degree murder.

17 The second theory of murder which is
18 alleged in our proposed Indictment is what is called felony
19 murder. Felony murder occurs when someone is killed during
20 the course of a dangerous felony, for instance sexual
21 assault or a robbery. In this case we have alleged an
22 alternate theory of liability other than first degree
23 murder that is willful, deliberate and premeditated.
24 That's first degree murder. That the victim in this case
25 was killed during the perpetration of a sexual assault or a

5 1 burglary or a robbery. That is the second theory of
2 liability that you can see.

3 There are two other aspects of the law
4 in Count 2 of the proposed Indictment that are basically
5 two other theories of liability. One of them is that the
6 defendant is charged with directly committing the act. So
7 what we say is that the defendant would be liable for these
8 charges if he is the one who directly killed Sheila
9 Quarles. The second theory of liability is what's called
10 aiding and abetting and under the aiding and abetting
11 theory, if two or more individuals commit a crime together
12 and they encourage each other or assist each other during
13 the commission of the crime, under the law each one is
14 responsible for the act of the other if they commit those
15 acts with the intent of helping the other person accomplish
16 the killing.

17 Every person concerned in the commission
18 of a felony, gross misdemeanor or misdemeanor, whether he
19 or she directly commits the act constituting the offense or
20 aids and abets in its commission, and whether present or
21 absent, if they directly or indirectly counsel, encourage,
22 hire, command, induce or otherwise procure another
23 individual to commit a felony with the intent that the
24 crime be accomplished is a principal and shall be punished
25 as such.

6 1 The third theory of liability is what is
2 known as conspiracy liability and that means if two or more
3 persons conspire or make an agreement to commit a crime
4 they've entered into what is known as a criminal conspiracy
5 and they're liable for the acts of their fellow
6 co-conspirators.

7 Each member of a criminal conspiracy is
8 liable for each act and bound by each declaration of every
9 other member of the conspiracy if the act or declaration is
10 in furtherance of the object of the conspiracy. The act of
11 one co-conspirator pursuant to or in furtherance of the
12 common design of the conspiracy is the act of all
13 co-conspirators, or conspirators, sorry about that. Each
14 conspirator is legally responsible for an act of a
15 co-conspirator that follows as one of the probable and
16 natural consequences of the object of the conspiracy even
17 if it was not intended as part of the original plan and
18 even if he was not present at the time of the commission of
19 the act.

20 What that instruction tells you, that if
21 you enter into a conspiracy with another individual, you
22 are responsible for the acts that he commits.

23 Count 3 in the amended proposed
24 Indictment is sexual assault. Sexual assault is when a
25 person subjects another individual to sexual penetration

6
1 against the victim's will or under conditions in which the
2 perpetrator knows or should know that the victim is
3 mentally or physically incapable of resisting or
4 understanding the nature of his conduct.

5 In Nevada sexual penetration means any
6 intrusion, however slight, of any part of a person's body,
7 or any object manipulated or inserted by a person into the
8 genital opening of another person.

9 Like the murder, Count 3, sexual assault
10 is charged under the three principles of criminal
11 liability. That the defendant either directly committed
12 the sexual assault, that he aided and abetted another
13 person by counseling, encouraging, commanding or procuring
14 the other person to commit the act, or by conspiring with
15 another person to commit the act.

16 And then finally Count 4, robbery is the
17 taking of the personal property of another by means of
18 force or violence.

19 Does anybody have any questions about
20 the instructions?

21 A JUROR: No.

22 MS. LUZAICH: Everybody is shaking their heads
23 no.

24 With that we would ask you to
25 deliberate.

6
1 A JUROR: Can I ask questions of her or not?
2 Can I ask you some questions?

3 MS. LUZAICH: I might not be able to answer
4 them but you can certainly ask.

5 A JUROR: Okay. Based on what's been
6 presented to us, I don't know who Robert Lewis is, no
7 fingerprints at the scene, cell phone records, no charges
8 against debit card, property disposition. You're asking me
9 to find against this man and I have no credible witnesses
10 that -- you say that his semen was in her vagina. We do
11 not know if that was consensual. Lots of young people
12 today are bi and so I am wondering --

13 MS. LUZAICH: Okay. These are questions that
14 you might want to talk about during deliberations.

15 A JUROR: Okay. Fine.

16 (At this time, all persons, other than
17 members of the Grand Jury, exit the room at 8:57 a.m. and
18 return at 9:06 a.m.)

19 THE FOREPERSON: We have a question concerning
20 DNA. Are we able to recall her, Miss Paulette?

21 MS. WECKERLY: She left.

22 MS. LUZAICH: She's gone. She's back at Metro
23 participating in interviews. Is it a question that you
24 need answered before you can continue deliberations?

25 A JUROR: It has some bearing

6
1 THE FOREPERSON: It would help. Even if it
2 could be done by phone call or if we could get that
3 information.

4 A JUROR: Cell phone.

5 MS. LUZAICH: I don't know if we can do that.
6 You know what, can you --

7 MS. WECKERLY: We'll try to get her back here.
8 Isn't your session over today at eleven?

9 A JUROR: We're going to be here this
10 afternoon, aren't we?

11 MS. LUZAICH: I'll see what I can do.

12 A JUROR: Do you have any evidence from the
13 detective that ties in the robbery?

14 A JUROR: Fingerprints, anything?

15 A JUROR: Anything that shows that he took the
16 stereo, had something to do with the stereo?

17 MS. LUZAICH: Well, I mean I can't answer that
18 question but let me see --

19 A JUROR: Well --

20 MS. LUZAICH: I mean the evidence that you
21 have is what you have. I'm going to see if I can get her
22 on the phone.

23 A JUROR: We don't want to let a guilty guy
24 go.

25 (Off the record.)

6
1 MS. WECKERLY: She's on her way back. I
2 assume you'll start your other case and when she's here
3 we'll bring her back in for your question.

4 A JUROR: That would be fine.

7
5 A JUROR: Thank you.

6
7 (Recess at 9:20 a.m.)

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9 (Proceedings resumed at 9:45 a.m.)
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8 1 MS. WECKERLY: Okay. We're back on the
2 record.

3 It's our understanding that the members
4 of the Grand Jury had at least one additional question for
5 DNA analyst Christina Paulette and we recalled her and so
6 you can, whatever the question is you can ask her.

7 And you are still under oath, Miss
8 Paulette.

9 MS. PAULETTE: Okay.

10
11 CHRISTINA PAULETTE,
12 having been previously duly sworn by the Foreperson of the
13 Grand Jury to tell the truth, the whole truth, and nothing
14 but the truth, testified as follows:

15
16 BY THE FOREPERSON:

17 Q The question has been raised, the fact that
18 you found a mixed DNA, obviously there was another person
19 involved, could that have taken place at two different
20 times?

21 A It's possible, but based on the data that I
22 obtained, due to the pretty much equal amount of minor
23 profiles, because obviously Sheila was the major and there
24 were two minor profiles, they're pretty even, and based on
25 that data, because there was no degradation, I would say

8 1 they happened close to the same time.

2 Q So it is not possible that the DNA from say
3 Norman Flowers, like she could have had casual sex with him
4 three days before, and then this other, the mix that was
5 unidentified could have taken place at the time of the
6 sexual assault?

7 A It's possible but not likely. We've actually
8 done studies in our own lab to sort of see how long semen
9 would last in the vaginal vault and depending on what,
10 depending on the person, actually when it was deposited,
11 how active they are at the time that it was deposited, we
12 can usually detect semen up to three days, but really to
13 get a DNA profile it's probably sooner than that.

14 THE FOREPERSON: Sharon, does that clarify
15 enough or --

16 BY A JUROR:

17 Q And there is no way to determine the DNA, how
18 close to time of death or anything?

19 A Not at all. It's a very non-clear cut
20 evidence. All we can say is it's there.

21 BY A JUROR:

22 Q Does the water do any damage to the DNA?

23 A It can cause degradation in the DNA to where
24 we would get partial profiles. But as I said the DNA was
25 not degraded whatsoever.

8 1 Q Is there any way to prove that the missing or
2 the third DNA is male or female?

3 A I can't say a hundred percent whether or not
4 it's male or female, but based on my experience in the way
5 that the data was arrived at it appears to be male.

6 Q But it doesn't register to Mr. Flowers?

7 A No, it's an additional person.

8 Q And you have no idea of the source?

9 A No, I do not.

10 BY A JUROR:

11 Q And she was submerged in water and that didn't
12 affect the DNA?

13 A If she was submerged it would depend on how
14 she was submerged basically. You know I don't know if she
15 was hanging upside down or what the story is with that, but
16 water does in fact, it can degrade the samples, but really
17 it just depends on her own physiological make-up. I'm not
18 sure. I'm unable to tell.

19 BY A JUROR:

20 Q I have one other question. I know the coroner
21 testified, this was obviously a violent struggle, she was
22 drowned, was there anything taken from under her nails or
23 anything that you might be able to use to test DNA on her
24 body that would give --

25 MS. WECKERLY: I don't think she can answer

8 1 that question. She can only answer what --

2 A JUROR: About the vagina.

3 MS. WECKERLY: About what she tested.

4 BY A JUROR:

5 Q There is no testimony about anything under her
6 nails in the struggle? I know the coroner did not testify
7 to anything about that.

8 MS. WECKERLY: This witness can testify to the
9 data that she got from the vaginal swabs and I don't
10 believe she can testify to any additional data other than
11 what she examined at this point.

12 Can I ask one question?

13 BY MS. WECKERLY:

14 Q DNA degrades over time; is that correct?

15 A Yes.

16 Q Okay. And in this, and you mentioned that you
17 can detect sperm at seventy-two hours, typically
18 seventy-two hours before someone has died, or seventy-two
19 hours after they've had sexual contact of some nature.
20 Would that be correct?

21 A I can detect semen. I can't always detect
22 sperm. In this case I actually detected sperm.

23 Q That would suggest it's on the more recent
24 side?

25 A Most likely, yes.

8
9
1 Q And you had a full profile of the minor
2 component DNA in this particular situation as well?

3 A Yes, I did.

4 Q And that would suggest that there was no
5 degradation?

6 A Not as far as I can tell.

7 Q Is that indicative of a shorter time period?

8 A Yes.

9 MS. WECKERLY: Any other questions for the
10 Grand Jury?

11 THE FOREPERSON: Anyone else have any other
12 questions?

13 MS. WECKERLY: Okay. I just wanted to add --
14 well, actually we can excuse the witness. But if it's okay
15 with you I just wanted to add one aspect to the Grand Jury
16 instructions that Lisa read to you.

17 MS. LUZAICH: We need to do that after she
18 leaves.

19 Thank you.

20 THE FOREPERSON: Your admonition stands.

21 THE WITNESS: Okay. Thank you.

22 THE FOREPERSON: Thank you.

23 MS. WECKERLY: The only thing I wanted to add
24 in terms of the instructions, you were instructed on
25 conspiracy liability. Those instructions still apply. The

9
1 only thing that you have to consider in addition to
2 conspiracy liability is that the members of the conspiracy
3 have to act with the intent that the crime be committed and
4 I don't know if we covered that or not. But obviously the
5 object of the conspiracy has to be what crime they intended
6 to commit. And with that we'll leave you to deliberate.

7 (At this time, all persons, other than
8 members of the Grand Jury, exit the room at 9:51 a.m. and
9 return at 9:54 a.m.)

10 THE FOREPERSON: Miss District Attorney, by a
11 vote of twelve or more Grand Jurors a true bill has been
12 returned against Norman Keith Flowers charging the crimes
13 of burglary, murder, sexual assault and robbery in Grand
14 Jury case number 06AGJ103X. We instruct you to prepare an
15 Indictment in conformance with the proposed Indictment
16 previously submitted to us.

17 MS. WECKERLY: Thank you. We will.

18 MS. LUZAICH: Thank you.

19 (Proceedings concluded.)

20

21

--ooOoo--

22

23

24

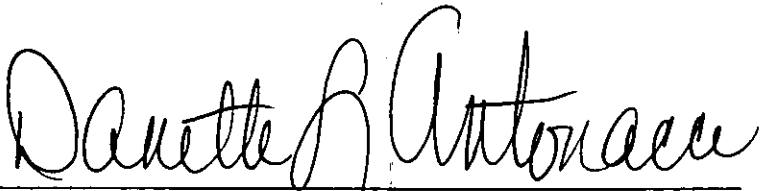
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript constitutes a
full, true and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, December 29, 2006.


Danette L. Antonacci, C.C.R. No. 222

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Transcript
(Title of Document)

filed in District Court Case number C 228755
06AGJ103X

☒ Does not contain the social security number of any person.

-OR-

 Contains the social security number of a person as required by:

A. A specific state or federal law, to wit: _____

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Danette L. Antonacci 1-2-07
Signature Date

Danette L. Antonacci
Print Name

Court reporter
Title

ORIGINAL

FILED

DEC 13 3 02 PM '06

Shirley C. Langston
CLERK

1 IND

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5 PAMELA WECKERLY
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7 Nevada Bar #006163
8 200 South Third Street
9 Las Vegas, Nevada 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 NORMAN KEITH FLOWERS,
14 aka Norman Harold Flowers, III,
15 #1179383

16 Defendant.

Case No. C228755
Dept. No. XIV

INDICTMENT

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

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

26 COUNT 1 - BURGLARY

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

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DEC 13 2006

COUNTY CLERK

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

3 COUNT 2 - MURDER

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

15 COUNT 3 - SEXUAL ASSAULT

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

25 COUNT 4 - ROBBERY

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

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

7 DATED this 13 day of December, 2006.

8
9 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

10
11 BY  for

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

14 ENDORSEMENT: A True Bill

15
16 
17 Foreperson, Clark County Grand Jury

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

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

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

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

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LVMPD EV# 050324-1801
MURDER; ROBB; BURG; S/A - F

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Shirley Blanton
CLERK

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PAMELA WECKERLY
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Nevada Bar #006163
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

Case No.

Dept No.

C228755

C216032/

C228755

VI

NOTICE OF MOTION AND MOTION TO CONSOLIDATE

DATE OF HEARING: 1/17/07

TIME OF HEARING: 8:30 A.M.

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

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

NOTICE OF HEARING

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

1 as soon thereafter as counsel may be heard.

2 DATED this 26th day of December, 2006.

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

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

9
10 STATEMENTS OF FACT

11 A. Fact of Case C in District Court VI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 B. Facts of Case C228755 in District Court XIV

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

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

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

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

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

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

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

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

10 ARGUMENT

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

26 Nevada Revised Statute 174.155 states:

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

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

3 Section 173.115 of the Nevada Revised Statutes provides:

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

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

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

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

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

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

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

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

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

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

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

19 Id. at 948.

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

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

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

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

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

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

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

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

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

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

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

6 Id. at 833.

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

13 CONCLUSION

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

16 DATED this 26th day of December, 2006.

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

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

I hereby certify that service of the above and forgoing, was made this __26th__ day of
December, 2006, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER
FAX#455-6273

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

mb

~~ORIGINAL~~

FILED

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Shirley L. Rungius
CLERK

0001
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO. C 216032
CASE NO. C228755

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

OPPOSITION TO STATE'S MOTION TO CONSOLIDATE

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

POINTS AND AUTHORITIES

FACTUAL BACKGROUND

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

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CLARK COUNTY
NEVADA

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

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

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

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

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

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

22 ARGUMENT

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

27 ...

28 ...

1 A.

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

5 NRS 173.115 "Joinder of Offense" provides:

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

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

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

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

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

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

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

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

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

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

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

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

20 B.

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

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

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

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

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

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

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

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

14 C.

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

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

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

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

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

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

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

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

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

29 CONCLUSION

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

32 ...

33 ...

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

3 DATED this 2 day of ^{January 2007} ~~December, 2006~~.

4 RESPECTFULLY SUBMITTED:

5 DAVID M. SCHIECK
6 SPECIAL PUBLIC DEFENDER

7 

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

16 RECEIPT OF COPY

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

19 

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

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
Opposition to Motion to Consolidate
filed in or submitted for District Court Case number C216032

XX Does not contain the social security number of any person.


-OR-

 Contains the social security number of a person as required by:

 A. A specific state or federal law, to wit:

-or-

 B. For the administration of a public program or for an application
for a federal or state grant.



Signature

1/2/07

Date

CLARK W. PATRICK

Print Name

DEPUTY SPECIAL PUBLIC DEFENDER

Title

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
Opposition to Motion to Consolidate
filed in or submitted for District Court Case number C2228755

XX Does not contain the social security number of any person.


-OR-

 Contains the social security number of a person as required by:

 A. A specific state or federal law, to wit:

-or-

 B. For the administration of a public program or for an application
for a federal or state grant.


Signature

1/2/07
Date

CLARK W. PATRICK
Print Name

DEPUTY SPECIAL PUBLIC DEFENDER
Title


CLERK

NISD
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS, aka
Norman Harold Flowers,
#1179383

Defendant.

CASE NO: C228755

DEPT NO: XIV

NOTICE OF INTENT TO SEEK DEATH PENALTY

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

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

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

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

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

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

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

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

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

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

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

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

22 DATED this 11th day of January, 2007.

23 Respectfully submitted,

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

26 BY /s/D. McDonald

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

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CERTIFICATE OF FACSIMILE TRANSMISSION

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

SPECIAL PUBLIC DEFENDER'S OFFICE
FAX #455-6273

AND

BRETT WHIPPLE, ESQ.
FAX #895-7315

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

PW/ddm

ORIGINAL

FILED

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CRF
CLERK OF THE COURT

0001
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
RANDALL H. PIKE
Deputy Special Public Defender
Nevada Bar No. 1940
CLARK W. PATRICK
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Nevada Bar No. 9451
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Las Vegas, NV 89155-2316
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Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.

NORMAN FLOWERS,
Defendant.

CASE NO. C228755
DEPT. NO. XIV

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

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

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

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

...
...

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 NOTICE OF MOTION

2 TO: THE STATE OF NEVADA, Plaintiff; and

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

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

7 **POINTS AND AUTHORITIES**

8 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

10 ARGUMENT

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

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

27 . . .

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

2 EDCR 7.40 provides in relevant portion as follows:

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

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

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

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

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

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

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

27 Brown, 424 F.2d at 1170.

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

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

Williams, 594 F.2d at 1261.

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

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

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

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

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

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

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

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

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

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

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

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

1 standard to require before its imposition.”

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

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

12
13 The Nevada Supreme Court has held that if evidence of one crime would be cross-
14 admissible at a trial on another charge, the charges may be tried together. Mitchell v.
15 State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989). In the case at bar, the evidence of
16 one offense is not necessary in proving the other offense, nor is it necessary in providing
17 the jury with a complete picture. The three offenses are not connected in any way and the
18 evidence is not cross-admissible. Moreover, admitting the evidence of one offense in the
19 trial of the other would be more prejudicial than probative. Mitchell, at 738, *citing* Berner v.
20 State, 104 Nev. 695 (1988); and citing NRS 48.045(2). The evidence would essentially
21 amount to evidence of prior bad acts. This type of evidence is not allowed to show that a
22 defendant has the propensity to commit the crime. Middleton v. State, 114 Nev. 1089,
23 1108, 968 P.2d 296, 309 (1998). The State argues that the evidence would be cross-
24 admissible because they can use evidence of one offense to show motive or intent, thus
25 circumventing the propensity rule. NRS 48.045 (2004). However, that argument is
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1 tenuous, at best. Moreover, the prejudicial nature of the evidence far outweighs its
2 probative value and the evidence is therefore not cross-admissible. See Tabish v. State,
3 73 P.3d 584, 593, *citing* Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064065
4 (1997).
5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

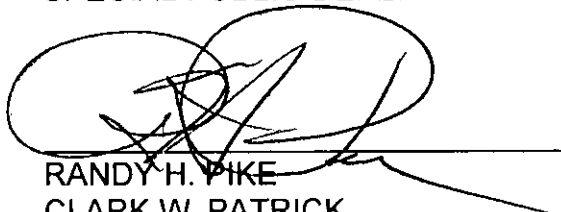
6 **CONCLUSION**

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

11 DATED this 23 day of January, 2007.

12 RESPECTFULLY SUBMITTED:

13 DAVID M. SCHIECK
14 SPECIAL PUBLIC DEFENDER

15 
16

17 RANDY H. PIKE
18 CLARK W. PATRICK
19 330 South Third Street, 8th Floor
20 Las Vegas, NV 89155-2316
21 Attorneys for Defendant
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23
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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED: 1-23-07

SPECIAL PUBLIC DEFENDER

DAVID M. SCHIECK



RANDY PIKE

CLARK PATRICK

Attorneys for Flowers

330 S. Third Street, 8th Floor

Las Vegas NV 89155


CLERK OF THE COURT

OPPS

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
-vs-)
)
NORMAN FLOWERS,)
#1179383)
)
Defendant.)

CASE NO: C228755

DEPT NO: XIV

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

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

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

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 A. The Facts of the Instant Case

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

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

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

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

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

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

6 B. Facts of Case C216032 in District Court VI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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