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

ORIGINAL

OCT 24 2008 12:54 PM

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

By: 
TINA HURD, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

Case No. C228755

Dept. No. VII

C 228755

vs.

NORMAN KEITH FLOWERS,

Defendant.

SPECIAL VERDICT**MITIGATING CIRCUMSTANCES**

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

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

Additional mitigators found by the jury

☒ NO PRIOR PROBLEMS IN PRISON

☒ NO POSITIVE INFLUENCE IN LIFE

☒ ALL ADULT LIFE IN PRISON

☐

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

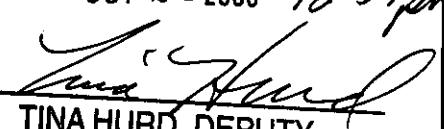


Foreperson

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

OCT 24 2008 12:54 PM

ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

BY: 
TINA HURD, DEPUTY

1 VER

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 NORMAN KEITH FLOWERS,

12 Defendant.
13

Case No. C228755

Dept No. VII

14 VERDICT

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

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

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

25
26 
27 FOREPERSON
28

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

OCT 24 2008

BY: 
TINA HURD, DEPUTY

VJRU

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff(s),

-VS-

NORMAN KEITH FLOWERS,

Defendant(s).

CASE NO. ~~C228755~~ C 22 8755

DEPT. NO. VII

**VERDICT(S) SUBMITTED TO JURY
BUT RETURNED UNSIGNED**

Attached hereto are the verdict form(s) which were submitted to the jury in the
above entitled action, but returned unsigned.

DATED: This 24TH day of October, 2008.

Edward A. Friedland, Clerk of the Court

By: 

TINA HURD, Deputy Clerk

0001

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
RANDALL H. PIKE
Deputy Special Public Defender
Nevada Bar No. 1940
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330 South Third Street, Suite 800
Las Vegas, NV 89155-2316
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Attorneys for Defendant

FILED

2008 OCT 30 A 11:36

[Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant,

CASE NO. C228755
DEPT. NO. VII

DATE OF HEARING: _____
TIME OF HEARING: _____

MOTION FOR NEW TRIAL

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

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

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

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

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

35
OCT 30 2008
CLERK OF THE COURT

1 **POINTS AND AUTHORITIES**

2 **FACTUAL BACKGROUND**

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

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

12 **ARGUMENT**

13 NRS 176.515 states that:

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

16 . . .

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

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

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

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

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

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

14 Fernandez, 81 Nev. at 279.

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

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

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

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

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CONCLUSION

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

DATED this ____ day of November, 2008.

RESPECTFULLY SUBMITTED:
DAVID M. SCHIECK
SPECIAL PUBLIC-DEFENDER



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

EXHIBIT A

0076

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

Case No. C216032/
C228755
Dept No. VI

NOTICE OF MOTION AND MOTION TO CONSOLIDATE

DATE OF HEARING: 1/11/07

TIME OF HEARING: 8:30 A.M.

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

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

NOTICE OF HEARING

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

1 as soon thereafter as counsel may be heard.

2 DATED this _____ day of December, 2006.

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

6
7 BY

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

9
10 STATEMENTS OF FACT

11 A. Fact of Case C in District Court VI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 B. Facts of Case C228755 in District Court XIV

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

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

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

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

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

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

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

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

10 ARGUMENT

11 The issue of consolidation lies within the sound discretion of the trial court and will
12 not be reversed absent a clear abuse of that discretion. Robins v. State, 106 Nev. 611, 789
13 P.2d 558 (1990); Mitchell v. State, 105 Nev. 735, 782 P.2d 1340 (1989). "Error resulting
14 from misjoinder of charges is harmless unless the improperly joined charges had a
15 substantial and injurious effect on the jury's verdict." Weber v. State, 121 Nev. 554, 119
16 P.3d 107, 119 (2005). Moreover, on appeal "the defendant carries the heavy burden of
17 showing an abuse of discretion by the district court." Id. at 121. In exercising that
18 discretion, courts consider potentially conflicting interests of judicial economy and
19 efficiency of judicial administration, crowded court calendars, avoidance of multiple trials
20 and possible prejudice to the defendant. See United States v. Fancher, 195 F. Supp. 634 (D.
21 Conn.), affirmed, 319 F.2d 604 (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:

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

10 Finally, Eighth Judicial Court Rule 3.10 emphasizes the importance of judicial
11 economy, providing:

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

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

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

28 Moreover, the Nevada Supreme Court has held that "if . . . evidence of one charge
would be cross-admissible in evidence at a separate trial on another charge, then both
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:

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

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

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

Id. at 948.

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

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

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

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

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

23 In addition, evidence of the March 2005 killing is relevant to the May 2005 killings
24 because it would constitute evidence of intent and lack of accident as well which are also
25 admissible under NRS 48.045(2). In Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508
26 (1985), reversed on other grounds by Petrocelli v. Angelone, 242 F.3d 867 (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

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. Nevertheless, like Williams, Flowers has put consent at issue because he claims that the sexual encounter with Marilee Coote was consensual. In maintaining that claim, Flowers makes relevant his prior conduct with Sheila Quarles who also was sexually assaulted by Flowers and subsequently killed.

CONCLUSION

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

DATED this _____ day of December, 2006.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY


PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and forgoing, was made this 26 day of
December, 2006, by facsimile transmission to:

SPECIAL PUBLIC DEFENDER
FAX#455-6273

BY M. [Signature]
Employee of the District Attorney's Office

EXHIBIT B

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FILED

JAN 2 4 34 PM '07

Linda C. Ruggione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 NORMAN FLOWERS,

15 Defendant.

CASE NO. C 216032
CASE NO. C228755

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

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

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

22 **POINTS AND AUTHORITIES**

23 **FACTUAL BACKGROUND**

24 On June 7, 2005, a Criminal Complaint was filed in Justice Court charging Defendant
25 NORMAN FLOWERS (hereinafter FLOWERS) with a single count of Murder (and other
26 charges) on the alleged victim Marilee Coote. Approximately two weeks later, a Second
27 Amended Criminal Complaint was filed charging FLOWERS with Murder (and other charges)
28

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

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

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

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

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

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

22 ARGUMENT

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

27 ...

28 ...

A.

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

NRS 173.115 "Joinder of Offense" provides:

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

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

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

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

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

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

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

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

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

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

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

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

20 B.

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

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

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

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

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

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

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

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

14 C..

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

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

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

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

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

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

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

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

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

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 ...


34

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~~, 2006.

19 

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

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
Opposition to Motion to Consolidate

filed in or submitted for District Court Case number C216032

XX Does not contain the social security number of any person.

-OR-

 Contains the social security number of a person as required by:

 A. A specific state or federal law, to wit:

-or-

 B. For the administration of a public program or for an application
for a federal or state grant.



Signature

1/2/07
Date

CLARK W. PATRICK
Print Name

DEPUTY SPECIAL PUBLIC DEFENDER
Title

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
Opposition to Motion to Consolidate
filed in or submitted for District Court Case number C2228755

XX Does not contain the social security number of any person.

-OR-

 Contains the social security number of a person as required by:

 A. A specific state or federal law, to wit:

-or-

 B. For the administration of a public program or for an application
for a federal or state grant.



Signature

1/2/07

Date

CLARK W. PATRICK

Print Name

DEPUTY SPECIAL PUBLIC DEFENDER

Title

EXHIBIT C

VOL V

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FILED

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ORIGINAL

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. C216032
Dept. No. 6

MOTIONS

Before the Honorable Joseph Bonaventure
Monday, January 8, 2007, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State of Nevada: Pamela Weckerly, Esq.
Elissa Luzaich, Esq.
Deputies District Attorney
Las Vegas, Nevada

For the Defendant: Randall Pike, Esq.
Clark Patrick, Esq.
Special Public Defenders
Bret Whipple, Esq.
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

NELSON & NELSON, CERTIFIED COURT REPORTERS
Office: 702.360.4677 Fax: 702.360.2844

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COUNTY CLERK

Las Vegas, Nevada; Monday, January 8, 2007

* * * * *

THE COURT: Flowers.

I read the briefs.

Does the State want to say anything?

MS. WECKERLY: No, Your Honor.

I know the Court's quite familiar with the facts of this case and the new case.

The only thing I would add is, when I read the opposition, it seemed to me that the focus of the opposition was on obviously the Binion case and the consolidation in that case.

THE COURT: And I know that case well.

You know, I still think I did right on that case, and you know, you never know what the Supreme Court is going to do.

We can go to trial on this case, and then a year from now, a year-and-a-half from now, they are going to reverse and say, Bonaventure shouldn't have consolidated, and you got to start over again, and you know, I don't know what to say.

MS. WECKERLY: The only distinguishing argument I would make for the record, Your Honor, is that I believe the Binion or Tabish opinion seems to

1 focus on the exception of common scheme or plan and
2 how narrow that exception is, and of course the
3 State's position in this case is not under that
4 exception of cross admissibility, we're more focused
5 on identity and intent and motive, and I think that's
6 where the distinguishing feature of the case law is,
7 and under the Gallego (Phonetic) case, and Williams
8 case, and the other cases cited by the State, it is
9 permissible to consolidate in this type of situation
10 where you have three victims all sexually assaulted
11 and all murdered by the same means effectively, and
12 there is quite a bit of similarity between the three
13 victims in this case, and of course the Defense in
14 this case will be identity, making all the evidence
15 all the more relevant.

16 THE COURT: Well, certainly if this goes to
17 trial, whenever it does, we could always take a look
18 at it, and if they open the door or something like
19 that, and they want to open the door, maybe bring it
20 in as a rebuttal, or evidence of other acts, I don't
21 know, but does anybody want to say anything regarding
22 this?

23 MR. PATRICK: Yes, Judge.

24 The same means?

25 All three of these murders were completely

1 different.

2 One was manual strangulation.

3 One had a ligature.

4 And one was a drowning.

5 The means are not close at all.

6 Also, between the first incident, Miss
7 Quarles (Phonetic), and the other two, there was 41
8 days elapsed, and you know the Court in Pablino
9 (Phonetic) said 17 days was okay because they were
10 both in the parking garage, but if you look at
11 Tabish, it was 350 days, and Mitchell was 45 days,
12 and it's too distant in time to connect the three
13 incidents.

14 And I think that all that is going to
15 happen is, Mr. Flowers is going to be greatly
16 prejudiced by the accumulation of evidence in this.

17 You know, the case against Miss Gonzalez is
18 very weak.

19 The case against Miss Quarles is not all
20 that strong.

21 But by putting them all together the
22 State's going to be able to accumulate all of the
23 evidence, and the jury will look at it and say, you
24 know, they wouldn't have arrested him for all three
25 of these unless he was guilty, and I think there is

1 an extreme risk of prejudice that outweighs any other
2 considerations the Court would have, whether it be
3 judicial economy or not.

4 I don't think that Mr. Flowers can get a
5 fair trial if we try all three of these together.

6 THE COURT: All right. Anything else?

7 MS. WECKERLY: Well, Your Honor, the risk
8 of prejudice really isn't legally defined as making
9 acquittal more likely, it's whether there is a
10 question about the jury verdict in a particular case,
11 and by consolidating these three cases I don't think
12 that we can say that there is a risk of an unfair or
13 unfounded verdict.

14 The Defendant himself in the first instance
15 with regard to the sexual assault and murder of
16 Marilee Koot (Phonetic) said that -- initially he
17 said he didn't have sex with her, but afterwards,
18 after several comments being made, he said that he
19 may have had sex, and then well, I did have sex with
20 her, but someone else killed her.

21 And the fact that he then puts consent at
22 issue in terms of that particular victim makes the
23 other case of Sheila Quarles all the more relevant
24 because here we have another instance where his DNA
25 is found in someone sexually assaulted and ultimately

1 murdered, and that puts his own statements - puts his
2 consent at issue and makes the other cases relevant
3 because they go directly to that issue.

4 THE COURT: All right. I've reviewed it
5 and pondered over it.

6 You know, I want to be fair.

7 I have to be fair to the State.

8 I certainly have to be fair to the
9 Defendant.

10 It's a capital murder case.

11 You know, if this was a burglary or
12 something like that, or whatever, but you got to
13 really -- it's a heightened standard of review
14 required on a death penalty case, and I just feel it
15 will be more prejudicial, and I'm not going to
16 consolidate them.

17 The motion to consolidate is denied.

18 I notice you have another motion to
19 consolidate in Department 14.

20 What is that about?

21 MS. WECKERLY: Well, we just noticed this
22 in that department in the event this was granted to
23 let Judge Mosley know what happened.

24 THE COURT: Should I take that off
25 calendar?

1 MS. WECKERLY: That can be off calendar.

2 THE COURT: I'll take that off calendar,
3 January 17th.

4 So as far as I know now, I don't know what
5 you want to do, but we have a calendar call coming
6 up.

7 We'll talk about it.

8 MR. PATRICK: Thank you, Your Honor.

9 THE COURT: All right.

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C E R T I F I C A T E

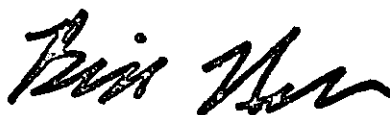
STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby
certify that I reported the foregoing proceedings;
that the same is true and correct as reflected by my
original machine shorthand notes taken at said time
and place before the Hon. Joseph Bonaventure,
District Court Judge, presiding.

Dated at Las Vegas, Nevada this 11th day of
January, 2007.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

EXHIBIT D

VOL V

AA1014

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT #: 050324-1801

SPECIFIC CRIME: MURDER INVESTIGATION

DATE OCCURRED: 03/24/05

TIME OCCURRED: 1451 HRS

LOCATION OF OCCURRENCE: 1001 N. PECOS #H-63, LAS VEGAS, NV

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: NORMAN "KEITH" FLOWERS

DOB:

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE G. SHERWOOD, P# 3676, LVMPD Homicide Section, on 08/24/06 at 0830 hours. Persons present during this interview are NORMAN "KEITH" FLOWERS and DETECTIVE SHERWOOD.

Q. Operator, this is Sherwood, uhm, at Clark County Detention Center on 08/24/2006, talking to Norman Flowers, ID#1179383. Is it okay— whatta you go by Norman?

A. Uh, Norman, Keith.

Q. Okay. What would you rather I call you?

A. Uh, you can call me Keith.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

Q. Okay. I'm gonna be talkin' to Keith Flowers. Uhm, date and time is 08/24/06 at 0830. We're at the Clark County Detention Center.

Uhm, Keith, prior to the interview, I told you that we're not going to discuss your case at all, is that correct?

A. Correct.

Q. Okay. And I also advised you of your Miranda rights, which I have to do because you're in custody, and had you sign a card sayin' that I advised you. Is that correct?

A. Correct.

Q. Okay. Uhm, first thing I wanna talk to you about, Keith, is I'm trying to find out who a friend of yours is. And he may be a friend of yours and he may not be a friend of yours. He's a black guy and he's got like a skin condition on his arms. Does that ring a bell of anybody?

A. What's the point of tryin' to find him? Why you tryin' to find him for?

Q. Well, because I need to ask him some questions on a case I'm investigating. And your name came up in the case that he's a friend of yours.

A. Uh, you... you're givin' me limited information.

Q. Okay. How 'bout... how 'bout I start and give you some more information. Okay. Uhm, do you know Debra Quarles?

A. (No verbal response)

Q. Let me show you a picture of her. Will that help?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 3

EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

A. Yeah.

Q. Okay. Uh, okay, this is a picture of Debra Quarles, ID#857276. Do you know this lady?

A. I'm not sayin'.

Q. Well, I mean do you think you know her? I mean she said she knows you.

A. I'm not sayin'. I mean until I know what it's about, I'm not saying anything.

Q. Okay. Here's what I'm investigating. I'm investigating the... the death of her daughter. Uhm, it's possible that someone you know may have been involved in it. And I just... I'm tryin' to find out who that person is so that I can go and talk to him. I mean Debra tells me that she's a good friend of yours and that you would probably help me. And I wanted to come talk to you and appeal to you because Debra can't rest in peace 'cause her daughter's killer hasn't been caught. And the reason I think it's the guy with the skin condition is just prior to Sheila being found, there was a guy hanging out outside that matches the description of him, wearing like a long-sleeved shirt, which it wasn't extremely cold that day. It was a long-sleeve flannel shirt. And I'm thinkin', you know, maybe this guy is tryin' to hide his skin condition or something like that.

A. I don't understand what makes you guys think a person would even have a skin condition because they have the long shirt.

Q. Well, here's why. Because this guy... this guy that I'm looking for, I was told is a

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

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EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

friend of yours. And I was told that you gave Debra rides home from work, so maybe... maybe he saw Debra and maybe he saw Sheila and maybe he got interested in Sheila.

A. Who is Sheila?

Q. Uhm, Sheila is Debra's daughter.

A. Oh. Only knew her by her nickname.

Q. Puka? (Unknown spelling) Okay. So you didn't really know her well.

A. (No verbal response)

Q. Okay. Uhm, anyway, uhm, you know, I'm just— I'm tryin' to solve... solve a crime that happened. And I mean I know... I know you're probably not real anxious to cooperate with the police, but I wanted to appeal to you as a friend of Debra's, uhm, you know, to maybe just pointin' in the right direction.

A. Can't do it. No. I'm not— I don't wanna be involved.

Q. Okay. Well, I understand that. And I mean I... you know, I can... I can find out. Uhm, how well do you know Debra?

A. No, I won't answer no questions about any of that.

Q. Okay. Well, could I ask you a couple... just a couple more things, then we'll be done?

A. No. I got my own problems to deal with, so I don't wanna get involved in anybody else's matters.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

Q. So you don't wanna help Debra at all. You don't wanna... you don't wanna like try and help catch who killed her daughter?

A. (No verbal response)

Q. Really?

A. I'm not sayin' yes, I'm not sayin' no. I'm just— I don't wanna be involved in anybody else's problems. I have my own case to deal with.

Q. Well, and I understand that.

A. And—

Q. And that's why I told you, you know, man to man, Norman, I came down here and I told you that I'm not gonna ask you questions about your case because I know you have your own problems. But I also wanted to appeal to your human decency.

A. If I do anything, I... I have to talk to my lawyer first, so— Before I do anything. I mean that's what I learned so far, so before I speak about anything or—

Q. Well, I know. But we're not talkin' about the case that—

A. I understand. It has nothin' to do with my case or anything, but the fact is still, I have a... I have an attorney and I... I believe I should talk to my attorney before doin' anything in... in the present or in the future.

Q. Okay. Well, you know, I understand that. But like I said, I'm also not asking you questions in regard to the case that you're under arrest for.

A. I understand.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

- Q. I mean I'm talking to you about something that's totally non-related.
- A. I understand. It's obviously a legal matter because you read me my rights. So, therefore, I should speak to a legal counselor, you know what I'm sayin'. My lawyer. I mean I understand has nothin' to do with my case, but still, you know. I understand everything you said and I still would rather, you know—
- Q. So your friendship with Debra, you don't really wanna help her? I mean she— can I just tell you somethin'? Debra told me you guys were actually intimate. That you guys had a relationship for a while.
- A. Okay, that's what she told you. Well, I mean what's that supposed to mean?
- Q. Well, I'm just— I mean like I said, I thought if I appealed to your, you know, maybe a friend, that, you know, you might at least give me the courtesy of talking to me about a couple of the people— I mean I wanted to show you some pictures of people and see if you knew 'em and, you know, see if you just wanted to help me with somethin' totally non-related to... to what you're in here for.
- A. Like I said, I got my own problems.
- Q. Well, can— well, did you know Puka?
- A. Like I said, I got my own problem. Not sayin' anything. I'm not nobody's information giver or anything like that. I don't... I'm not doin' nothin' and sayin' nothin' until I talk to my lawyer.
- Q. Okay. So you wanna be done?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

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EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

A. Yeah, I guess. 'Cause I mean he might want me to speak to you. He might not want me to speak to you. I don't know. You know what I'm sayin'. I figure gettin' in other people problems create problems, so—

Q. Okay. Well, and I understand that. But like I said, I just... I mean I... I... my basic points of coming down here and talking to you were just to see, you know, if you would help Debra put... lay her daughter to rest. And, you know, I'll be honest with you, we have no idea who did this. Uhm, we're grasping at straws because I happen to think Debra's a pretty nice lady and I've been tryin' to do some work on this and get somethin' goin'. And that's all. I mean and chances are we'll never figure who did this. You know, we don't know... we don't know why they did it, we don't know what the motive for it was. I mean from what I heard, she had no enemies. So it's, uh, it's just like I said, it's one of those deals where, you know, I'm tryin' to do the right thing for the family. But like I also said, you know, if you don't wanna help, I mean I can't make you.

A. All I said was I'm gonna have to talk to my attorney first.

Q. Who's your attorney?

A. Uh, Randy Pipe (?). Randy Pipe (?).

Q. Okay. And do you want me to come ~~back and~~ talk to you or you just wanna be done with me and you talkin'?

A. That's up to him, so— that's up to him.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 050324-1801

STATEMENT OF: NORMAN "KEITH" FLOWERS

Q. Okay.

A. It's up to him.

Q. Okay. Well, I'll shut the tape off and we'll be done then. Is that what you want?

A. Yes.

Q. Okay. That's the end of this, uh, tape. The date and time is same date, time is now
0840 hours.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT THE CLARK COUNTY DETENTION CENTER,
LAS VEGAS, NV, ON THE 24TH DAY OF AUGUST, 2006, AT 0840 HOURS.

GS:cc
06V1134


CLERK OF THE COURT

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 PAMELA WECKERLY
6 Chief Deputy District Attorney
7 Nevada Bar #00613
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 NORMAN FLOWERS,
14 #1179383)

15 Defendant.)

CASE NO: C228755

DEPT NO: VII

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL**

17 DATE OF HEARING: 11/12/08
18 TIME OF HEARING: 8:30 A.M.

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached
21 Points and Authorities in Opposition to Defendant's Motion for New Trial.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 **A. Fact of Case C214390 in District Court XI**

4 1. **Marilee Coote**

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

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

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

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

25 2. **Juanita Curry**

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

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

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

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

21 3. Rena Gonzalez

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

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

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

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

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

15 4. Mawusi Ragland

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

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

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

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

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

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

25 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source of this
26 DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is excluded as
27 the source of that DNA as well. The partial profiles obtained from Gonzalez's rectal swabs and the
28 phone cord are consistent with a single male source and may be the product of laboratory transfer or

1 contamination. Upon retesting, no indication of the partial male profile was present in the rectal
2 swabs.

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

4 Sheila Quarles

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

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

14 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30 p.m.
15 and her mother arrived home to find her dead at approximately 2:50 p.m. A stereo was also missing
16 from the residence. In addition, detectives learned that Sheila was involved in a lesbian relationship
17 with an individual named Quinise Toney.

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

27 After detectives were notified of the DNA match, they recontacted Debra Quarles. Quarles
28 explained that she knew and had actually dated Norman Flowers several months before the murder.

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

7 The State moves to admit evidence of Flowers's subsequent murders and activity at the
8 Silver Pines Apartment Complex in May in the instant murder case before this Court concerning
9 victim Sheila Quarles. Prior to this case being transferred to Department VII, the case was in
10 Department XIV. At that time, the defense moved to preclude the State from introducing such
11 evidence. The State opposed. Judge Mosley did not grant the defense motion, commented that all
12 three cases should be consolidated, but did not clearly state that the State could affirmatively move
13 to admit such evidence. Thus, the State filed a motion for clarification.

14 Subsequently, this Court reviewed all of the incidents and ruled that the State would be
15 permitted to bring in evidence of the Marilee Coote murder as an other bad act, but not defendant's
16 conduct regarding Rena Gonzalez, Mawusi Ragland, and Juanita Curry. In addition, after this Court
17 heard testimony and argument on this matter, the State was able to identify the second source of
18 DNA in the Quarles case. Quarles's boyfriend, George Brass had sex with her in the morning just
19 hours before she was murdered. Brass was able to establish that he was at work prior to Quarles's
20 death—an alibi. At trial, Defendant Flowers suggested to this Court that his sexual contact with
21 Quarles was consensual and that Brass or some other individual was the real killer.

22 **ARGUMENT**

23 As this Court is well aware, NRS 175.381 provides that the Court may enter a judgment of
24 acquittal if the evidence adduced at trial is insufficient to sustain a conviction. Similarly, a
25 defendant may file a motion for new trial within seven days after the verdict or finding of guilt. See
26 NRS 176.515. In order to grant a motion for judgment of acquittal, the Court would have to
27 determine that, as a matter of law, the evidence was legally insufficient to support a conviction. See
28 State v. Rhodig, 101 Nev. 608, 707 P.2d 549 (1985). The standard for sufficiency of the evidence

1 on appeal “is whether the jury, acting reasonably, could have been convinced of the defendant’s
2 guilt beyond a reasonable doubt.” Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992),
3 overruled on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000). Sufficient
4 evidence exists if the evidence, viewed in the light most favorable to the prosecution, would allow
5 any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.
6 Davis v. State, 110 Nev. 1107, 1116, 881 P.2d 657, 663 (1994); see also Azbill v. State, 88 Nev.
7 240, 252, 495 P.2d 1064, 1072 (1972) (holding that in all criminal proceedings, the weight and
8 sufficiency of the evidence are questions for the jury, and its verdict will not be disturbed upon
9 appeal if there is evidence to support it; the evidence cannot be weighed by an appellate court).

10 In his motion, Defendant Flowers does not appear to be claiming that there was insufficient
11 evidence for a jury to find him guilty at trial. Rather, he raises the propriety of the Court’s
12 evidentiary ruling regarding admitting evidence of the Coote murder pursuant to NRS 48.045(2) and
13 the ruling regarding the admissibility of his statement to Detective Sherwood.

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

15
16 Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a
17 person in order to show that he acted in conformity therewith. It may, however, be
admissible for other purposes, such as proof of motive, opportunity, intent,
preparation, plan, knowledge, identity, or absence of mistake or accident.

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

25
26 There is nothing “unfair” in admitting direct evidence of the defendant’s past acts by
27 an eyewitness thereto that constituted substantive proof of the relevant intent alleged
28 in the indictment. The intent with which a person commits an act on a given occasion
can many times be best proven by testimony or evidence of his acts over a period of
time prior thereto . . .

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

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

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

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

27 In the case of Flowers, both victims were casual acquaintances of Flowers. Both were killed
28 in their residences. Both were killed during daylight hours. In addition to being murdered, both had

1 some minor property taken from them as well. More significantly, of course, both were sexually
2 assaulted prior to their deaths. The victims both had damage to their vaginal and/or anal areas
3 substantiating the sexual assault charges. Both victims were killed, at least in part, by means of
4 strangulation. Admittedly, the cause of death for Sheila Quarles was a drowning; however, the
5 strangulation was a significant contributing factor to the death. Certainly, the similarity of the three
6 murders constitutes evidence of identity admissible under NRS 48.045(2).

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

14 Further, given that Flowers suggested that he had consensual sex with Quarles and someone
15 else killed her, evidence of the Coote killing is relevant to his intent during his encounter with
16 Quarles and whether she consented to the sex. The fact that he subsequently—at a minimum—had
17 at least one violent sexual encounter which resulted in vaginal trauma to victim Marilee Coote as
18 well as her strangulation and death is evidence that Quarles’s murder was intentional and not an
19 accident. See id.

20 Finally, evidence of the Coote murder was relevant to the March 2005 murder in terms of the
21 charged sexual assault counts. In Williams v. State, 95 Nev. 830, 603, P.2d 694 (1979), a sexual
22 assault victim testified that she met the defendant while discussing a possible job as his secretary.
23 At some point, the defendant offered her \$5000 for a “one night stand,” but she refused. The
24 defendant told her that he was trained in martial arts and demonstrated how he could injure her and
25 then sexually assaulted her. The defendant maintained that the intercourse was consensual. The
26 State presented the testimony of two prior victims, from incidents occurring nineteen months before
27 the charged incident, who testified that they met the defendant through a job interview and were
28

1 coerced into having sex with him after he demonstrated his karate knowledge. In affirming the
2 admission of testimony regarding the prior incidents, the Nevada Supreme Court stated:

3
4 In the instant case, evidence of Williams' sexual misconduct with other persons was
5 admitted as being relevant to prove his intent to have intercourse with the victim
6 without her consent. This evidence was introduced after Williams admitted
7 committing the act, but claimed to have done so with the victim's consent. By
8 acknowledging the commission of the act but asserting his innocent intent by
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.

9 Id. at 833.

10 Because Quarles was killed after she was sexually assaulted, the State had to rely on
11 circumstances and medical testimony to establish the lack of consent. Consent was at issue because
12 of the sexual assault charge itself, which requires lack of consent, and, like Williams, Flowers
13 claimed that the sexual encounter was consensual. Therefore, the subsequent conduct of Flowers
14 with regard to Marilee Coote was relevant.

15 Defendant Flowers's second claim of error, that the admission of his statement improperly
16 commented on his invocation of his right to counsel, is factually inaccurate. Detective Sherwood
17 provided Flowers with his Miranda rights, which he waived. The State elicited testimony regarding
18 Sherwood's conversation with Flowers before he invoked. The State never elicited any information
19 regarding Flowers's invocation. Thus, there was no error.

20 CONCLUSION

21 Based on the foregoing, the State respectfully asks this Court to deny the instant motion.

22 DATED this 10th day of November, 2008.

23 Respectfully submitted,

24 DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

25
26 BY /s/PAMELA WECKERLY
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 Opposition to Defendant's Motion for New Trial, was made this 10th day of November, 2008, by facsimile transmission to:

CLARK W. PATRICK, SPD
FAX #455-6273

/s/ Deana Daniels
Secretary for the District Attorney's Office

ORDR

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

FILED

Nov 18 2 36 PM '08

E. J. [Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

NORMAN FLOWERS,
#1179383

Defendant.

Case No. C228755
Dept No. VII

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: 11/12/08
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 12th day of November, 2008, the Defendant being present, REPRESENTED BY RANDALL PIKE and CLARK PATRICK, Deputy Special Public Defender's, the Plaintiff being represented by DAVID ROGER, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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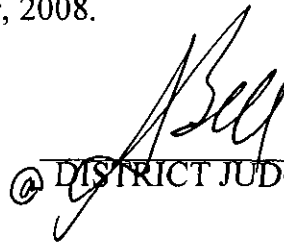
CLERK OF THE COURT

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1 IT IS HEREBY ORDERED that the Defendant's Motion For New Trial, shall be, and
2 it is DENIED.

3 DATED this 19th day of November, 2008.

4
5
6  @ DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

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

2 ORIGINAL

JAN 16 10:29 AM '09

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 NORMAN KEITH FLOWERS
12 aka NORMAN HAROLD FLOWERS, III,

13 Defendant.

CASE NO. C228755

DEPT. IV

14
15 BEFORE THE HONORABLE KATHY HARDCASTLE, DISTRICT COURT JUDGE

16 TUESDAY, JANUARY 13, 2009

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**
18 **SENTENCING**

19 APPEARANCES:

20 For the State:

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

22 For the Defendant:

CLARK W. PATRICK, ESQ.,
RANDALL H. PIKE, ESQ.,
Deputy Special Public Defenders

23 RECORDED BY: KRISTEN LUNKWITZ, COURT RECORDER

CLERK OF THE COURT

JAN 16 2009

RECEIVED

1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 13, 2009

2 [Proceeding commenced at 9:09 a.m.]

3
4 THE COURT: Page 3, C228755, Norman Keith Flowers.

5 MS. LUZAICH: Good morning, Judge.

6 THE COURT: This is time set for sentencing.

7 MR. PATRICK: Good morning, Judge. Clark Patrick, Randall Pike for Mr.
8 Flowers.

9 THE COURT: All right. We ready to go forward?

10 MR. PATRICK: Yes, Judge.

11 THE COURT: All right. Mr. Flowers is present in custody. Mr. Flowers,
12 pursuant to jury verdict entered October 22, 2008 on the following charges: Count
13 1, burglary; Count 2, murder; Count 3, sexual assault, all felonies. You are hereby
14 adjudicated guilty of those crimes and the jury has already -- let me see, you had a
15 penalty phase and they imposed life without the possibility of parole; is that correct?

16 MS. LUZAICH: That's correct.

17 MR. PATRICK: That's correct, Judge.

18 THE COURT: All right, State, wish to be heard?

19 MS. LUZAICH: I do, Judge. I also have a speaker in this case and I would
20 ask her to be heard last pursuant to statute.

21 THE COURT: Okay.

22 MS. LUZAICH: Thank you.

23 Judge, it's somewhat unfortunate that you get to sentence the
24 Defendant without the benefit of having heard the trial, but in this particular case
25 Sheila, the victim, was an eighteen-year old girl. She had everything in the world

1 going for her. She had a job. Everybody loved her. Nobody had anything bad to
2 say about her.

3 The Defendant was actually part of her life for a period of time
4 because he dated her mother months before Sheila's death. In this particular case,
5 he entered her apartment. He violently strangled her to death after sexually
6 assaulting her; and again the sexual assault was an exceptionally violent sexual
7 assault.

8 He also, I'm not sure if the Court is aware, has another case pending
9 in District Court 11. This happened on March twenty something, sorry, of 2005
10 twenty days after he was released from prison on a parole violation. Six weeks after
11 he raped and strangled Sheila to death, he entered an apartment and raped and
12 strangled another lady, Marilee Coote, to death. Within hours of that, he entered
13 another apartment in that same apartment complex and raped and strangled Rena
14 Gonzales to death.

15 Her seven and nine or so --

16 THE DEFENDANT: You can't do that. I haven't been in trial.

17 CORRECTION'S OFFICER: Hey, hey, hey.

18 MS. LUZAICH: And he has not -- he has not yet been to trial on that case I
19 recognize, but these are certainly things that the Court can take into consideration.

20 All three of these acts were obviously exceptionally violent, but
21 what's interesting is part of the reason that he was on parole to begin with was, as a
22 juvenile, he entered a bunch of different homes. In one particular home that he
23 entered with the intent to steal, he ended up burning their house down. Their dog
24 was in the bedroom. He lit a fire in the master bedroom and rather than letting the
25 dog out one of the two three doggy doors in the house, he locked the dog in the

1 master bathroom, so that the dog burned to death in the fire. I mean, that's the kind
2 of person you have here.

3 And that is why we are asking the Court to sentence him on the
4 burglary and the sexual assault consecutive to the murder. I recognize that life
5 without right now today means life without the possibility of parole. It didn't used too
6 and in the future it might not again. No, obviously we cannot tell the jury that when
7 they sentence, but this Court can certainly take that into consideration.

8 What he did in this particular case is extremely heinous, but when
9 you look at everything that he has been convicted of and the acts that he is going to
10 be tried for; and for the record, on one of the new cases his DNA is found in her
11 vagina in right in front of her. In the other one it was not. I recognize that, but those
12 two are tied together because they are both friends of the woman that he was, at
13 that time, seeing.

14 So everything basically comes full circle and I would submit to the
15 Court the Defendant is absolutely earned maximum sentences four to ten on the
16 burglary. And I have no idea why P&P said the sexual assault's a fifteen to life while
17 I would love that to be. It's not the case. It's actually ten to life, so I would ask you
18 to give him the ten to life on the sexual assault consecutive to the murder; four to ten
19 on the burglary consecutive to those counts.

20 THE COURT: All right. Counsel.

21 MR. PATRICK: Thank you, Judge.

22 Looking back at the trial, I think the -- the phrase exceptionally violent
23 does not -- was -- is belied by the facts of the trial. I mean, I understand that sexual
24 assault and homicide are inherently violent crimes, but I think the adjective
25 exceptionally does not apply from the facts of this case. True, Ms. Quarles was

1 strangled and sexually assaulted, but I don't think it was exceptional as opposed to
2 any other.

3 Secondly, I'd like to say that according to United State's Constitution,
4 Mr. Flowers stands before you today innocent of any crimes involving Ms. Cootes or
5 Ms. Gonzales. I think the Prosecutor absolutely misspoke when she already
6 convicted him prior to any trial on those matters, so I think you need to take into
7 consideration at this point he is completely innocent of those crimes.

8 Also, when the jury came back with a verdict of first degree murder in
9 this case, they did not find it to be premeditated and deliberate. They found it under
10 the felony-murder rule in association with the sexual assault and the burglary.
11 Therefore, I think it's highly appropriate that this Court sentences him concurrent on
12 all the counts. Thank you.

13 THE COURT: All right. Thank you.

14 Mr. Flowers, is anything you wish to state?

15 THE DEFENDANT: I just want to say that basically that -- that I know --
16 know the family of the victim are going through a bad time right now and I feel bad
17 about that and I maintain my innocence; and that's it.

18 THE COURT: All right, we'll here the speaker.

19 MS. LUZAICH: Debra Quarles.

20 THE COURT: She may remain back there. Just stand.

21 MS. LUZAICH: Can she stand where she is; is that okay or here?

22 THE COURT: Can you hear on the microphone from there?

23 COURT RECORDER: Just speak loud.

24 THE CLERK: She can come up.

1 **DEBRA QUARLES**

2 having been called as a speaker and being first duly sworn, testified as follows:

3 THE CLERK: Please state your name. Spell it for us please.

4 THE SPEAKER: Debra -- Debra Quarles, D-E-B-R-A; last name, Q-U-A-R-
5 L-E-S.

6 THE COURT: All right, Ms. Quarles, you may make your statement.

7 THE SPEAKER: Well, I'm back face to face with you once again --

8 THE COURT: Direct your statements please to the Court.

9 THE SPEAKER: -- for the most hurtful thing you could have ever done to my
10 family and myself. It hurts me to my soul of how you came into my life with nothing
11 but deceitfulness. I can't understand why you would do such a horrible thing like
12 that to my baby, Pooka *[phonetic]*. She was so full of love, life and a big future
13 ahead of her. She was so desperate to succeed in life. I know my baby had to put
14 up a struggle for her life and you took it from her for no reason at all, but I hope the
15 Court make you pay for this.

16 You have made me nothing, but sleepless nights, mind-filled based
17 of what-if's, all asking God to take it back and let it be me not Pooka *[phonetic]*
18 please. Pooka *[phonetic]* didn't deserve this neither would I have, but it would have
19 been better had you taken me instead of her. Now all I feel is that if I'd made the
20 mistake of meeting you and being deceived by you. This is something I never can
21 forgive myself for being around someone who had nothing positive on his mind at all
22 just murder.

23 You took not just a part of me, but more than half of me. I can't
24 function even though I pray everyday, all day. I need medication for every moment
25 of my life. My life is imprisoned from doing -- from you doing this to my baby, but I

1 know God makes all things possible. See, one day I will be able to see my baby
2 again and it's a place I can look around and know you will never, never be. This
3 place is called heaven where we will reconnect, but remember you will pay for what
4 you did to my baby.

5 THE COURT: All right, Mr. Flowers, in addition to the \$25 administrative
6 assessment fee, \$150 DNA analysis fee, you are ordered to submit to -- asked to
7 determine genetic markers. Count 1, you're sentenced to a term of a hundred and
8 twenty months Nevada Department of Corrections, minimum parole eligibility of
9 forty-eight months. Count 2, this jury has already imposed a sentence and we'll just
10 formalize its sentence of life without the possibility of parole; and that sentence will
11 run consecutive to Count 1. Count 3, life without the possibility of parole with a
12 minimum parole eligibility of -- it's a hundred and twenty months; correct?

13 MS. LUZAICH: Yes, Judge.


14 THE COURT: And that sentence will run consecutive to Count 2. And you'll
15 receive seven hundred and sixty-one days credit for time served.

16 MS. LUZAICH: Thank you.

17 [Proceeding concluded at 9:20 a.m.]

18
19 * * * * *

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

23
24 
25 Michelle Ramsey
Court Recorder/Transcriber

JOC

ORIGINAL

FILED

2009 JAN 16 A 6:49

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Smith
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS
aka Norman Harold Flowers III
#1179383

Defendant.

CASE NO. C228755

DEPT. NO. IV

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - BURGLARY (Category B Felony) in violation of NRS 205.060, COUNT 2 - MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 4 - ROBBERY (Category B Felony) in violation of NRS 200.380; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 - BURGLARY ((Category B Felony) in violation of NRS 205.060, COUNT 2 - FIRST DEGREE MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364,

1 200.366; COUNT 4 – FOUND NOT GUILTY; thereafter, on the 13TH day of January,
2 2009, the Defendant was present in court for sentencing with his counsel, RANDY
3 PIKE, Deputy Special Public Defender and CLARK PATRICK, Deputy Special Public
4 Defender, and good cause appearing,
5

6 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
7 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
8 including testing to determine genetic markers, the Defendant is SENTENCED to the
9 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO A
10 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
11 Eligibility of FORTY-EIGHT (48) MONTHS; AS TO COUNT 2 - TO LIFE WITHOUT THE
12 POSSIBILITY OF PAROLE, to run CONSECUTIVE to COUNT 1; AS TO COUNT 3 -
13 TO LIFE WITHOUT THE POSSIBILITY OF PAROLE with a MINIMUM Parole Eligibility
14 of ONE HUNDRED TWENTY (120) MONTHS, to run CONSECUTIVE to COUNT 2;
15 (Category B Felony) in violation of NRS 205.060, COUNT 2 – MURDER (Category A
16 Felony) in violation of NRS 200.010, 200.030, COUNT 3 – SEXUAL ASSAULT
17 (Category A Felony) in violation of NRS 200.364, 200.366; with SEVEN HUNDRED
18 SIXTY-ONE (761) DAYS credit for time served.
19
20
21
22
23

24 DATED this 15th day of January, 2009

25
26
27
28

KATHY HARDCASTLE
DISTRICT JUDGE

ORIGINAL

NOAS
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
RANDALL H. PIKE
Deputy Special Public Defender
Nevada Bar No. 1940
CLARK W. PATRICK
Deputy Special Public Defender
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rpike@co.clark.nv.us
cpatrick@co.clark.nv.us
Attorneys for Defendant

JAN 20 3 28 PM '09

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

NORMAN FLOWERS,
Defendant.

CASE NO. C228755
DEPT. NO. IV
DOCKET NO. N/A

NOTICE OF APPEAL

DATE: N/A
TIME: N/A

TO: THE STATE OF NEVADA, Plaintiff;
TO: DAVID ROGER, DISTRICT ATTORNEY; and
TO: DEPARTMENT IV OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

NOTICE is hereby given Defendant NORMAN FLOWERS, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from his conviction and sentence entered from his trial in this matter. (Judgement of Conviction (Jury Trial) was

RECEIVED

JAN 26 2009

CLERK OF THE COURT

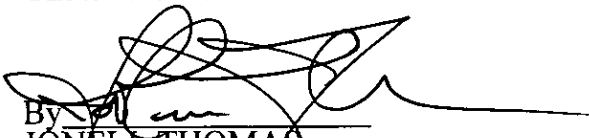
SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 filed on January 16, 2009).

2 DATED this 26th day of January, 2009.

3 DAVID M. SCHIECK
4 CLARK COUNTY SPECIAL PUBLIC DEFENDER

5 
6 BY JONELL THOMAS
7 DEPUTY SPECIAL PUBLIC DEFENDER
8 NEVADA BAR #4771
9 330 S. THIRD ST., STE. 800
10 LAS VEGAS, NEVADA 89155-2316
11 (702) 455-6265

12 **CERTIFICATE OF MAILING**

13 The undersigned employee with the Clark County Special Public Defender's Office,
14 hereby certifies that on the 26 day of January, 2009, a copy of the Notice of Appeal was
15 deposited in the United States mail at Las Vegas, Nevada, enclosed in a sealed envelope upon
16 which first class postage was fully prepaid, addressed to District Attorney's Office, 200 Lewis
17 Ave., 3rd Floor, Las Vegas NV 89155; the Nevada Attorney General's Office, 100 N. Carson,
18 Carson City, NV 89701; and Norman Flowers, No. 1179383, Clark County Detention Center
19 330 S. Casino Center Blvd., Las Vegas NV 89101, that there is a regular communication by
20 mail between the place of mailing and the place so addressed.

21 DATED: 1/26, 2009.

22 
23 KATHLEEN FITZGERALD
24 An employee of The Special Public Defender

1 TRAN

FILED

2009 FEB 17 P 12:07

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

12 NORMAN K. FLOWERS,

13 Defendant.

CASE NO. C228755

DEPT. IV

14 BEFORE THE HONORABLE KATHY HARDCASTLE, DISTRICT COURT JUDGE
15 THURSDAY, JANUARY 29, 2009

16 **RECORDER'S TRANSCRIPT OF**
17 **STATE'S REQUEST, CLARIFICATION ON THE SENTENCE**

18 **APPEARANCES:**

19 For the Plaintiff:

ELISSA LUZAICH, ESQ.
Deputy District Attorney

21 For the Defendant:

CLARK W. PATRICK, ESQ.
Deputy Special Public Defender

24 **RECORDED BY: LARA CORCORAN, COURT RECORDER**

FEB 17 2009

CLERK OF THE COURT

1 THURSDSAY, JANUARY 29, 2009 AT 9:09 A.M.

2
3 THE COURT: Page 2, top, C228755, Norman Keith Flowers.

4 MR. PATRICK: Morning, Judge, Clark Patrick, Special Public Defender for
5 Mr. Flowers.

6 MS. LUZAICH: Morning, Judge, Miss Luzaich for the State.

7 This is on -- there was an error in the court minutes on count three.
8 The court minutes reflect that he was sentenced on a sexual assault to life without
9 the possibility of parole, with parole eligibility after ten years has been served;
10 therefore, the JOC is incorrect. So if the minutes could be corrected to reflect count
11 three life with the possibility of parole, with a minimum parole eligibility of 120
12 months.

13 THE COURT: That will be corrected.

14 MS. LUZAICH: Thank you.

15 THE COURT: You'll submit an amended JOC?

16 MS. LUZAICH: Yes.

17 MR. PATRICK: Thank you, Judge.

18 [Whereupon the proceedings concluded]

19 * * * * *

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

23 
24 DEBRA WINN, Court Transcriber
25

JOC

FILED

2009 FEB 12 A 7 19

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Smith
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C228755

DEPT. NO. IV

NORMAN KEITH FLOWERS
aka Norman Harold Flowers III
#1179383

Defendant.

AMENDED JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - BURGLARY (Category B Felony) in violation of NRS 205.060, COUNT 2 - MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 4 - ROBBERY (Category B Felony) in violation of NRS 200.380; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 - BURGLARY ((Category B Felony) in violation of NRS 205.060, COUNT 2 - FIRST DEGREE MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 4 - FOUND NOT GUILTY; thereafter, on the 13TH day of January, 2009, the Defendant was present in court for sentencing with his counsel, RANDY

1 PIKE, Deputy Special Public Defender and CLARK PATRICK, Deputy Special Public
2 Defender, and good cause appearing,

3
4 THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to
5 the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including
6 testing to determine genetic markers, the Defendant was SENTENCED to the Nevada
7 Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO A MAXIMUM of
8 ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of
9 FORTY-EIGHT (48) MONTHS; AS TO COUNT 2 - TO LIFE WITHOUT THE
10 POSSIBILITY OF PAROLE, to run CONSECUTIVE to COUNT 1; AS TO COUNT 3 -
11 TO LIFE WITHOUT THE POSSIBILITY OF PAROLE with a MINIMUM Parole Eligibility
12 of ONE HUNDRED TWENTY (120) MONTHS, to run CONSECUTIVE to COUNT 2;
13 with SEVEN HUNDRED SIXTY-ONE (761) DAYS credit for time served.
14

15
16 THEREAFTER, on the 29th day of January, 2009, the Defendant appeared in
17 court with his counsel, CLARK W. PATRICK, Special Deputy Public Defender, and
18 pursuant to the State's request for clarification of the sentence, and good cause
19 appearing to amend the Judgment of Conviction; now therefore,

20
21 IT IS HEREBY ORDERED that the Defendant's sentence be amended to reflect:
22 AS TO COUNT 3 - TO LIFE WITH THE POSSIBILITY OF PAROLE with a MINIMUM
23 Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS, to run CONSECUTIVE
24 to COUNT 2.

25 DATED this 10th day of February, 2009

26
27
28 
KATHY HARDCASTLE
DISTRICT JUDGE

ORIGINAL

FILED

FEB 20 3 03 PM '09

Earl D. Smith
CLERK OF THE COURT

NOAS
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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rpike@co.clark.nv.us
cpatrick@co.clark.nv.us
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

NORMAN FLOWERS,
Defendant.

CASE NO. C228755
DEPT. NO. IV
DOCKET NO. N/A

AMENDED NOTICE OF APPEAL

DATE: N/A
TIME: N/A

TO: THE STATE OF NEVADA, Plaintiff;

TO: DAVID ROGER, DISTRICT ATTORNEY; and

TO: DEPARTMENT IV OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

NOTICE is hereby given Defendant NORMAN FLOWERS, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from his conviction and sentence entered from his trial in this matter. (Amended Judgement of Conviction (Jury

CLERK OF THE COUNTY
FEB 20 2009


SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 Trial) was filed on February 12, 2009).¹

2 DATED this 19th day of February, 2009.

3 DAVID M. SCHIECK
4 CLARK COUNTY SPECIAL PUBLIC DEFENDER

5 
6 JONELL THOMAS
7 DEPUTY SPECIAL PUBLIC DEFENDER
8 NEVADA BAR #4771
9 330 S. THIRD ST., STE. 800
10 LAS VEGAS, NEVADA 89155-2316
11 (702) 455-6265

12 **CERTIFICATE OF MAILING**

13 The undersigned employee with the Clark County Special Public Defender's Office,
14 hereby certifies that on the 19th day of February, 2009, a copy of the Amended Notice of Appeal
15 was deposited in the United States mail at Las Vegas, Nevada, enclosed in a sealed envelope
16 upon which first class postage was fully prepaid, addressed to District Attorney's Office, 200
17 Lewis Ave., 3rd Floor, Las Vegas NV 89155; the Nevada Attorney General's Office, 100 N.
18 Carson, Carson City, NV 89701; and Norman Flowers, No. 1179383, Clark County Detention
19 Center, 330 S. Casino Center Blvd., Las Vegas NV 89101, that there is a regular communication
20 by mail between the place of mailing and the place so addressed.

21 DATED: 2/19, 2009.

22 
23 KATHLEEN FITZGERALD
24 An employee of The Special Public Defender

25 ¹Judgement of Conviction (Jury Trial) was filed on January 16, 2009. The Notice of Appeal
26 was filed on January 26, 2009. Due to a clerical error in the Judgement of Conviction, the District
27 Attorney's Office requested a hearing to clarify Mr. Flowers sentence and correct the Judgement of
28 Conviction. This appeal is from the Amended Judgement of Conviction.

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 68140

Electronically Filed
Oct 05 2015 01:12 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 V

James A. Oronoz, Esq.
Nevada Bar No. 6769
Oronoz & Ericsson LLC
700 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 878-2889
Facsimile: (702) 522-1542
Attorney for Norman Flowers

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V	Amended Notice of Appeal, Filed February 20, 2009	AA1052
VI	Appellant's Opening Brief, Filed December 21, 2009	AA1054
VI	Appellant's Reply Brief, Filed May 3, 2010	AA1170
I	Bench Brief, Filed July 30, 2008	AA0174
VI	Defendant's Opposition to State's Response and Motion to Dismiss Defendant's Petition for Writ Of Habeas Corpus (Post-Conviction), Filed November 14, 2012	AA1229
IV	Defendant's Proposed Jury Instructions Not Used At Trial, Filed October 21, 2008	AA0688
VI	Defendant's Supplemental Opposition to State's Response and Motion to Dismiss Defendant's Petition For Writ of Habeas Corpus (Post-Conviction), Filed January 8, 2013	AA1249
VII	Findings of Fact, Conclusions of Law and Order, Filed May 28, 2015	AA1380
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IV	Instructions to the Jury, Filed October 22, 2008	AA0761
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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
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VI	State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Filed October 30, 2012	AA1221
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IV	Verdict, Filed October 22, 2008	AA0809
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V	Verdict(s) Submitted to Jury but Returned Unsigned, Filed October 24, 2008	AA0973
---	---	--------

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



CASE NO. C228755
DEPT. NO. VII

ORIGINAL

FILED

OCT 24 8 27 AM '08

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Bell
CLERK OF THE COURT

THE STATE OF NEVADA,)
Plaintiff,)

Reporter's Transcript
of
Penalty Phase

vs.)

Volume 7-A

NORMAN KEITH FLOWERS,)
aka NORMAN HAROLD)
FLOWERS, III,)
Defendant.)

BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 23, 2008

10:00 A.M.

APPEARANCES:

For the State: Pamela Weckerly, Esq.
Elissa Luzaich, Esq.
Deputies District Attorney

For the Defendant: Randall Pike, Esq.
Clark Patrick, Esq.
Deputies Public Defender

Reported by: JoAnn Orduna, CCR No. 370

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1 CASE NO. C228755
2 DEPT. NO. VII

3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)
7 Plaintiff,)
8 vs.) Reporter's Transcript
9) of
10 NORMAN KEITH FLOWERS,) Penalty Phase
11 aka NORMAN HAROLD) Volume 7-A
12 FLOWERS, III,)
13 Defendant.)

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22 Clark Patrick, Esq.
23 Deputies Public Defender

24 Reported by: JoAnn Orduna, CCR No. 370
25

1 LAS VEGAS, CL COUNTY, NV, THURS, OCT 23, 2008

2 10:00 A.M.

3 -oOo-

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

5 THE COURT: Okay. Let's go on the record
6 in Case No. C228755, State of Nevada versus Norman
7 Keith Flowers.

8 Let the record reflect the presence
9 of the defendant with his counsel, counsel for the
10 State, absence of the jury.

11 Before the jury comes in, Mr. Pike
12 has what must be a stock motion to bifurcate because
13 it doesn't even have the case number on it.

14 MR. PIKE: Just because I was doing it
15 last night and I was my own secretary.

16 THE COURT: I've read it, Mr. Pike, I
17 understand it.

18 Anything you want to add about the
19 motion?

20 MR. PIKE: No, Your Honor.

21 THE COURT: Okay. Here's the deal: I
22 trust the jury to do their job. I particularly
23 trust this jury to do its job. They obviously
24 worked very hard on this case, spent a lot of time

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1 during the guilt phase and then actually, you can
2 tell from their verdict that they looked at each and
3 every count separately and you can tell from the
4 time they just didn't say well, we're gonna
5 disregard the judge's instruction on 48.045.

6 In additional, I am going to when
7 the case is submitted to them, explain exactly how
8 they need to do their job, by deciding the
9 aggravators unanimously beyond a reasonable doubt,
10 set that aside and decide the mitigators.

11 One person that thinks it's a
12 mitigator, let's check, but these two on the scale
13 of justice without considering one other thing, then
14 depending on which one tips, pick one of these two
15 and then work off of it and you still don't have to
16 come up with death.

17 So I'm going to explain it to them,
18 I'm going to expect they're gonna do their job. And
19 I didn't see a case that says that you need to
20 bifurcate. All I've got were cases that say okay,
21 we need to be sure that the jury follows the law and
22 then properly instruct them.

23 So motion's denied.

24 MR. PIKE: Thank you.

25 THE COURT: Ready to go?

1 MS. WECKERLY: Can I just have one minute
2 to get this?

3 THE COURT: Mr. Flowers, while I'm at it,
4 I guess actually yesterday it's not in the
5 admonition, but the truth is you can also actually
6 be sworn and make a statement, although you're
7 pretty much limited to the same issue as you would
8 in an unsworn statement.

9 But if you do that, then the State
10 could cross-examine you, although they're limited,
11 too, on what they can cross-examine. And that's
12 historically been the case. It's not even on our
13 admonition now. In 40 years, I've never seen
14 anybody opt to do that.

15 You know, most people opt to make an
16 unsworn statement, a number of people, but a
17 minority opt not to do anything. And I've never
18 seen nobody opt to make a sworn statement, just give
19 a -- I've never seen the upside, but I'm sure Mr.
20 Pike has told you, because he's done a jillion of
21 these, that that's also your right.

22 And I'm rather sure he's probably
23 told you that isn't in your best interest. So I
24 want you to be aware of that.

25 MR. PIKE: Right. And I also advised him

1 that the allocution would be at the end of our case,
2 it would be after --

3 THE COURT: It will be after everything's
4 all done. You're the last person. You're the last
5 person to get up and speak and you have those three
6 things you can talk about in allocution and --

7 MR. PIKE: Also --

8 THE COURT: I also let counsel read so
9 that they stay on task or I've had counsel say,
10 judge, do you want to ask the questions. Any way,
11 we'll do some leading questions so we keep on task.
12 And it won't be very long and lengthy if you decide
13 to do that.

14 MR. PIKE: And for the allocution as far
15 as an opportunity, will Mr. Flowers be able to offer
16 his allocution from counsel table?

17 THE COURT: Wherever you want. He can
18 either do it here or there.

19 MR. PIKE: Thank you.

20 (Whereupon, the jury entered the
21 courtroom.)

22 THE COURT: Okay. Let's go on the record
23 in Case C228755, State of Nevada versus Norman Keith
24 Flowers.

25 Let the record reflect the presence

1 of Mr. Flowers with his counsel, counsel for the
2 State. All ladies and gentlemen of the jury are
3 back in the box.

4 This is the time set for the penalty
5 phase of the trial.

6 Ms. Weckerly, are you ready to
7 proceed?

8 MS. WECKERLY: Yes.

9 THE COURT: Go ahead. Make your opening.
10 Ladies and gentlemen, this is gonna be like the
11 other trial in terms of the way we proceed except
12 it's abbreviated. It's not gonna be, the opening
13 won't be as long, the closing won't be as long, the
14 witnesses won't be as long, but same sort of
15 approach.

16 We'll have openings, we'll have
17 witnesses from the State, we'll have witnesses from
18 the defense, I'll give you the instructions on how
19 to go about it, we'll have closings and we'll be
20 done.

21 Go ahead, Ms. Weckerly.

22 MS. WECKERLY: Good morning. Aristotle
23 once said, What is justice but to give every man his
24 due.

25 And as Judge Bell just explained to

1 you, at this point in the trial it will be your duty
2 as jurors to determine what justice demands in terms
3 of the case of Sheila Quarles. You will decide what
4 is the proper penalty for the murder of Sheila
5 Quarles.

6 Now, procedurally as Judge Bell just
7 explained, this phase of the trial is considerably
8 shorter than the trial phase, but it proceeds in the
9 same manner.

10 The evidence that you may consider
11 in the penalty phase consists of all the evidence
12 that you've already heard in the previous trial
13 phase of the trial.

14 And you can take into consideration
15 the facts and circumstances of the murder of Sheila
16 Quarles when you determine the appropriate penalty
17 in this case. You can consider what the last hours
18 of this lady's, young lady's life was like, what she
19 must have gone through and how Mr. Flowers left her
20 drowning in a bathtub of water.

21 The evidence rules at a penalty
22 phase are different than they are at the trial
23 phase. You'll -- hearsay's allowed and it's a
24 little bit more of a relaxed evidentiary standard.

25 You'll hear from officers though

1 like you did in the trial phase. You'll hear from
2 other victims of the defendant Norman Flowers and of
3 course you'll hear from family members of the
4 victims of Norman Flowers.

5 In terms of criminal history, what
6 you'll learn in this portion of the trial phase is
7 that Mr. Flowers started his career as a criminal by
8 doing residential burglaries.

9 On September the 21st of 1992, he
10 burglarized the home of Karen Moore. She came home
11 to find her house ransacked and various items of her
12 property missing from her residence. She was
13 missing a gun, a television, a Walkman and some
14 jewelry. The person who burglarized her home had
15 gone through her bedroom and her son's bedroom.

16 MR. PIKE: I apologize for objecting, but
17 I've got to. In reference to these, I'd just make a
18 continuing Crawford objection.

19 THE COURT: Okay.

20 MR. PIKE: I apologize.

21 MS. WECKERLY: That's okay. A few days
22 later on August -- or I'm sorry. On October the 7th
23 of 1992 in the same general neighborhood, 3064
24 Parkdale, a lady by the name of Betty Bell
25 experienced a burglary.

1 She was actually home in her
2 residence and she heard a crash in a room of her
3 residence. And when she went to investigate to see
4 what the crash was, she encountered a man who was
5 wearing a jersey or some type of jersey type shirt
6 with the name Keith on it.

7 He told Ms. Bell that actually he
8 wasn't breaking in, but that he was chasing his
9 little brother out of her residence. He actually
10 had an injury, he was bleeding at the time arguably
11 from a broken window at Ms. Bell's house and Ms.
12 Bell actually gave him a towel to help him with his
13 injury.

14 Later Ms. Bell went to investigate
15 her residence and she found that the window in one
16 of her and her windowsill had been pried opened.

17 On October the 8th of 1992, at 4489
18 Ridgedale which is also in that same neighborhood, a
19 man by the name of Elwood Williams was burglarized
20 by Norman Flowers.

21 Mr. Williams came home to find a
22 window pried at his residence. Some guns, elect --
23 and electronic items were stolen. It looked like a
24 screwdriver had been used to pry open his window.

25 Crime scene analysts tried to

1 process the scene for fingerprints but were unable
2 to recover any.

3 Also on October the 9th of 1992, a
4 man by the name of Roger Osgood was the victim of a
5 burglary committed by Mr. Flowers. He also lived in
6 that same neighborhood at 3192 Palmdale.

7 What happened to him was a young man
8 came up to him and knocked on his door and said he
9 was looking for someone named John. Ms. Osgood sort
10 of sent him away and didn't know what he was talking
11 about.

12 Later when Mr. Osgood returned to
13 his residence, his bedroom screen was damaged. The
14 windows of his residence had been pried and a boom
15 box, credit cards and cash were taken.

16 Later on October the 21st of 1992,
17 at 4250 East Cloverdale, a lady by the name of
18 Barbara King became the victim of a burglary.

19 A bedroom window was pried open at
20 her residence, a gun, jewelry and \$3,000 in cash
21 that belonged to her mother was taken from the
22 residence.

23 Sort of interesting fact of her case
24 was that her young son who was about 12 years old at
25 the time of the burglary actually encountered the

1 burglar Mr. Flowers as he was leaving the residence,
2 and Mr. Flowers told him I'll give you a hundred
3 dollars if you don't tell on me. The young boy
4 actually took the money and ended up, ended up
5 burying it in the backyard. And later when
6 confronted about it, told the police he was scared,
7 he didn't know what to do and actually dug up the
8 money and handed it to the police.

9 In terms of this burglary series,
10 Metro started investigating this series and had
11 information that led them to Mr. Flowers.

12 When they made contact with him,
13 they informed him of his Miranda rights and he
14 agrees to speak with them and he actually admitted
15 to committing all of these burglaries. He went
16 around the neighborhood and pointed out the various
17 locations where he committed the burglaries.

18 He explained that what he did with
19 the property that he got from the burglaries was he
20 sort of dumped it off at his friends' homes. So
21 then the detectives go to the friends' homes where
22 Mr. Flowers pointed out yeah, I left some property
23 there, I left some property there, and they were
24 able to recover a substantial portion of the
25 property and return it to the victims.

1 What else does Mr. Flowers' criminal
2 history show? Well, also in October of 1992, he
3 committed other crimes, namely a robbery with use of
4 a deadly weapon.

5 On October the 10th of 1992, Mr.
6 Flowers and a co-conspirator of his went to a
7 business called the Car Store which is located at
8 4231 Boulder Highway. Mr. Flowers and this other
9 man approached the employees of the Car Store and
10 said they were interested in a particular car. They
11 wanted to see how the car drove.

12 Mr. Flowers gets in the passenger
13 seat of the car, the man he was with gets in the
14 back seat and the employee sits in the driver's seat
15 of the car. They take off driving the car. And
16 when they get to an intersection, Mr. Flowers pulls
17 out a gun, holds it on the employee of the Car Store
18 and demands that he exit the car so Mr. Flowers can
19 take it. The employee obviously gets out the car
20 and runs away. And Mr. Flowers gets into the
21 driver's seat and takes off with his co-conspirator.

22 Another event happened in October,
23 on October 11th of 1992. This was a residential
24 burglary. On this occasion, Mr. Flowers knocked on
25 the door of a lady's home. Her name was Nina

1 Delacourt. And he told her that he needed to use
2 the phone inside her residence and she let him
3 inside and let him use -- let him use her telephone.

4 Once inside, he pulled a gun on her
5 and demanded the keys to her car. Mr. Flowers was
6 order -- ordered her into her bedroom and told her
7 that he wanted her to go in there and lay down. As
8 she got into her bedroom, she was actually able to
9 grab her own gun and confront Mr. Flowers with it.
10 He ended up running out of the residence on that
11 occasion and she actually ended up firing a shot at
12 him.

13 For these two crimes, Mr. Flowers
14 ultimately pled guilty to one count of robbery with
15 use of a deadly weapon.

16 What else is in Mr. Flowers'
17 criminal history? Well, in September, on September
18 the 29th of 1992, Claud and Barbara McGowan left
19 their residence. They also lived in the Cloverdale,
20 Ferndale neighborhood.

21 And when they left their residence
22 in the afternoon, they were notified of a fire that
23 had actually occurred at their residence. Someone
24 had used an accelerant and set the bedroom area of
25 their home and sort of a closet area of their home

1 on fire.

2 When they returned to the residence,
3 there was substantial damage obviously to their
4 home. When they went inside, they noticed various
5 items were missing from their residence. Jewelry
6 was missing, guns were missing and cash was missing,
7 as well, in particular, a coin collection.

8 In addition, they had a pet dog who
9 had been locked in a bathroom and actually died in
10 the fire. Mr. Flowers was charged with this case as
11 well and he ended up pleading guilty to first-degree
12 arson in this case.

13 What happened was the police
14 contacted him about the residential burglaries and
15 he essentially admitted his conduct in the robbery,
16 the arson and the residential burglaries. So he
17 ended up with three separate cases that moved
18 through the criminal justice system.

19 For all of those cases, Mr. Flowers
20 on May the 28th of 1993 was sentenced to a total of
21 18 years in the Nevada State Prison. What happened
22 in the plea negotiations on his case was he pled
23 guilty to the robbery with use, he pled guilty to
24 the first-degree arson, and he pled guilty to the
25 burglary. But the sentencing in all those cases was

1 that the sentences would run concurrent. Meaning
2 run all at the same time. So he ended up
3 essentially with one 18-year sentence at the Nevada
4 Department of Prisons and that sentence was imposed
5 on May the 28th of 1993.

6 After serving about 10 years, Mr.
7 Flowers was released on parole. He ended up
8 violating the conditions of his parole in November
9 of 2004. So a little over a year later.

10 And the nature of the parole
11 violations was that he had violated a temporary
12 protective order that his girlfriend and mother of
13 his child had applied for. He wasn't -- because of
14 a violent history between the two, he wasn't
15 permitted to go around her and be in her presence.
16 He ended up violating that and making contact with
17 her on November the 22nd of 2004, and so his parole
18 ends up being violated which means he's revoked and
19 taken back to the Nevada Department of Prisons.

20 He was there for a certain length of
21 time, but he ended up being reinstated or regranted
22 the opportunity to be on parole. And that occurred,
23 he was actually out of custody as of March the 4th
24 of 2005. So he did a couple more months on the last
25 segment of the parole, but then he was released 20

1 days before Sheila Quarles's murder.

2 We all know from this proceeding
3 what happened on March the 24th of 2005. That of
4 course is when Ms. Quarles was murdered. But as you
5 all know, that case didn't get involved right away.

6 The next criminal event in Mr.
7 Flowers' history occurred in May. And that was May
8 the 3rd of 2005. And of course that was at Marilee
9 Coote's apartment which was located at 6650 East
10 Russell.

11 And as you've learned in the trial
12 phase of this case, that was the date that Ms.
13 Coote's fellow employees had called and asked the
14 managers of the apartment complex to do a welfare
15 check on Ms. Coote.

16 And of course when they do so, they
17 find her dead in her apartment. Mr. Flowers' DNA
18 underneath the carpet beneath her, Ms. Coote the
19 victim of a sexual assault. There are vaginal
20 injuries to her and anal injuries to her as well,
21 and of course Mr. Flowers' DNA is found in her body.

22 You heard in the trial phase, you
23 heard testimony from a lady named Juanita Curry.
24 She was the sort of neighbor in the apartment area
25 that had contact with Mr. Flowers as the police were

1 up investigating Ms. Coote's death. And you heard
2 sort of a limited version of the contact that
3 Juanita Curry had with the defendant on May the 3rd.

4 Her contact with him was actually a
5 little bit more extensive. As she explained to you,
6 he came to her door while authorities were up on the
7 third floor apartment. And she was speaking with
8 him and the authorities were sort of coming up and
9 down the stairs, he would turn away and try to sort
10 of come inside her apartment.

11 He ended up having contact with her
12 sort of throughout the morning. He came back one
13 time wanting to use the phone, he came back another
14 time wanting a glass of water because it was hot, he
15 came back another time talking with her.

16 One time he wanted to use her rest
17 room. She let him come inside and use the rest
18 room, but then she waited outside of the apartment
19 because she was a little bit nervous.

20 As he went inside to use the rest
21 room, he actually called out to her and asked her to
22 come help him find the light switch in the bathroom
23 which she refused to do.

24 Because of his conduct, Ms. Curry
25 told -- or Ms. Curry ended up sort of looking out

1 her apartment window and sort of watching and sort
2 of watched the comings and goings of Mr. Flowers
3 that morning as he would sort of come back and forth
4 and make contact with her.

5 And the way the apartment complex
6 was configured is her, she was in one building and
7 Ms. Coote's apartment was two floors up. And across
8 the apartment parking lot, she could see the
9 stairway area of the building across the way.

10 And what ended up happening is at a
11 little before 3:00 in the afternoon, two children
12 Angel and Vanessa Gonzalez actually returned home to
13 their apartment where they lived with their mother.
14 And when they go inside the apartment, these two
15 little girls finds their mom under unresponsive and
16 lying on a bed.

17 And this lady's name is Reina
18 Gonzalez. Ms. Gonzalez was strangled on May the 3rd
19 of 2005 as well. Ms. Gonzalez was sexually
20 assaulted as well. Her sexual assault consisted of
21 vaginal injuries and anal injuries as well. And
22 there were extensive injuries all over her body.

23 There was no sign of forced entry
24 into her residence and the police were unable to
25 recover any fingerprints in terms of the

1 investigation.

2 Like Marilee Coote, the lady on the
3 third floor, Ms. Gonzalez was an acquaintance and
4 friend with the defendant's girlfriend, the lady by
5 the name of Mawoose Ragland.

6 And when the police investigated
7 this second homicide which occurred on the same day
8 at the Silver Pines Apartments, Ms. Curry explained
9 that she could see into the stairway area of Ms.
10 Gonzalez's apartment and she actually saw the
11 defendant Norman Flowers in that area, but she
12 couldn't say that she saw him go inside the
13 residence. But she saw him kind of going back and
14 forth of Ms. Gonzalez's apartment itself.

15 And you'll hear more information
16 about her case as well.

17 Basically at the end of this
18 hearing, it will be the State's position that Mr.
19 Flowers at this point has victimized too many
20 people.

21 It will be the State's position that
22 Mr. Flowers has clearly demonstrated that he
23 represents a, an extreme danger to the community, in
24 particular to women.

25 And it will be the State's position

1 that based on all the harm he's caused, he deserves
2 a punishment commensurate with that.

3 THE COURT: Thanks. Mr. Patrick.

4 MR. PATRICK: Today I'm standing here and
5 I'm gonna ask you one thing: Spare Mr. Flowers'
6 life. Spare Norman's life.

7 You've heard about the Coote case,
8 now you've heard about this Gonzalez case, now
9 you've heard about the arsons, the robberies.

10 Remember that on the Coote case and
11 the Gonzalez case that Norman has not been found
12 guilty of those. He's gonna have a trial similar to
13 this down the road where that jury will determine
14 whether or not he's guilty.

15 Everything you've heard since we
16 started last Wednesday and everything you will hear
17 today and tomorrow, it all comes into consideration
18 now. Everything you will hear from the time we
19 started until the time we end, you can consider when
20 you go back to deliberate the proper penalty for
21 this case.

22 Right now your journey is only
23 halfway over. When we did voir dire, we talked to
24 you about this part and I talked a little bit in my
25 closing before about this part. Because again,

1 that's only the time we get to talk to you and try
2 to get your feelings and try to pick jurors who are
3 fair and impartial and will listen to both sides of
4 the story before you make up your mind.

5 You'll -- at the end of this when
6 you go back to deliberate the penalties, you'll be
7 given four choices. Three of those choices are for
8 life, one of those choices is for death. I ask you
9 to choose life.

10 Now, based on the evidence you've
11 seen on Sheila's case and what you're gonna hear
12 from the State over the next day, you may say well,
13 you know, he's done one murder that we found him
14 guilty of, he has two more out there that another
15 jury's gonna see.

16 THE COURT: Mr. Patrick, this is really a
17 closing argument. You're supposed to show them that
18 what the evidence is gonna show, and I know you have
19 some things that you're gonna put before them.

20 MR. PATRICK: What we're gonna do today
21 when it's our turn to put on some evidence in,
22 tomorrow, is we're gonna show you Norman. We're
23 gonna if show you his life, what kind of man he is,
24 what kind of childhood he had. We're gonna give you
25 a full picture of the man that you're gonna

1 sentence.

2 You're gonna hear from some of
3 Norman's family members.

4 You're gonna hear from a
5 psychologist Dr. Mortillaro that we hired, that we
6 paid to come in and examine Norman and to kind of
7 give you an idea of what Norman's been through in
8 his life and what's brought him to this point.

9 You're gonna hear from James Estin
10 who is an expert in prisons and how prisons are run
11 and what happens when somebody goes to prison.

12 You're gonna hear from Tammy Bass
13 who is -- also deals with the prisons. She's been a
14 member of the parole board for several years and
15 she's gonna tell you about life in prison and how
16 that works.

17 You're gonna hear about the two
18 aggravators that the State has. And then we're,
19 what we're gonna give you is gonna be the
20 mitigators.

21 Well, what are mitigators? And
22 simply a mitigator is anything you want it to be.
23 Norman -- Norman's the son, Norman's a father,
24 Norman's a brother. He has family and friends that
25 you're gonna hear from and he has family and friends

1 that you won't be able to hear from, but each one of
2 them have a reason why Norman, they want Norman in
3 their lives, whether he's in prison or not.

4 The thing you've got to remember as
5 we're putting on our case in the next few days is
6 we're not giving any of this as an excuse. Nothing
7 is offered as justification.

8 But you're gonna hear how Norman
9 suffered severe emotional, physical and sexual abuse
10 as a child. Any of those can be reasons to spare
11 his life. Any of those are mitigators.

12 Norman's older sister is gonna come
13 in here and talk to you a lot about Norman's
14 childhood and the physical abuse he endured, the
15 sexual abuse he endured, his feelings of
16 abandonment.

17 She's gonna tell you about not only
18 was he sexually abused over a period of years by a
19 neighbor, but even after he reported it, he got sent
20 back to that same house and how he felt that was a
21 punishments.

22 From your verdict in this case,
23 along with the possible verdicts in the other cases,
24 you've already assured society that Norman's gonna
25 spend the rest of his life in prison. I know that's

1 a harsh thing for me to say as a defense attorney,
2 but it's the truth.
3 No matter what you do, Norman has
4 already forfeited his right to ever eat a meal or
5 use the bathroom or go to sleep anywhere other than
6 Ely State Prison. You've assured society that
7 Norman will never have the chance to harm anybody
8 else.

9 When Dr. Mortillaro gets on the
10 stand, he's gonna tell you a little bit about how
11 Ely is full of people like Norman. And for reasons
12 that he can't understand, for reasons that I can't
13 understand, he'll explain to you how these people do
14 well in that type of safe and secured environment.

15 When you go back to deliberate, each
16 one of you have to determine life or death on your
17 own. The judge is gonna tell you when he gets to
18 the end and gives you the jury instructions, it
19 doesn't matter how many aggravators there are, it
20 doesn't matter how many mitigators there are, it's
21 not a numbers game. It's a weighing game. If it
22 was simply a numbers game, we wouldn't need you
23 here. We can just put the numbers n a computer and
24 the computer would tell us what we should do. But
25 that's not what we're doing.

1 It's up to each of you to decide
2 individually Norman's punishment.

3 You have to trust the system, you
4 have to trust the process and that's what we're
5 asking you to do here today when you listen to the
6 evidence you're gonna see over the next day and a
7 half.

8 Martin Luther King took a line from
9 Mohandas Gandhi. And it went something like, an eye
10 for an eye and soon the whole world is blind. In
11 this case, two eyes and a world just gets blinded
12 faster.

13 You're gonna be given four choices.
14 Like I said, three for life, one for death and we're
15 asking that you choose life. Thank you.

16 THE COURT: Thank you. Ms. Weckerly,
17 your first witness.

18 MS. WECKERLY: Detective Long.

19 THE COURT: Thank you.

20 MR. PIKE: Can we approach the bench,
21 Your Honor?

22 THE COURT: Yeah.

23 (Whereupon, an off-the-record
24 discussion was had at the bench.)

25 THE COURT: Okay. Come on up, Detective

1 Long.

2 THE COURT: Mr. Photographer, I'm sure
3 you know the rules. The rules are no photographing
4 any jurors, no photographing any juveniles, no
5 photographing any undercover police. You can
6 certainly photograph the lawyers, the defendant, any
7 of the detectives.

8 THE PHOTOGRAPHER: Okay.

9 THE COURT: Good to go. And I think
10 there is one sensitive witness who doesn't want to
11 be photographed.

12 THE PHOTOGRAPHER: Okay.

13 THE COURT: Detective, come on up.

14 (Whereupon, Detective Dan Long was
15 duly sworn to tell the truth, the
16 whole truth and nothing but the
17 truth.)

18 THE CLERK: Thank you. Please have a
19 seat. And could you please state your full name and
20 spell your first and last name for the record.

21 THE WITNESS: Dan Long. D-a-n. L-o-n-g.

22 DIRECT EXAMINATION

23 BY MS. WECKERLY:

24 Q. And Detective Long, you're obviously
25 employed with the Las Vegas Metropolitan Police

1 Department?

2 A. Yes, ma'am.

3 Q. In preparation for today's hearing, did I
4 ask you to review a series of police reports that
5 were kept in the course of business at the Las Vegas
6 Metropolitan Police Department?

7 A. Yes, ma'am.

8 Q. And did they concern a series of
9 burglaries and two robbery type cases committed by
10 the defendant Norman Flowers?

11 A. Yes, ma'am.

12 Q. I'd like to talk about the series of the
13 burglaries first if we could.

14 A. Sure.

15 Q. And the first incident of burglary, would
16 that have occurred on September the 21st of 1992?

17 A. Yes, ma'am.

18 Q. And can you explain to the members of the
19 jury -- obviously you've read the police reports on
20 it?

21 A. Yes, ma'am.

22 Q. What happened on that occasion?

23 A. This occurred September 21st, 1992. It
24 occurred at 3224 Ferndale, which is there's
25 community called the Dales down off Boulder Highway

1 before you get down to Flamingo. Residential homes,
2 single story homes.

3 The victim in this, her name is
4 Karen Moore. It's a residential burglary. She went
5 to work for the day shift between 7:30 in the
6 morning and 4:30 in the afternoon. When she got
7 home, she found that her house had been broken into.
8 The house had been ransacked. The entry was through
9 a door.

10 Stolen from her house was a Smith &
11 Wesson, model 3638 revolver, a hundred and \$58 in
12 U.S. currency, a Nintendo game or games, a 27-inch
13 Sony TV, a second Sony TV with a remote, a Nintendo
14 game station, a Sony Walkman, an Omega watch, some
15 clothing and a gold ring with diamonds in it.

16 Do you want me to continue?

17 Q. Sure. Ahead.

18 A. This occurred on the 21st September.

19 On October 22nd, Officers Stark and
20 Figueroa met with Mr. Flowers. He confessed to the
21 burglary, he showed them where the burglary
22 occurred. He told them how he got into the house
23 and he advised them where the 38 revolver was.

24 On the 29th of October, Detective
25 Tharp met with another gentleman who turned over the

30

1 gun that was taken by Norman Flowers.

2 Q. Can I interrupt you there. And the
3 person who had the gun, in your review of the police
4 reports, was that a friend or sort of an associate
5 of Mr. Flowers?

6 A. It was a friend of his. And what he
7 would do is after committing a daily burglary, he
8 would move the property he took to someone else's
9 house very quickly. So he was storing his gun with
10 this other person.

11 And like I said, Officer Tharp
12 recovered the firearm at that time on the 29th.

13 Q. And the next residential burglary that
14 there's a report on?

15 A. That would be under Event No. 9210070859.
16 It would have been on October 7th of 1992, which
17 would be several days later. A couple of weeks
18 later actually.

19 This one occurred at 3064 Parkdale
20 which is in the same community that I'm talking
21 about.

22 Oh, by the way, when Norman was
23 arrested, he indicated to officers that he was
24 currently living at, and I'm going back to the first
25 one, 3237 Avendale Court which is in that same

1 community.

2 Q. And then the October 7th, 1992

3 burglary --

4 A. Yes.

5 Q. -- what happened in that situation?

6 A. The victim, her name is Betty Bell. She
7 lives at that address. It's the single family
8 residence. She went to work between -- well, she
9 actually left her house between the hours of 12:15
10 and 1:27.

11 When she arrived at home, she found
12 entry through a bathroom window, she found a pair of
13 broken pliers near the window. So he'd used those
14 to pry open the window.

15 Q. And prior to her --

16 A. Actually, I'm sorry. She had not left
17 the house. She was actually in the house.

18 Q. Okay.

19 A. There was entry made through the bathroom
20 window. She heard a crash. She stepped out of her
21 bedroom. And I'm sorry about that.

22 Q. That's okay.

23 A. And she saw Mr. Flowers standing in the
24 hallway and his hand was bleeding. Mr. Flowers told
25 Mrs. Bell that he had chased his little brother into

32

1 the house and was trying to get him out of the
2 house, that he was sure that his little brother had
3 not stolen anything. Mrs. Bell gave him a towel for
4 his hand for the blood. Norman then left through
5 the front door and then she called the police.

6 Mrs. Bell said that at the time
7 Norman was wearing a jersey with the name of Keith
8 on the back of it.

9 Q. And she later found the pliers and noted
10 that her window had been or her bathroom window had
11 been pried open?

12 A. Correct. And then on the 22nd of October
13 when Norman was meeting with Officer Tharp again at
14 that time, Norman took Officer Tharp to that address
15 and indicated that he had broken into that house and
16 but he hadn't gotten anything on that one.

17 Q. And the next one?

18 A. This would have been on October 8th of
19 1992. So it would have been the next day after the
20 hand cut.

21 The address would be 4489 Ridgedale.
22 Same community that we're talking about. This was a
23 residential burglary also. The people that lived
24 there were Elwood Williams and Marian -- or/and
25 Marian Dalton.

1 Both had gone to work in the morning
2 at 9:30 in the morning and returned at 4:14 in the
3 afternoon. They found the window and windowpane
4 removed from their window. It was pried off which
5 they think was with a screwdriver.

6 Taken in the burglary was a Colt
7 revolver, semi-automatic. No, I'm sorry. Colt
8 revolver, 45 caliber, a Remington 22 rifle with
9 scope, an RCA camcorder, gold necklace, JVC cassette
10 stereo, Sony VCR.

11 They -- when Detective Tharp met
12 with Norman, he indicated that he had moved the gun,
13 the 45 to Gordo and Poochie's house which was at
14 4385 Parkdale. He actually confessed to this
15 burglary.

16 And on the 23rd, Detective Tharp
17 along with an LSP team did a search warrant at 4385
18 Parkdale and recovered the firearm.

19 Q. And what's a LSP team?

20 A. Oh, I'm sorry. Lying services patrol
21 team. It then evolved into a, what's called now --

22 Q. Problem --

23 A. PSU, problem solving unit. Thank you. I
24 haven't been in -- I was on an LSP team. I didn't
25 know PSU.

1 Q. And the next incident?

2 A. Well, the next incidents are the
3 robberies, but you want to skip those?

4 Q. We'll come back to those.

5 A. Okay.

6 Q. If we could do the burglaries first and
7 then we'll go to the robberies.

8 A. Not a problem. The next one would have
9 been October 13th, which would have been five days
10 later from that last one. It's at 3192 Palmdale,
11 Las Vegas, Nevada.

12 It -- this one the victim is Roger
13 Osgood. He had left for a couple of days it appears
14 to be on a vacation. When he arrived home on the
15 13th, he discovered -- oh, I'm sorry. There's,
16 there was an initial part of this.

17 It said that on the morning of the
18 9th, Ms. Osgood heard a knock on his door and there
19 was a male at his door asking for John. This gave
20 Ms. Osgood a bad feeling. He locked up his house
21 thoroughly. He had security gates and security bars
22 on his windows and then he left for his vacation.

23 When he returned, he found the, one
24 of the screens ripped opened and one the bars on the
25 window pried. They couldn't make entry that way.

1 The door was then kicked completely off his hinges.
2 Stolen in the burglary was a Sony CD radio, cassette
3 player, a large list of credit cards, a 14 karat
4 gold chain, CDs, butcher knife, carry bag with UNLV
5 music, sheet music in it, and batteries.

6 On the 22nd of October, Detective
7 Tharp -- I'm sorry. Officer Tharp was meeting with
8 Norman. Norman indicated that he did burglarize
9 this house. And there was -- he told Officer Tharp
10 that he stole a black stereo and which was portable
11 style and miscellaneous other items, but he couldn't
12 remember the other items and that he had kicked the
13 door at this address.

14 Q. And on October the 21st of '92?

15 A. Okay. Another residential burglary. It
16 was on October 21st of 1992, which will be a week
17 later. 4250 Cloverdale. The victims were Barbara
18 King and Aaron Murphy.

19 This was forced window using a
20 screwdriver was the entry. The house was ransacked.
21 Stolen was a Smith & Wesson 38 revolver, U.S.
22 currency amounting to \$3,000, all \$100 bills.
23 Reebok sports bag which was a purple and blue color,
24 and jewelry.

25 On the 22nd of October while Norman

1 Flowers was meeting with Officer Tharp, he indicated
2 that he had burglarized this house, burglarized this
3 house, showed Detective Tharp where the house was.

4 They, they then went back when they
5 had more information and Detective Tharp met with
6 Aaron Murphy who is the 13 year old son. This is on
7 the 30th of October.

8 Detective Tharp asked Aaron if he
9 had come across Norman or as everybody knew him as
10 Keith. The son indicated that he had, that Norman
11 was in the house, Norman gave him \$200 to keep his
12 mouth shut. Aaron did take the \$200 but said the
13 reason he didn't say anything was because he was
14 afraid of Keith.

15 He then --

16 Q. Did he say what he did with the money?

17 A. He then buried \$200 cash in the back
18 corner of his yard. He took detective or Officer
19 Tharp to that corner and he dug up the \$200 and
20 returned it to Officer Tharp who then returned it to
21 Barbara King.

22 On the 7th of November, Norman
23 Flowers made a phone call from CCDC. A person that
24 we don't know who that person is.

25 THE COURT: Do you want to say what CCDC

1 means?

2 THE WITNESS: Oh, I'm sorry. Clark
3 County Detention Center. Where he was spending his
4 time. That person then threw a gun into the yard
5 where Norman was living. Norman's mother located
6 the gun and called Officer Tharp and then Officer
7 Tharp went out and recovered that gun in her yard.
8 BY MS. WECKERLY:

9 Q. Okay. Let's talk about those are the
10 residential burglary series, correct?

11 A. Yes.

12 Q. And there's also two instances of
13 robbery?

14 A. Yes, ma'am.

15 Q. Or one's an attempt I guess. The first
16 robbery incident was on October the 10th of 1992?

17 A. That's correct.

18 Q. And what happened in that situation?

19 A. This, again, this is right in the middle
20 of these series of burglaries. This one occurred at
21 the Car Store. And according, according -- Norman
22 went with a male, a white male that he only would
23 identify as Ron. He had a 45 caliber firearm with
24 him. He went to the Car Store and asked to drive a,
25 test drive a Chevy Cavalier. A salesman by the name

1 of Rembert took them out. He was driving the car
2 and Norman was in the front seat. Ron was in the
3 back seat.

4 Norman pulled the gun and told the
5 man, the salesman to get out of the car which he
6 did. Norman then got into the driver's seat and
7 drove the Cavalier to the 3100 block of Palmdale.
8 He said, he told officers that the reason he did
9 this, Officer Figueroa which is Tharp's partner, was
10 that he was gonna use the car later in other crimes.
11 The problem was the car was recovered by the police
12 later that day.

13 Q. And on --

14 A. The next day?

15 Q. Yes. The 11th.

16 A. This would be October 11th at 2100 hours
17 or 9 o'clock p.m. This is at 3124 Ferndale. Same
18 community. We're always in the same community. The
19 victim is a Nina Delacourt. She had a knock at her
20 door. She looked out the peep hole and she didn't
21 recognize the person. The man said this is Steve.
22 She thought it was her neighbor so she opened the
23 door and it was Norman Flowers.

24 Norman stepped into the house to use
25 the phone and he pulled out a 45 caliber firearm.

1 And asked for the keys to Nina Delacourt's car.

2 Nina said that she didn't drive a car, didn't have
3 any keys to give him. Nina then ran for her
4 bedroom. She --

5 MR. PIKE: Your Honor -- I'm sorry,
6 detective. I just want to interject, a double
7 hearsay. I know hearsay's admissible, but -- and I
8 renew the Crawford and make sure there's an ongoing
9 objection.

10 THE COURT: Okay. You made a record. I
11 think that's --

12 THE WITNESS: So --

13 THE COURT: The reports are kept in the
14 ordinary course of the business at the police
15 department so --

16 MS. WECKERLY: Correct.

17 THE COURT: Most is one of them.

18 MS. WECKERLY: Right.

19 THE COURT: Go ahead.

20 THE WITNESS: Nina then ran for her
21 bedroom where she obtained a 38 caliber revolver
22 from her nightstand and then ran into her bathroom
23 shutting the door. Norman -- and I want to get this
24 right.

25 BY MS. WECKERLY:

1 Q. And actually, does part of the police
2 report on this incident contain a written statement
3 of Ms. Delacourt?

4 A. That's where I'm referring to now.

5 Q. Okay. Refer to that.

6 A. Nina Delacourt had a handwritten
7 statement at the time. She said she ran into the
8 bedroom and got my gun, which is a 38 out of the
9 nightstand, and then ran into the bathroom.

10 Norman said -- or what it says here
11 is he said, come out of the bathroom. And Nina said
12 no, you come in and get me. He then said stay in
13 there and don't come out. I then -- she then comes
14 out with -- there's, there's one part here I left
15 out. And I'm sorry about that.

16 When she's indicated that she didn't
17 have keys to a car and they're both in the front
18 room just after he comes in, he had pulled out his
19 gun and asked for my keys, I told him I didn't have
20 any keys. He then told Nina to go to the bedroom
21 and lay down. And then that's when she broke for
22 the bedroom and got her gun.

23 So now she's in the bathroom, he's
24 saying come out, she's saying no, you come in and
25 get me. He then leaves. She says she comes out of

1 the bathroom and goes to the front door. She sees
2 him on the sidewalk in front of her driveway. He
3 sees her at the door and raises his gun. She then
4 fires one round from her 38 at him missing him. And
5 he runs away.

6 Q. And those are the two -- well, that's an
7 attempted robbery, but the prior one's a robbery
8 with use of a deadly weapon?

9 A. That's correct.

10 Q. Thank you.

11 A. Did the -- I'm sorry. The burglary --

12 MR. PIKE: There's no question before the
13 witness.

14 MS. WECKERLY: I have no other questions.

15 THE WITNESS: Okay.

16 THE COURT: Any questions?

17 MR. PIKE: Yes.

18 CROSS-EXAMINATION

19 BY MR. PIKE:

20 Q. Detective, you have no personal knowledge
21 of the events that you've just testified to and
22 you're just reading or summarizing a number of
23 reports that have been provided to you?

24 A. Well, our own police reports, that's
25 correct.

1 Q. Okay. And, and in reference to that,
2 every event that you've testified to occurred in
3 1992?

4 A. Correct.

5 Q. During the time that in 1992 or -- well,
6 let me reask the question more directly.

7 You're aware of the year in which
8 Norman was born?

9 A. Correct.

10 Q. 1974?

11 A. Correct.

12 Q. So all -- at the time that these events
13 all occurred, he was 18 years old?

14 A. Yes, sir.

15 Q. At the time that all of these events
16 occurred and from your testimony, there was a time
17 that he met with detectives and it sounds like he
18 basically started confessing to everything and took
19 detectives around to solve any outstanding crimes
20 that were -- that he may have been involved in?

21 A. Officer Tharp was a very good detective
22 and yes, that happens.

23 Q. Okay.

24 A. I would put that to his skill.

25 Q. And actually Officer Tharp went through

1 and -- he actually went with Norman and Norman took
2 him to these locations according to what you've read
3 in your reports?

4 A. That's correct.

5 Q. And he's identified other individuals and
6 he was also again cooperative with police during
7 that period of time?

8 A. Yes.

9 Q. And as a result of these events that
10 occurred when he was 18, they were turned over to
11 the district attorney's office and he was prosecuted
12 on those offenses?

13 A. Yes, sir.

14 Q. And as far as any sentencing or anything
15 else, that's outside of Metro's records and those
16 would be subject to different records at that time?
17 Excuse me. Those would be subject to different
18 records that may be brought in at a different time
19 before this court.

20 A. What happened in court is what you're
21 saying?

22 Q. Right.

23 A. Yes. I know what it is, but yes.

24 Q. Okay. And during the course of that, do
25 you -- did you notice in the reports that they were

1 all kind of close together during this period of
2 time in October of 2000 -- or 1992?

3 THE COURT: In time or geographically or
4 both?

5 MR. PIKE: Both.

6 THE WITNESS: Thank you. Yeah, September
7 and October and they were all in the Dales, the
8 housing tract.

9 BY MR. PIKE:

10 Q. And excuse me if I was wrong, but I -- it
11 sounded like you said that there was a, an event
12 that occurred on October 21st of '92 and then by
13 October 22nd there was the meeting with the
14 detective or the detective had started taking him
15 around to do all of these things, to tell him where
16 all these events had occurred?

17 A. There had been one on the 21st you're
18 asking me?

19 Q. Yeah. That was your testimony on October
20 21st of '92 and then you had testified previously
21 that on October 22nd was when he'd gone around with
22 the detective?

23 A. Well, the very first one is September
24 21st.

25 THE COURT: No. But the last one before

1 he was arrested or whatever on, I think you did say
2 was October 21st.

3 THE WITNESS: Correct. Yes.

4 THE COURT: My understanding is October
5 22nd Tharp who later became a detective was a
6 uniformed officer who arrested him in this -- was in
7 interaction with the uniformed officer.

8 THE WITNESS: And then the investigation
9 continues all the way throughout November.

10 BY MR. PIKE:

11 Q. Okay. And then throughout the reports
12 Norman was cooperative with the police during that
13 period of time?

14 A. As far as the reports say, yes.

15 MR. PIKE: Thank you. Nothing further.

16 THE COURT: Anything else?

17 MS. WECKERLY: Just one question.

18 REDIRECT EXAMINATION

19 BY MS. WECKERLY:

20 Q. The gun that he used in the two robberies
21 that he just spoke of, when he was talking to
22 Officer Tharp, did he explain where he got that gun
23 or the guns?

24 A. Yes.

25 Q. Was it from one of the -- you don't have

1 to say which one, but was it from one of the
2 residential burglaries?

3 A. Yes, ma'am.

4 MS. WECKERLY: Thank you.

5 THE COURT: Thanks, detective.

6 Appreciate your time. You're excused. Next.

7 MS. WECKERLY: Elwood Williams.

8 THE COURT: Okay. Come on up here, Mr.
9 Williams. Officer Moon -- come on up here, Mr.
10 Williams. Come around that way and right over here
11 by this chair.

12 THE CLERK: Please remain standing and
13 raise your right hand.

14 (Whereupon, Elwood Williams was duly
15 sworn to tell the truth, the whole
16 truth and nothing but the truth.)

17 THE CLERK: Thank you. Please be seated.
18 And could you please state your full name and spell
19 your first and last name for the record.

20 THE WITNESS: My name is Elwood E.
21 Williams.

22 DIRECT EXAMINATION

23 BY MS. WECKERLY:

24 Q. And, sir, do you spell your first name
25 E-l-w-o-o-d?

1 A. Yes, I do.

2 Q. And your last name is W-i-l-l-i-a-m-s?

3 A. Yes, it is.

4 Q. Thank you, sir. May I proceed?

5 THE COURT: Sure.

6 BY MS. WECKERLY:

7 Q. Mr. Williams, I'd like to talk to you
8 about October of 1992, okay?

9 A. Yes.

10 Q. At that time were you living at 4489
11 Ridgedale?

12 A. Yes, I was.

13 Q. During that time, did you become -- did
14 your house get burglarized?

15 A. Yes, it did.

16 Q. When your house was burglarized, do you
17 remember any of the kind of property that was taken
18 in the burglary?

19 A. There was a number of, of things
20 misplaced and some taken, but I don't remember all
21 that was taken.

22 Q. Okay. Do you remember if a gun was
23 taken?

24 A. Yes, there was a gun that was, was taken.

25 Q. Okay. And when your house was

1 burglarized, when -- after that happened, did you
2 see any damage to your house to like a door or a
3 window that you noticed?

4 A. The only thing I noticed was that a
5 window was jimmied and it.

6 Q. It looked like it was pried?

7 A. Yes.

8 Q. I assume the police investigated the
9 burglary?

10 A. Yes.

11 Q. And at some point were they able to
12 recover some of your property and return it to you?

13 A. Yes.

14 Q. And that would have been obviously way
15 back in '92?

16 A. Yes.

17 MS. WECKERLY: Thank you, sir.

18 THE COURT: Anything else of Mr.
19 Williams?

20 MR. PIKE: No.

21 THE COURT: Thanks, Mr. Williams.

22 Appreciate your time. You have a nice day.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Next.

25 MS. WECKERLY: Barbara Murphy who in '92

1 was Barbara King.

2 THE COURT: Barbara King. Come on up
3 here, Ms. Murphy. Come on around here and over this
4 way.

5 (Whereupon, Barbara Murphy was duly
6 sworn to tell the truth, the whole
7 truth and nothing but the truth.)

8 THE CLERK: Thank you. Please be seated.
9 And could you please state your full name and spell
10 your first and last name for the record.

11 THE WITNESS: Okay. My name know is
12 Barbara Murphy. I was King at that time.
13 B-a-r-b-a-r-a. And K-i-n-g. And M-u-r-p-h-y.

14 DIRECT EXAMINATION

15 BY MS. WECKERLY:

16 Q. I'm gonna call you Mr. Murphy today --

17 A. Okay.

18 Q. -- okay? Back in October of 1992, where
19 were you living?

20 A. I was at 4250 Cloverdale Avenue, 89121,
21 Las Vegas.

22 Q. Who did you live with?

23 A. I lived with my, my mother lived there
24 and my younger son.

25 Q. And your mom, what's her name?

1 A. Pearly Margarite Anderson.

2 Q. Pearly?

3 A. Margarite Anderson.

4 Q. And your son?

5 A. Aaron Matthew Murphy.

6 Q. At that time in October of 1992, about
7 how old was your son Aaron?

8 A. He was 13.

9 Q. During that time, did you -- or did your
10 residence get burglarized?

11 A. Yes, it did.

12 Q. When the burglary occurred, what type of
13 property was missing from your house?

14 A. My mother had a 38 special revolver and
15 she, she had \$3,000 that was stolen and some
16 jewelry.

17 Q. Okay. So it was your -- it was actually
18 your mom's property that was taken?

19 A. Yes. The jewelry was mine, but the money
20 was my mother's.

21 Q. The gun was your mom's?

22 A. Yes, it was.

23 Q. And you said your mom had \$3,000 in cash?

24 A. (Positive nod of the head.)

25 Q. Is that yes?

1 A. Yes, yes. She was old school.

2 Q. Any reason why -- yeah, that was my
3 question.

4 A. Yeah.

5 Q. Any reason why she had so much cash in
6 the house?

7 A. Well, we're from the south. You keep
8 your money in the mattress.

9 Q. So that was sort of the habit?

10 A. Her way of doing things yes.

11 Q. And the jewelry that was taken, that was
12 yours?

13 A. Yes.

14 Q. When the house was burglarized, did you
15 notice any damage to it structurally that you saw
16 afterwards?

17 A. Well, he -- it was, it was broken in the,
18 her bedroom actually, her window.

19 Q. So there was damage somehow to the window
20 itself?

21 A. Yes.

22 Q. Metro investigate the burglary?

23 A. Yes.

24 Q. At some point did Metro officers speak
25 with your son Aaron?

1 A. Yes.

2 Q. And after they spoke with him, did he end
3 up producing some money that had been given to him
4 by the person who committed the burglary?

5 A. Yes. Because he walked in on him.

6 Q. Aaron walked in on him?

7 A. (Positive nod of the head.)

8 Q. Is that yes?

9 A. Yes, he did. Yes, he did.

10 Q. And at that time Aaron was fairly young?

11 A. Yes, he was.

12 Q. And when the officers spoke with him, I
13 take it he gave him back the money?

14 A. Yes, he did.

15 Q. Which was probably -- which was your
16 mother's?

17 A. Yes.

18 Q. Okay. At some point did you get any of
19 the property that had been taken from you, did any
20 of it get returned by Metro's investigation?

21 A. We got the gun back.

22 Q. The gun?

23 A. (Positive nod of the head.)

24 Q. Not the cash?

25 A. No, not the cash.

1 Q. What about the jewelry?

2 A. No.

3 Q. Did you have to file an insurance claim

4 or anything like that for the jewelry or was it just

5 a loss that you absorbed?

6 A. We thought -- we didn't file a claim.

7 Q. Okay. And I take to this day your mother

8 never got the \$3,000 back?

9 A. No, she didn't.

10 MS. WECKERLY: Thank you, ma'am. I'm

11 pass the witness.

12 THE WITNESS: Okay.

13 THE COURT: Any questions?

14 MR. PATRICK: No, judge.

15 THE COURT: Thanks, Miss Murphy.

16 Appreciate your time. Next?

17 MS. LUZAICH: Barbara McGowan.

18 THE COURT: Come on all the way up here,

19 ma'am. Just come down here around this way and up

20 to this chair.

21 THE CLERK: Please remain standing and

22 raise your right hand.

23 (Whereupon, Barbara McGowan was duly

24 sworn to tell the truth, the whole

25 truth and nothing but the truth.)

1 THE CLERK: Thank you. Please be seated.

2 Could you please state your full name and spell your

3 first and last name for the record.

4 THE WITNESS: Barbara McGowan.

5 B-a-r-b-a-r-a. M-c, capital G, o-w-a-n.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q. Ms. McGowan, good morning.

10 A. Good morning.

11 Q. Do you remember where you lived in

12 September of 1992?

13 A. Yes.

14 Q. Where was that?

15 A. At 4361 Parkdale Avenue in Las Vegas.

16 Q. And is that a single story home?

17 A. Yes.

18 Q. Did you live there alone or with anybody?

19 A. My husband and I.

20 Q. What's your husband's name?

21 A. And my granddaughter. Claud McGowan.

22 Q. And is he outside?

23 A. Yes, he is.

24 Q. Now, specifically on September 29th of

25 1992, did you and your husband and your

1 granddaughter leave the home in the morning?

2 A. Yes.

3 Q. And when you got home at some point, did

4 you find out that something had happened to your

5 home?

6 A. Yes.

7 Q. What had happened to your home?

8 A. They neighbors called and I called back.

9 I was out to lunch. My husband was at work and I

10 was at work. And at noon, I was -- excuse me. I

11 was notified that my home was on fire. And I went

12 home and my husband went home and our home had been

13 burglarized and had been burned and our dog had been

14 killed. Thank you.

15 Q. You said your home had been burned and

16 burglarized?

17 A. Yes, ma'am.

18 Q. And your dog had been killed?

19 A. Yes.

20 Q. When you left home in the morning, was

21 your dog okay?

22 A. Yes.

23 Q. What was your dog's name?

24 A. Pebbles.

25 Q. Is there a way that Pebbles could get in

1 and out of the house?

2 A. Yes, we had two doggy doors.

3 Q. Okay. So do you know what happened to

4 Pebbles?

5 A. Yes.

6 Q. What happened?

7 A. He locked her in the bathroom and she

8 died.

9 Q. When you got back to your home and it had

10 been burned, did you discover also that property had

11 been taken?

12 A. Yes.

13 Q. Do you recall what property had been

14 taken?

15 A. Yes.

16 Q. What was that?

17 A. He had broken into the safe. He took

18 several rifles and hand guns. He took jewelry,

19 diamond jewelry. He took watches, he took -- there

20 was a \$50 gold certificate, a \$20 gold certificate

21 and a whole coin collection. In fact, everything in

22 the safe practically that could be carried was taken

23 right down to our will.

24 Q. Now, you say that there was a safe. What

25 kinds of safe was it?

1 A. It was just a little safe we had bought
2 from Sears and it could just be like pried open,
3 you know. It had a little key, but it was just, you
4 could pry it open.

5 Q. Could you tell that that's what happened
6 to it?

7 A. Yes.

8 Q. That it had been pried open?

9 A. Yes.

10 Q. And you said all of your jewelry, all of
11 your jewelry was taken?

12 A. All.

13 Q. Do you remember what kind of pieces you
14 had?

15 A. Yes. I had -- I think it was two or
16 three diamond rings, I had, we had watches. I
17 believe there was diamond earrings. It's been 16
18 years so I don't remember.

19 Q. I know. Was there any sentimental value
20 to any of those pieces?

21 A. Yes.

22 Q. What was the value?

23 A. Some of these pieces belonged to members
24 of our family who had died and they were just like
25 they were in the safe because we wanted to keep them

1 forever.

2 Q. So it's stuff that you kept personally,
3 you didn't even wear every day?

4 A. No.

5 Q. Did you ever -- well, as you went to your
6 house, was there anything that remained that you
7 could recover?

8 A. No. Well, they, they took it all out.
9 What did not burn had so much smoke damage that it
10 couldn't -- we had to just leave and we lived in a
11 condo for three-and-a-half months.

12 Q. Was your house rebuilt?

13 A. Yes.

14 Q. Did insurance or anything like that help
15 you build your house or did you have to pay for it
16 out of pocket?

17 A. No, the insurance helped. It didn't
18 cover everything, but it did help.

19 Q. Did anything remain other than the
20 clothes on your back?

21 A. Of mine personally, no.

22 Q. Did something happen the next day with
23 your husband?

24 A. Yes.

25 Q. What?

1 A. It was a couple of days later. My
2 husband was scheduled to fly to Japan for Titanium
3 Metals Corporation. And so he flew out. He had to
4 go. It was just one of those things. So there I
5 was, you know. No home.

6 Q. Left to deal with that all by yourself?

7 A. Yes.

8 Q. No home?

9 A. No home.

10 Q. You said that you were able to get a
11 temporarily place to live, a condo?

12 A. Yes.

13 Q. Did there come a time that somebody was
14 caught and went to court that you're aware of?

15 A. Yes.

16 Q. Did you actually appear at court at some
17 point?

18 A. Yes, I did.

19 Q. And what did you do at court?

20 A. I was a victim witness. I asked to be a
21 victim witness.

22 Q. Did you speak at sentencing?

23 A. Yes, I did.

24 Q. And what did you tell the court?

25 A. I asked, I told the court everything that

1 we had lost and, and about our family pet and I
2 begged the judge not to be lenient.

3 Q. Did you do anything after that?

4 A. Yes, I did.

5 Q. What did you do?

6 A. I went to -- I think I missed two parole
7 hearings. I went to parole hearings to ask that
8 they not let him out and I wrote to the parole
9 commission a couple of times and asked them not to
10 let him out.

11 Q. The property that you know was taken
12 during the burglary, did you ever recover any of it?

13 A. No.

14 Q. Nothing?

15 A. Nothing.

16 MS. LUZAICH: Thank you. I have no
17 further questions.

18 MR. PATRICK: Court's indulgence.

19 THE COURT: Yup.

20 MR. PATRICK: Nothing, judge.

21 THE COURT: Thanks, Ms. McGowan.

22 Appreciate you coming down. I know it was
23 difficult. Next.

24 MS. LUZAICH: Claud McGowan.

25 THE COURT: Come on up here, sir.

1 (Whereupon, Claud McGowan was duly
2 sworn to tell the truth, the whole
3 truth and nothing but the truth.)
4 THE CLERK: Thank you. Please be seated.
5 And please state your full name and spell your first
6 and last name for the record.

7 THE WITNESS: Claud D. McGowan.

8 THE COURT: Spell it please, sir.

9 THE WITNESS: Pardon?

10 THE COURT: Spell Claud.

11 THE WITNESS: C-l-a-u-d.

12 MS. LUZAICH: Go ahead. We have the
13 spelling of his last name.

14 MS. LUZAICH: Thank you.

15 DIRECT EXAMINATION

16 BY MS. LUZAICH:

17 Q. Good morning, Mr. McGowan.

18 A. Good morning.

19 Q. Is the nice lady who just left your wife?

20 A. Yes.

21 Q. Were you living with her at 4361 Parkdale
22 on September 29th of 1992?

23 A. Yes.

24 Q. Did you go to work that day?

25 A. Yes.

1 Q. When you went to work that day, was your
2 house fine?

3 A. Yes.

4 Q. All the property in it was where it
5 should be?

6 A. Yes.

7 Q. When you got home that day, what'd you
8 finds?

9 A. Well, I was called home from the police
10 department that my house was on fire.

11 Q. When you got home, did you see that it
12 had been on fire?

13 A. When I got home, it was demolished.

14 Q. Did you discover that property had been
15 taken in addition to the house being burned down?

16 A. Not until they -- they never did let us
17 in there. The fire department went in and carried
18 the dog out that had been put in the bathroom and
19 let die in there instead of letting it go out the
20 doggy door.

21 Q. Pebbles?

22 A. Yes.

23 Q. Okay. What about some property that you
24 discovered was missing?

25 A. We didn't discover that until later,

1 until they would let us go through some of the stuff
2 that was there.

3 Q. Okay. And you went through and found
4 what?

5 A. Well, I found that he had left all the
6 rifles, but he had taken all the pistols and shot
7 guns.

8 Q. So you had pistols in the house?

9 A. Yes.

10 Q. And shot guns?

11 A. Yes.

12 Q. Where were they located when --

13 A. They were in the safe.

14 Q. They were in the safe?

15 A. Yes.

16 Q. Were the rifles also in the safe?

17 A. Yes.

18 Q. Now, the pistols that were taken, how
19 many pistols, do you know?

20 A. Two. One of them was a Browning
21 automatic 22.

22 Q. Was there anything significant about that
23 pistol?

24 A. And other than -- the only thing I know
25 about it is that I used it quite a bit.

1 Q. What about the other pistol?

2 A. I just had it, but my youngest son worked
3 at Calvin's 88 cent store when he was just a small
4 boy and bought it for me for a Christmas present.

5 Q. That was the Browning pistol?

6 A. Yes.

7 Q. When he was small, he saved up his money
8 from --

9 A. Yes, he did.

10 Q. -- the 88 cent store and bought you a
11 present?

12 A. Yes.

13 Q. And that's gone?

14 A. That's gone.

15 Q. Did you ever get that back?

16 A. No.

17 Q. What about the other pistol that was in
18 the safe?

19 A. No. Never did see it again.

20 Q. What kind of pistol was that?

21 A. The only one of the firearms that I ever
22 saw was the Coachman. I had a Coachman 12 gauge
23 that had the hammers on each side, the old type.
24 And I got to see part of it. That stock was cutoff
25 and the barrels was cutoff at poor stock.

1 Q. Now, the Coachman shotgun that you're
2 talking about, that was a special kind of shotgun,
3 right?
4 A. Yes.
5 Q. Uh --
6 A. But the other shotgun that was taken was
7 a collector's item. It was a Browning automatic,
8 all fully engraved and had a Queen Elizabeth coin on
9 each side. A gold coin on each side of the stock.
10 Q. And that was taken?
11 A. Yes.
12 Q. Never saw that again?
13 A. That was never seen again or heard of.
14 Q. Okay. And I'm sorry, just to go back to
15 the first shotgun you mentioned. It was special, it
16 had the things on the side --
17 A. Yes.
18 Q. -- that I can't describe, sorry.
19 A. It was, it was just the head hammers on
20 the side like the, the ones you see in the old
21 movies, the real old movies. The old shot guns
22 double barrels had hammers on each side, double
23 triggers.
24 Q. Okay. And it was in good condition when
25 you saw it --

1 A. It was in --
2 Q. -- last?
3 A. -- excellent condition when it was taken.
4 Q. And then the police recovered it, but --
5 A. They had recovered it, yes.
6 Q. -- it had been damaged? And what had
7 been changed about it the exactly?
8 A. The barrels had been cut off at the four
9 stock and stock had been cut off of the hand grip.
10 And the judge at the time had me to -- I went to the
11 firearms, Tobacco and Firearms people called me in
12 and I went in there and the judge had me to break
13 the gun down for the serial numbers that was on it
14 because I had, still had the papers on it.
15 Q. Okay. But because it had been sawed off
16 and that's illegal, you were not able to --
17 A. They were not allowed to let me have it
18 again they said.
19 Q. Okay. Did you get anything back from
20 that burglary?
21 A. Yes. I got three Indian head coins.
22 That's all I ever got.
23 Q. Okay. But you had an entire coin
24 collection?
25 A. Yes. I had all kinds of coin

1 collections. I had all kinds of silver
2 certificates, and I had a \$50 gold certificate, says
3 redeemable in gold upon demand. And I had a \$20
4 gold certificate which is I've never seen one like
5 them before or after.
6 Q. How long had you been collecting all of
7 those things?
8 A. Since I was about 15 years old.
9 Q. And had you heard about how the fire had
10 started and continued?
11 A. The fire department said that it had been
12 starting in our bedroom right, right in the middle
13 of our bed and some kind of a liquids had been
14 poured in the bed to start it.
15 Q. And the bathroom that Pebbles was found
16 in, was that by the bedroom?
17 A. That is right -- the master bedroom is
18 right off the bedroom there and she was in there
19 when the fire department went in and got her for us.
20 MS. LUZAICH: Thank you. I have no more
21 questions.
22 THE COURT: Thank you, Mr. McGowan.
23 Next.
24 MS. WECKERLY: John Mehalko.
25 (Whereupon, John Mehalko was duly

1 sworn to tell the truth, the whole
2 truth and nothing but the truth.)
3 THE CLERK: Thank you. Please be seated.
4 Could you please state your full name and spell your
5 first and last name for the record?
6 THE WITNESS: Sure. It's John David
7 Mehalko, Jr. First is J-o-h-n. Last is
8 M-e-h-a-l-k-o.
9 THE COURT: Okay.
10 DIRECT EXAMINATION
11 BY MS. WECKERLY:
12 Q. Mr. Mehalko, how are you employed, sir?
13 A. I work for the State of Nevada Parole and
14 Probation.
15 Q. How long have you worked for Parole and
16 Probation?
17 A. 10 years now.
18 Q. And in preparation for your testimony
19 this morning, did we request that you review the
20 case history for an individual named Norman Keith
21 Flowers?
22 A. Yes.
23 Q. And do you actually see Mr. Flowers in
24 the courtroom today?
25 A. Yes.

1 Q. Could you point to him and describe what
2 he's wearing today, please?

3 A. He's right in the middle of the two guys
4 with the white shirt and a tie.

5 THE COURT: The record will reflect
6 identification of the defendant.

7 MS. WECKERLY: Thank you.

8 BY MS. WECKERLY:

9 Q. In your review of Mr. Flowers' criminal
10 history, sir, are you aware that he was convicted by
11 way of a guilty plea to robbery with use of a deadly
12 weapon --

13 A. Yes.

14 Q. -- that time? And what, in your review
15 of his records, what day was he sentenced on?

16 A. On May 28th of 1993.

17 Q. And the sentence he got at that time?

18 A. I believe it was nine years on the
19 robbery and nine years consecutive with the use of
20 deadly weapon.

21 Q. So for a total of 18 years?

22 A. That's correct.

23 Q. And at that time there wasn't a
24 sentencing range, it was just a set term or a --

25 A. Yes.

1 Q. -- set amount of time?

2 A. Yes.

3 Q. At that time Mr. Flowers would have been
4 sentenced obviously to prison?

5 A. Yes.

6 Q. Was there a point in time when he was
7 released on parole?

8 A. He was first released on parole on August
9 15th of 2003.

10 Q. Okay. So that's a little over 10 years
11 on the 18-year sentence?

12 A. That's correct.

13 Q. And that was on August 15th of '03 you
14 said?

15 A. Yes.

16 Q. At some point after that, was -- well,
17 let me ask you this.

18 Once you're placed on parole, does
19 the person who's placed on parole have certain
20 requirements or responsibilities that go along with
21 the privilege of being on parole?

22 A. Yes. I mean, he has to report to his
23 parole officer anywhere from once a day to once a
24 month. It all depends on the parole officer at the
25 time and what he's doing. He's supposed to maintain

1 work, maintain a residence.

2 Q. Stay out of trouble?

3 A. Stay out of trouble and do counseling,
4 all that type of stuff.

5 Q. At some point did Mr. Flowers get
6 violated or violate the conditions of his parole?

7 A. Yes, he did. On November 24th of 2004.

8 Q. And what was the violation?

9 A. That was for -- he violated a temporary
10 restraining order or protection order against his,
11 the mother of his children and we placed him in
12 custody at that time.

13 Q. And is the mother of his children a young
14 woman by the name of Katrina McKenna?

15 A. Yes.

16 Q. So essentially he was supposed to stay
17 away from her and he came in contact with her and
18 that was reported?

19 A. Yes.

20 Q. And so he was violated from parole,
21 meaning sent back to prison?

22 A. Yes.

23 Q. At some point was his parole reinstated,
24 meaning he got a second chance at parole?

25 A. Yes. He went in front of the parole

1 board on January 6th of 2005 and they reinstated him
2 outright upon approved plan of course for him to be
3 released.

4 Q. And when you go before the parole board,
5 essentially you make a case for well let me out
6 again and I'll be good this time?

7 A. Yes.

8 Q. And that occurred on January the 6th of
9 '05?

10 A. Yes.

11 Q. Does that mean he was actually released
12 on January the 6th of '05?

13 A. No. He had to wait until we actually did
14 a pre-parole investigation at the house that he
15 wanted to live at.

16 Q. And what was the residence that he
17 reported that he was gonna live at?

18 A. 1701 J Street, apartment 101 with his
19 sister.

20 Q. And do you know her name or is it just
21 reported as sister?

22 A. I, I, I -- I do, but I can't recollect it
23 right now.

24 Q. Okay. And when someone is, in this case
25 he's reinstated on parole, I take it one of the

1 things that you have to have on parole is an address
2 where your parole officer can contact you?

3 A. Yes.

4 Q. And he reported that he'd be living with
5 his sister at the J Street address?

6 A. Yes.

7 Q. And in order to -- I mean, once you
8 report a certain location as your address, does the
9 Department go and make sure that that's an okay
10 place for the parolee to be living?

11 A. Yes.

12 Q. And what sort of things are you looking
13 at?

14 A. Well, we check to make sure that nobody
15 else there is currently on for a felony or any kind
16 of crime. We also check to see who else is living
17 in the residence where he'd be staying at, if he'd
18 be staying in his own separate room, that type of
19 stuff.

20 Q. And so when is he reinstated for and gets
21 this second chance at parole, he says he's gonna be
22 living with his sister?

23 A. Yes.

24 Q. And he was supposed to find employment;
25 is that true?

1 A. Yes.

2 Q. And stay out of trouble again?

3 A. Yes.

4 Q. And what is the date that he's actually
5 out of custody then on the reinstated parole?

6 A. He was officially released on March 4th
7 of 2005.

8 Q. And when he's released on March 4th of
9 2005, that's released to parole, right, or given
10 parole?

11 A. He was actually dropped off at our office
12 and then he was either transported to his sister's
13 house or his sister came and picked him up.
14 Whichever way.

15 Q. But in March of '05, he's still
16 technically under the sentence of imprisonment on
17 the robbery charge?

18 A. Yes, yes.

19 Q. Because he hasn't done the balance of his
20 sentence?

21 A. Correct, yes.

22 Q. Okay. And at the time he is granted
23 parole in March of '05, were you in charge of
24 supervising him?

25 A. Yes.

1 Q. And you would have met with him on
2 March --

3 A. I actually met him on March 9th. About
4 five days after he was released.

5 Q. Okay. When you met with him, where was
6 it that you met?

7 A. In my office at 610 Belrose.

8 Q. And was he to report to you at a
9 particular time on the 9th?

10 A. Actually I believe at that time he showed
11 up to report to his officer that was assigned to him
12 before; however, because that officer was switched
13 to another unit, I just happened to be there and
14 they gave me the file at that time.

15 Q. Okay.

16 A. And I saw him that day.

17 Q. And so that was your first meeting with
18 him?

19 A. Yes.

20 Q. When you have an initial meeting with a
21 parolee, what's the conversation? How's it supposed
22 to go?

23 A. Basically we go over all the conditions
24 again. Due to the fact we knew he was in violation
25 previously on parole, that's one of the special

1 conditions he had on parole was no contact with his,
2 the mother of his children, Katrina McKenna.

3 So we went over all that stuff

4 again. Advised him what he was supposed to do, when
5 he was supposed to report, all that stuff.

6 Q. And you in March I take it reminded him
7 you're not supposed to have contact --

8 A. Oh, yeah.

9 Q. -- with Katrina?

10 A. Oh, yes.

11 Q. And what was his response to that?

12 A. He was not happy. I can tell you that it
13 took, the meeting itself took anywhere from a half
14 an hour to an hour which shouldn't take that long.
15 Mainly because we had to calm him down due to the
16 fact that he wanted to see his kids who live with
17 Ms. McKenna. My sergeant and I actually had him
18 report, come to my office and actually we had to
19 settle -- cuz actually he would have had to go back
20 into custody at that time if, if he continued his
21 attitude.

22 Q. Okay. And when you say -- I mean you
23 said he was not happy, I take it that's a little bit
24 of an understatement or can you describe like what
25 his -- did he say anything to you about that

1 condition?

2 A. He said it was bullshit. He said that's
3 bullshit and I need to go back to the parole board.
4 I said well, the only way you can go back to the
5 parole board is if we take you back in custody.

6 Q. And this was all over not having contact
7 with Ms. McKenna?

8 A. Yes.

9 Q. And he said that he wanted to see his
10 kids?

11 A. Yes.

12 Q. Did you suggest to him an alternative, a
13 way to still adhere to the conditions of parole and
14 still be able to visit his children?

15 A. Yes.

16 Q. And what was that?

17 A. We advised him the best thing to do is
18 have his sister either go and pick up the children
19 from Ms. McKenna or have them dropped off at the
20 sister's house when he was not present. But that's
21 the only time that he could not have contact with
22 her at all.

23 Q. Okay. And you said normally -- or you
24 said this meeting took anywhere from a half hour to
25 an --

1 A. To an hour at that time, yes.

2 Q. In a normal situation, how long would
3 that type of meeting take?

4 A. On a normal parolee that comes out of
5 prison, it takes 20 minutes, maybe a half hour at
6 the most, but never, never past a half hour.

7 Q. After that meeting, I take it he was
8 still released on his own?

9 A. Yes.

10 Q. Did you supervise him in terms of whether
11 he was paying his supervision fees?

12 A. Yes.

13 Q. And was he paying those fees?

14 A. No.

15 Q. And what are the supervision fees?

16 A. Anybody that's on parole, probation has
17 to pay a \$30 supervision fee to the State of Nevada
18 to offset the cost of supervising them. It's \$30 a
19 month money order and normally basically he's
20 supposed to pay on a regular basis.

21 Q. Are you aware of him ever paying his fee
22 during the time --

23 A. No.

24 Q. -- that you supervised him?

25 A. No.

1 Q. Also during that time period, he was
2 supposed to work or find a job?

3 A. Yes.

4 Q. Was he successful in doing that?

5 A. No.

6 Q. Did you ever hear or did he ever talk to
7 you about any efforts in that regards?

8 A. He stated he, he had a job offer at a
9 temp service at one time, but that was it.

10 Q. And he's supposed to be living at that J
11 Street address?

12 A. Yes.

13 Q. As his parole officer, did you ever make
14 an every effort to contact him at that address?

15 A. Yes.

16 Q. Explain what happened with that.

17 A. Well, I mean basically from March all the
18 way through until May, I went by it looks like six
19 times before I was actually able to catch him at his
20 house on one occasion.

21 Q. And then of course in, in May he was
22 taken into custody?

23 A. Yes. Well, not until June actually.

24 Q. Actually June, yeah --

25 A. Yes.

1 Q. -- you're right. June of '05 he was
2 taken into custody --

3 A. Yes.

4 Q. -- in relation to some murder charges?

5 A. Yes.

6 MS. WECKERLY: Thank you, sir. I'll pass
7 the witness.

8 THE COURT: Questions?

9 MR. PIKE: Thank you very much.

10 RE-CROSS-EXAMINATION

11 BY MR. PIKE:

12 Q. Officer, in relationship to your
13 supervision of an individual that's on parole, let
14 me ask you a couple of questions about the parole
15 process as you understand it.

16 A. Sure.

17 Q. Under the sentencing structure that was
18 given back in 1992, it was a set sentence that was
19 given as opposed to a range?

20 A. Yes.

21 Q. Okay. And as a result of that, an
22 individual that's in custody has a proposed release
23 date where they actually expire their sentence and
24 they can be released completely without supervision
25 at all?

1 A. Yes.

2 Q. And you indicated that on your review of
3 the sentence that was imposed in this case there was
4 actually a couple of sentences that were imposed.

5 There was nine years for the
6 robbery?

7 A. Uh-huh.

8 Q. Nine years for an enhancement because a
9 deadly weapon was used?

10 A. Yes.

11 Q. Additionally to that, as part of the plea
12 negotiations, you're aware that there was another
13 underlying charge or a sentences for the burglary
14 that was part of the negotiations.

15 Do you recall that?

16 A. Yes, yes.

17 Q. And so as Mr. Flowers was in custody, he
18 was completing sentences and he completed the
19 sentence on the burglary and then he was doing time
20 on the robbery. And then by the time he was
21 released to the Department of Parole and Probation
22 when he was on, when you were supervising him, he
23 was going through the last part of the last sentence
24 of that, of those three sentences?

25 A. Of the use, yes.

1 Q. All right. Now, in, in determining when
2 an individual is going to be released, sometimes it
3 would be safe to say that the parole board may look
4 at somebody and say I don't want him to just expire
5 their time because then they're released without
6 supervision, and so it would be appropriate this
7 close to an end of a sentence to release him to
8 parole because then he'd be subject to the
9 supervision of the Department of Parole and
10 Probation and we'd have control or a way of
11 contacting him and supervising and monitoring him?

12 A. Well, I mean, I'm not totally sure to be
13 honest with you. I know the parole board probably
14 does take in consideration, but I'm not part of that
15 so.

16 Q. But the representations that I make to
17 you make sense?

18 THE COURT: Well, you're gonna have Ms.
19 Bass come on and I'm sure she's gonna say that.

20 BY MR. PIKE:

21 Q. And so part of your responsibilities in
22 supervising somebody is making sure that they have
23 the opportunities to get a job and you help them in
24 finding jobs?

25 A. We assist them in trying to get back into

1 the community. And if that means job leads or Job
2 Connect or Nevada Partners which are not temp
3 services, their job, they're vocational programs, we
4 do allow them to go to those, yes, and we do give
5 them information on that.

6 Q. You allow them to go to that, you give
7 them information on it, but how many people do you
8 supervise or were you supervising back in 2005 at
9 any given time?

10 A. Anywhere from 80 to a hundred and 30.
11 It, it varies.

12 Q. Okay. And so it's tough to go in and
13 actually operate as a provider to assist people in
14 getting jobs or counseling. You can just give them
15 the referrals and try and monitor and make sure that
16 they're not involved in any additional criminal
17 activity?

18 A. Yes.

19 Q. Now, in reference to the temporary
20 protective order, the TPO that you've talked about,
21 by its very nature, it says temporary protective
22 order.

23 Are you aware that the process in
24 which an individual can go in and take away that
25 temporary protective order?

1 A. By going back into court, yes.

2 Q. And so, and if in this case his wife or
3 ex-wife, the mother of his children, wanted to have
4 the contact, so that he could exercise visitation or
5 see his children, she had the option of initiating
6 the contact and initiating the termination of that
7 and then he would not be in violation of his parole,
8 correct?

9 A. Yes, that's correct.

10 Q. And that was controlled completely by, by
11 her to your knowledge?

12 A. Yeah. To my knowledge, yes.

13 Q. And in reference to the paying of the
14 supervision fee, you didn't automatically revoke or
15 you don't automatically revoke somebody for not
16 making a couple of payments if they're out of
17 prison, they're having a hard time getting a job or
18 they're just at a sustenance level?

19 A. No.

20 MR. PIKE: I have nothing further.

21 MS. WECKERLY: Just one question.

22 REDIRECT EXAMINATION

23 BY MS. WECKERLY:

24 Q. Mr. Pike asked you about the other
25 sentences that Mr. Flowers was serving.

1 What does it mean when sentences are
2 run concurrently?
3 A. It usually it means that if he's
4 sentenced on three cases, they all run at the same
5 time. So when he goes to prison, all the time comes
6 off at the same time.

7 When it's consecutive, he has to do
8 the first time first and the second time last.

9 Q. And if his sentences were concurrent,
10 that means he gets credit for all three at the --

11 A. Yes.

12 Q. -- same time?

13 A. Yes.

14 MS. WECKERLY: Thank you.

15 THE COURT: Thanks. Appreciate it,
16 officer. Next.

17 MS. LUZAICH: Detective Tremel.

18 (Whereupon, Detective Donald Tremel
19 was duly sworn to tell the truth,
20 the whole truth and nothing but the
21 truth.)

22 THE CLERK: Thank you. Please be seated.
23 Could you please state your full name and spell your
24 first and last name for the record?

25 THE WITNESS: Donald Tremel.

1 D-o-n-a-l-d. T-r-e-m-e-l.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MS. LUZAICH:

5 Q. Detective Tremel, you testified in the
6 other phase of this trial; is that correct?

7 A. Yes.

8 Q. I assume you are still a detective with
9 Metro in the homicide area?

10 A. Yes.

11 Q. In the previous phase of this trial, you
12 talked about going to the Silver Pines Apartments on
13 May 3rd of 2005 in the morning and discovering the
14 body of -- or at least seeing the already discovered
15 body of Marilee Coote, correct?

16 A. Yes, yes.

17 Q. Do you recall as you were walking around
18 and investigating that how much time did you spend
19 in that apartment? I mean five minutes, two hours?

20 A. In Marilee Coote's apartment?

21 Q. (Positive nod of the head.)

22 A. Probably about an hour, an hour and a
23 half.

24 Q. Okay. And when you left there, you
25 didn't know of anything else that was going on in

1 that apartment complex at the time; is that correct?

2 A. Correct. We just left.

3 Q. Okay. Later in the day were you called
4 back to those same apartments?

5 A. Yes.

6 Q. And was that for something else?

7 A. It was.

8 Q. What were you called back for?

9 A. There was another homicide.

10 Q. What time of day was it that you were
11 called back?

12 A. It was about 4:30. I was on my way home
13 when I got called.

14 Q. So 4:30 in the afternoon as opposed to
15 the morning?

16 A. Yes.

17 Q. And when you got called back for this
18 second homicide at 4:30, what was the name of the
19 lady that you ultimately investigated?

20 A. Reina Gonzalez.

21 Q. And how is it your understanding that it
22 was discovered that this lady was found?

23 A. How was she discovered?

24 Q. Yes.

25 A. Her children, two small children who got

1 off a school bus which dropped off the kids in front
2 of the apartment complex. Normal routine for her
3 was to pick her children up at the bus after school,
4 drop them off in the morning before school. She
5 wasn't there. The kids walked into the apartment
6 complex, to their apartment, the first floor,
7 entered the apartment, found the mother.

8 Q. So the two little girls -- daughters,
9 correct?

10 A. Yes.

11 Q. Was that Angel and Vanessa?

12 A. Yes.

13 Q. Do you know how old Angel and Vanessa
14 were at the time?

15 A. I don't remember their exact age. They
16 were in grade school. Grade school.

17 Q. Elementary school?

18 A. Elementary school, yes.

19 Q. So like six and eight-ish?

20 A. Yes.

21 Q. And I'm sorry. You said it was your
22 understanding that Ms. Gonzalez would walk her two
23 little girls from the apartment to the bus stop
24 that's right outside the apartment complex?

25 A. Yes.

1 Q. And that's elementary school. So, you
2 know, 8:30, 9:00 in the morning?

3 A. Yes.

4 Q. And then they get off around 3:00 in the
5 afternoon?

6 A. Yes.

7 Q. And these two little girls opened the
8 door so the door was not locked?

9 A. Correct.

10 Q. They opened the door and they found their
11 mother?

12 A. Yes.

13 Q. What position did they find their mother
14 in?

15 A. She was in the bedroom which would have
16 been directly straight in the front door. She was
17 on her stomach at the foot of the bed, her knees on
18 the ground with her head, head -- upper portion of
19 her body on the bed facing the headboard with her
20 pants pulled down, a portion down exposing a portion
21 of her buttocks.

22 Q. When Angel and Vanessa found their
23 mother, what did they do?

24 A. They told some other people in the
25 complex, friends of theirs. Inevitably an adult

1 was able to notify the police.

2 Q. But first did they find a young boy who
3 came in --

4 A. Yes.

5 Q. -- and checked? And then it was the
6 young boy who was able to find some other
7 individuals?

8 A. Yes.

9 Q. And the police apparently were called; is
10 that right?

11 A. Yes, they were.

12 Q. Is it your understanding that prior to
13 the police actually arriving at the scene that there
14 were quite a few individuals that walked at least
15 into the apartment and saw Ms. Gonzalez?

16 A. Yes, that was our understanding, there
17 was some of their friends and other kids in the
18 complex that had gone in there.

19 Q. Ultimately when the police were called,
20 did patrol arrive first like they would have at
21 Marilee Coote's?

22 A. Yes, they did.

23 Q. And when they discovered that, would they
24 have contacted homicide and homicide came out?

25 A. Eventually we were notified, yes.

1 Q. And when you homicide detectives arrived
2 there, was the scene already secure so that nobody
3 else at least would enter your scene?

4 A. It was.

5 Q. And did you enter the scene?

6 A. I did.

7 Q. When you got there, what did you see?

8 A. I saw the front door opened, I saw a
9 slight evidence of a slight disturbance right by the
10 front door. There was a pair of slippers or
11 sandals, there was some plastic pieces. We really
12 didn't know what the plastic pieces were. We later
13 discovered they were part of a hair clip.

14 Q. Okay. And the sandals that were there,
15 were they slightly askew?

16 A. Yes.

17 Q. And the pieces of the, that were on the
18 floor when you say they were part of a hair clip,
19 was the rest of it in her hair?

20 A. It was.

21 Q. Found by police?

22 A. Yes.

23 Q. How did the rest of the apartment, how
24 did the rest of the apartment look?

25 A. It was very clean. The kitchen, the

1 living room, everything was very clean and
2 organized. We've seen a lot of dirty apartments in
3 our clean, but this was very, very clean.

4 Q. Would you say immaculate?

5 A. Yeah, it would be a good description of
6 it.

7 Q. Especially in light of the fact that
8 there were obviously two young children living
9 there?

10 A. Yes.

11 Q. So you saw this slight disturbance but
12 everything else was okay.

13 Did you enter the room where Ms.
14 Gonzalez was found?

15 A. Yes.

16 Q. And what did you see?

17 A. I saw, as I described, her positioning on
18 the bed with her knees on the floor, pants down.
19 There was what appeared to be -- early on, we didn't
20 know what it was, it looked like a cord or something
21 around her neck. We determined later on that it was
22 a phone cord as well as a, another form of ligature
23 which we determined was a lanyard which kind of
24 hangs identification.

25 Q. Showing you what's been marked as State's

1 proposed Exhibits 143 through 150 which for the
2 record have been shown to defense counsel before, do
3 you recognize these photographs?

4 A. Yes.

5 Q. And I'm sorry, did you also cause crime
6 scene analysts to come out and photograph and
7 process the scene?

8 A. Yes.

9 Q. Are these photographs of the scene that
10 we're talking about?

11 A. Are they of the scene?

12 Q. Yes.

13 A. Yes.

14 Q. And do they all fairly and accurately
15 depict what we've been discussing?

16 A. Yes.

17 MS. WECKERLY: Move them into evidence.

18 THE COURT: Objection?

19 MR. PIKE: No.

20 THE COURT: Admitted.

21 BY MS. WECKERLY:

22 Q. Showing you State's Exhibit 143, what
23 does State's 143 depict?

24 A. That is the view from the front door down
25 a small hallway, living room on the left, directly

1 into the master bedroom where the victim was found.

2 Q. Okay. Now, the photograph right now as
3 it looks on the computer screen, is it kind of dark
4 where the bedroom is?

5 A. Yes.

6 Q. And if you actually had the photograph in
7 your hands, could you see Ms. Gonzalez's body
8 through the doorway?

9 A. Yes.

10 Q. And coming closer to the bottom of the
11 photograph, what do you see specifically?

12 A. One of the sandals or flip flops in the
13 hallway there.

14 Q. Okay. And is that one of the ones that
15 you mentioned was kind of askew?

16 A. Yes.

17 Q. Showing you State's Exhibit 144, what
18 does this show?

19 A. That's a picture of the front door from
20 inside the living room in the hallway, probably
21 about where the sandal was at.

22 Q. Okay. Is it all quite neat and clean?

23 A. Yes.

24 Q. As you walked in the door, did you look
25 to see if there was any sign of forced entry?

1 A. Yes.

2 Q. Was there any sign of forced entry?

3 A. No.

4 Q. Does the door that we're looking at in
5 this photograph show that there was no sign of
6 forced entry was as well?

7 A. It's opened, but there's, you would also
8 almost need to see it up close, a view of it, but
9 that shows that the door is opened.

10 Q. Right. But can you see that there's no
11 damage done to the door?

12 A. Right. Normal, normal forced entry, if
13 it was a kick or whatever, you would see one turning
14 of the frame, you'd see wood on the floor and maybe
15 pieces of a knob, but there's nothing to indicate in
16 that area.

17 Q. Nothing like that there?

18 A. No, nothing.

19 Q. And there was nothing to indicate in the
20 door jam that anything had been pried or anything of
21 that nature?

22 A. Correct.

23 Q. Showing you State's Exhibits 145, what
24 does that show?

25 A. That is the very neat living room.

1 Q. Exhibit 146?

2 A. Same room from a different angle.

3 Q. Still neat but showing that sandal we
4 were talking about?

5 A. Yes. To the left of that leather chair.

6 Q. And for the record, the TV appears to be
7 on in the photograph. Was it on when you arrived at
8 the apartment?

9 A. Yes.

10 Q. State's Exhibit 147.

11 A. That is a small, neat clean kitchenette.

12 Q. 148?

13 A. That is the kitchen taken from where the
14 kitchenette table is.

15 Q. Still neat and clean?

16 A. Yes.

17 Q. 149?

18 A. That's the same clean kitchen from the
19 far portion of the kitchen outward.

20 Q. 150?

21 A. That is a neatly made child's bed in a
22 child's room based on the, you know, the stuffed
23 animals up there.

24 Q. Just for the record, the -- there's a
25 dresser in the corner; is that correct?

1 A. Yes.
 2 Q. All little stuffed animals nightly lined
 3 up -- nicely lined up?
 4 A. Yes.
 5 Q. Exhibit 151?
 6 A. That is the victim Ms. Gonzalez showing
 7 the ligatures around her neck.
 8 Q. And I'm gonna jump ahead for one second
 9 to 155.
 10 What does that show?
 11 A. That is a picture of Ms. Gonzalez from
 12 the outer portion of the hallway into the bedroom
 13 showing her position at the foot of the bed on her
 14 knees, on her stomach, the upper portion of her on
 15 the bed with her pants down a little bit.
 16 Q. Now, you can see the bed a bit in that
 17 picture and actually you can see it better in the
 18 actual picture than you can on the screen.
 19 What was the condition of the bed?
 20 A. It was made. It didn't look like -- I
 21 mean, it wasn't messed up or unmade.
 22 Q. So the bed was nicely made?
 23 A. Yes.
 24 Q. State's Exhibit 152?
 25 A. Again, that's Ms. Gonzalez showing a --

1 more of the ligatures and appears to be wound or
 2 something behind her ear.
 3 Q. Does it also -- do you also see a blue
 4 thing in her hair?
 5 A. Yes. Just to the left of the hands that
 6 are in the picture.
 7 Q. And would that be kind of like a little
 8 clip --
 9 A. Yes.
 10 Q. -- that one holds when a girl might hold
 11 her hair with?
 12 A. Yes.
 13 Q. And there were pictures of that found
 14 where?
 15 A. We found pieces of that by the front door
 16 and actually in the hallway area leading from the
 17 front door to the bedroom.
 18 Q. Okay. State's Exhibit 153?
 19 A. That is the ligatures, the little metal
 20 clip which is underneath the chin is the portion of
 21 the lanyard that would normally hold a piece of
 22 identification.
 23 Q. And those were items that were found on
 24 her, around her neck --
 25 A. Yes.

1 Q. -- when you located her?
 2 A. Yes.
 3 Q. And then finally 154?
 4 A. Just a master bedroom closet.
 5 Q. Neat and tidy?
 6 A. Yes.
 7 Q. As you were at the house investigating,
 8 you said that crime scene came out.
 9 Were you trying to find witnesses in
 10 the area?
 11 A. My partner was, yes.
 12 Q. And how does that happen?
 13 A. Through a canvassing of adjoining
 14 apartments above, next to, across, anybody that
 15 might be within a close proximity of where the crime
 16 occurred. Then we'll normally knock on doors, see
 17 if anybody's home, see if they heard anything or saw
 18 anything.
 19 Q. When you say your partner, who was your
 20 partner?
 21 A. At that time it was Detective Sheila
 22 Huggins.
 23 Q. Okay. So Detective -- earlier in the
 24 other phase of the trial, we talked about when
 25 homicide arrives on the scene and there's partner

1 one is in charge of the scene and one is in charge
 2 of interviewing, were you in charge of the scene at
 3 Ms. Gonzalez's homicide?
 4 A. Yes, I was.
 5 Q. And Detective Huggins was in charge of
 6 witnesses?
 7 A. Yes.
 8 Q. But you communicate with each other and
 9 share your information?
 10 A. Yes.
 11 Q. Did detectives, whether it was Detective
 12 Huggins or someone else, ultimately speak to a lady
 13 named Juanita Curry?
 14 A. Yes.
 15 Q. And where was it your understanding that
 16 Juanita Curry lived?
 17 A. I don't believe Juanita Curry was spoke
 18 to that evening. Juanita Curry --
 19 Q. But ultimately somebody did?
 20 A. Ultimately, yes. Yes. She lived
 21 directly below Marilee Coote. That building is a
 22 three-story building, Ms. Coote lived on the third
 23 floor, Ms. Curry lived two stories below her.
 24 Q. Where in relation to Juanita Curry and
 25 Marilee Coote was Ms. Gonzalez's apartment?

1 A. Directly across the parking lot.
 2 Q. So if you were standing in Juanita
 3 Curry's doorway, could you see the entrance to Ms.
 4 Gonzalez's apartment?
 5 A. Yes.
 6 Q. Is it as close as you are to the door
 7 back there or around that?
 8 A. Probably just a little bit further. It
 9 would probably be from where I am now probably to
 10 outside in the hallway area somewhere.
 11 Q. Okay. So close?
 12 A. Pretty close, yes.
 13 Q. And what did Ms. Curry tell officers she
 14 was aware of from that morning?
 15 A. That she had seen an individual that she
 16 had met before on the property. She'd seen this
 17 individual at Ms. Gonzalez's apartment area by the
 18 door and this individual had knocked on her door
 19 several doors times.
 20 Q. Her being Juanita Curry?
 21 A. Juanita Curry.
 22 Q. When he was knocking on her door several
 23 times, what was it that he wanted?
 24 A. Ultimately to use her telephone and to
 25 allegedly get out of the heat because he said he was

1 hot.
 2 Q. Did she indicate that he had approached
 3 her door the first time and indicated to her who he
 4 was?
 5 A. Yes.
 6 Q. And did she recognize him at that time?
 7 A. She did.
 8 Q. Did she recognize him because she knew
 9 somebody that he was in association or contact with?
 10 A. Yes.
 11 Q. Who was that?
 12 A. Mawoosy Ragland.
 13 Q. And did Juanita Curry indicate that she
 14 personally knew Mawoose Ragland?
 15 A. Yes. And she referred to her as Woo
 16 because she said it was too hard to say her first
 17 name.
 18 Q. And did Woo or Mawoosy Ragland live in
 19 that same apartment complex?
 20 A. She did.
 21 Q. Did she in fact live kind of right
 22 upstairs above Juanita, Kitty corner to Marilee
 23 Coote?
 24 A. She lived, yes, on the third floor of
 25 that complex. She lived directly across the -- they

1 shared the same walkway at the top of the stairs
 2 with Marilee Coote.
 3 Q. And when the per -- did you say what the
 4 person's name was that she had contact with?
 5 A. That?
 6 Q. Did she tell you the name of the
 7 individual, the man that she had contact with that
 8 knocked on her door back in --
 9 A. I believe she said that she actually knew
 10 him as Keith.
 11 Q. Keith. Okay. So did she tell you that
 12 she knew Keith through his girlfriend?
 13 A. Yes.
 14 Q. And did she tell you that he was knocking
 15 on her door in the morning at the time that the
 16 police were actually there investigating Marilee
 17 Coote's death?
 18 A. Yes.
 19 Q. And the first time that he came to the
 20 door wanting to use the phone, did she tell you
 21 where he went when he left her door?
 22 A. I believe that she said she did not know
 23 where he went that time.
 24 Q. Okay. And but he came back?
 25 A. Came back.

1 Q. Shortly thereafter?
 2 A. Yes.
 3 Q. And when I say shortly, within half an
 4 hour?
 5 A. Yes.
 6 Q. What did he want the second time?
 7 A. To use the phone again.
 8 Q. And did she indicate that he went
 9 somewhere after that?
 10 A. Yes.
 11 Q. Where did he go?
 12 A. Across the street towards Reina
 13 Gonzalez's apartment.
 14 Q. Okay. Now you're talking about across
 15 the street.
 16 A. Across the parking lot.
 17 Q. Okay. So right in the same apartment
 18 complex?
 19 A. Yes.
 20 Q. Across the parking lot where you can
 21 see -- not the parking lot. The little walkway
 22 where you can see Ms. Gonzalez's door?
 23 A. Yes.
 24 Q. And she said he went there?
 25 A. Yes.

1 Q. Did he come back again after that?

2 A. Yes.

3 Q. Wanting what?

4 A. I believe he wanted to use the phone

5 again, and at that point she offered him some water.

6 Q. Okay. Did he indicate to her that he

7 wanted water for a reason?

8 A. He indicated he wanted some water, again,

9 because of the heat, but this is early in May. He

10 said he came back because the people over there were

11 smoking marijuana and that he didn't want to be over

12 there when that was happening.

13 Q. Okay. Did he say something to her when

14 police came downstairs?

15 A. I don't recall.

16 Q. Okay. When he got his water, did she say

17 where he went?

18 A. Well, he eventually left her apartment

19 again.

20 Q. And went where?

21 A. Back across the street.

22 Q. Across the street?

23 A. Across the parking lot which from her

24 apartment you walk across the parking lot to Ms.

25 Gonzalez's apartment.

1 Q. Okay. So she saw him going back towards

2 Ms. Gonzalez's door?

3 A. Yes.

4 Q. Did he come back yet again?

5 A. Eventually he did come back. By this was

6 she was in her vehicle.

7 Q. Was there a time that he wanted to use

8 the bathroom?

9 A. Yes.

10 Q. And did she actually let him come in and

11 use the bathroom?

12 A. She did.

13 Q. But did she step outside while he did

14 that?

15 A. She stayed by the front door and stepped

16 out of the residence onto like a front porch area

17 because she didn't trust him.

18 Q. And did he ask her something about a

19 light switch, trying to get her into the apartment?

20 A. Yes.

21 Q. Did she actually go into the apartment?

22 A. No.

23 Q. Now, this is noonish, correct?

24 A. Yes.

25 Q. And you've been in those apartments.

1 It's fairly light inside the apartments?

2 A. It is, yes.

3 Q. Okay. So you said that there was finally

4 a time that he came and she was leaving?

5 A. Yes.

6 Q. And was that about 11:00, 11:30 in the

7 morning?

8 A. According to her it was, yes.

9 Q. So all of these visits back and forth

10 were between what, about 9:00 and 11:00, 11:30?

11 A. Yes.

12 Q. And did she then just leave the

13 apartment?

14 A. She did. The whole time she'd been

15 conversing with her daughter on her cell phone. She

16 was nervous and she wanted to leave and she

17 ultimately did.

18 Q. Did she indicate that she was nervous

19 because of him?

20 A. Yes.

21 Q. Now, did you ultimately discover that

22 Mawoose Ragland did in fact live in this apartment

23 complex?

24 A. Yes.

25 Q. And that she was the girlfriend of Keith

1 at the time?

2 A. Yes.

3 Q. And when I say Keith, in the prior

4 proceeding you recognized the defendant and had had

5 contact with him?

6 A. Yes.

7 Q. Did you then attend the autopsy for Ms.

8 Gonzalez?

9 A. Yes.

10 Q. And what did you discover about her cause

11 of death?

12 A. Ligature strangulation, manner of death

13 was homicide, and we also learned that there had

14 been sexual assault.

15 Q. Okay. When you say you learned that

16 there had been sexual assault, were there specific

17 body parts that had been sexually assaulted?

18 A. Yes.

19 Q. What body parts?

20 A. Anally and vaginally.

21 Q. Both anally and vaginally?

22 A. Yes.

23 Q. And did you -- while you were present,

24 did you observe that swabs were taken like they are

25 during autopsies?

1 A. Yes.
 2 Q. Did the coroner also discuss with you --
 3 well, is it the nature that you would discuss with
 4 the coroner things that they observed?
 5 A. Yes.
 6 Q. And did the coroner also discuss with you
 7 other injuries to her body?
 8 A. Yes.
 9 Q. And what was that?
 10 A. There was a puncture wound behind her
 11 ear.
 12 Q. Was she bruised?
 13 A. Yes.
 14 Q. All over her body?
 15 A. Yes.
 16 Q. As if there had been a violent struggle?
 17 A. Yes.
 18 Q. Now, as you looked at the apartment, was
 19 the apartment consistent with that?
 20 A. Only in the entry way hallway by the door
 21 and then into the bedroom.
 22 Q. As if the rest of it had been cleaned
 23 up --
 24 A. Yes.
 25 Q. -- after?

1 MR. PIKE: Objection. Calls for
 2 speculation.
 3 THE COURT: Sustained. Disregard it.
 4 The jury can draw their own conclusions as to how
 5 that came to be.
 6 BY MS. LUZAICH:
 7 Q. Was there any room in the house where you
 8 discovered anything broken?
 9 A. No.
 10 Q. Anything knocked over?
 11 A. No.
 12 Q. Anything spilled?
 13 A. No.
 14 Q. Did you -- you said that you had observed
 15 that swabs were taken from Ms. Gonzalez.
 16 Did you cause the lab to do some DNA
 17 analysis to compare with anyone in particular?
 18 A. Yes.
 19 Q. Who?
 20 A. Mr. Flowers.
 21 Q. And was Mr. Flowers' DNA found inside her
 22 vagina?
 23 A. Not in Reina Gonzalez, no.
 24 Q. Was it found inside her rectum?
 25 A. No.

1 Q. But did you do elimination -- well, or
 2 I'm sorry. Was his fingerprints found in her
 3 residence?
 4 A. No.
 5 Q. Was there actually a fingerprint or two
 6 found?
 7 A. I believe there was a few, yes.
 8 Q. And did you get prints from maintenance
 9 people and stuff to confirm?
 10 A. We did.
 11 Q. And was there any maintenance worker that
 12 did have a print there?
 13 A. Yes.
 14 Q. But was he also in the apartment because
 15 of a maintenance issue way prior?
 16 A. Yes.
 17 MS. LUZAICH: And -- okay, thank you. I
 18 have no further questions.
 19 MR. PIKE: Thank you.
 20 CROSS-EXAMINATION
 21 BY MR. PIKE:
 22 Q. Okay. Detective Tremel, you were --
 23 we've heard your testimony in previous hearings
 24 involving the number of detectives that were
 25 involved in the investigations.

1 Did the investigations, at least as
 2 far as the Gonzalez and -- Reina Gonzalez and the
 3 Marilee Coote case, that involved the same
 4 detectives?
 5 A. Yes.
 6 Q. During the course of that investigation,
 7 there have been a number of individuals whose name
 8 came -- names have come up.
 9 Damon Alexander for instance. Do
 10 you recall that individual as being a suspects?
 11 A. Being a suspect?
 12 Q. Yes.
 13 A. No.
 14 Q. Aren't there police reports that indicate
 15 that Damon Alexander had been requested to have his
 16 fingerprints compared against the fingerprints that
 17 were located at the scene?
 18 A. The name sounds vaguely familiar, but I
 19 don't --
 20 Q. If I was to approach you with a forensic
 21 laboratory examination collection, would that
 22 refresh your recollection?
 23 A. It probably would, yes.
 24 Q. May I approach?
 25 THE COURT: Yes.

1 MR. PIKE: Thank you very much.

2 BY MR. PIKE:

3 Q. You're familiar with this form, are you
4 not?

5 A. Yes.

6 Q. Okay. And it indicates it was requested
7 by Detective Huggins?

8 A. Yes.

9 Q. And that had been your partner?

10 A. Yes.

11 Q. And the, they had -- or Detective Huggins
12 had requested that there be an analysis or
13 comparison to three individuals?

14 A. That's correct.

15 Q. Would you read those three names into the
16 record?

17 A. Kenneth Riley, Cesar Hernandez and Damon
18 Alexander.

19 Q. Thank you. And that refreshes your
20 recollection that there specifically was an
21 individual by the name of Alexander that you had an
22 interest in at that time?

23 A. Yeah, I guess an interest would be just
24 to see if his fingerprints were there.

25 Q. Okay. And maybe to see if his DNA was

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1 there. Did you ever go get a buckle swab from him?

2 A. No.

3 Q. And yet in the DNA reports that came in,
4 none of the DNA came, on the Gonzalez case came back
5 to Mr. Flowers?

6 A. That's correct.

7 Q. In fact, you've testified at a previous
8 hearing in this matter, preliminary hearing, that
9 there is no piece of physical evidence that would
10 connect Mr. Flowers to the Gonzalez apartment
11 whatsoever?

12 A. Correct.

13 Q. In addition to the DNA that was obtained
14 as part of the vaginal and anal swabs which did not
15 match Mr. Flowers, there was male DNA that was
16 recovered from the ligature cords on Ms. Gonzalez?

17 A. Yes.

18 Q. That male DNA that was on the cords that
19 were tied around her neck and that strangled her did
20 not match Mr. Flowers?

21 A. Correct.

22 Q. And because you had no swab or anything
23 from Mr. Alexander, you don't know whether it
24 matches his DNA or not?

25 A. That's correct.

1 Q. And that investigation then similar to
2 the DNA in the other case, the Quarles case, that
3 came to light after three years and violently after
4 investigation, is still unidentified out there and
5 could still be identified, and that would tell you
6 who held that ligature and who held that cord that
7 is associated with the blood of Ms. Gonzalez?

8 A. Yes, it could.

9 MR. PIKE: I don't have anything further.

10 THE COURT: Anything else?

11 MS. LUZAICH: Just briefly.

12 REDIRECT EXAMINATION

13 BY MS. LUZAICH:

14 Q. You had talked earlier about elimination
15 prints, maintenance workers. Is it possible Damon
16 Alexander is one of those maintenance workers?

17 A. Yes.

18 Q. Okay. Now, you had talked about when the
19 little girls found their mom dead, there was at
20 least one young boy who came in and then some
21 adults.

22 Were you able to absolutely
23 determine every adult that came in and peaked?

24 A. No, we were not.

25 Q. So is it possible that an adult that came

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1 in and peaked that you're not sure of could have
2 touched the ligature?

3 A. It's possible.

4 Q. Okay. Did it take -- you know, right now
5 we know in hindsight that Norman Flowers went back
6 and forth between the defendant -- sorry. Between
7 Juanita Curry's house and Reina Gonzalez, but did it
8 take awhile to realize that he was actually a
9 suspect?

10 MR. PIKE: Objection.

11 THE WITNESS: Yes.

12 MR. PIKE: Calls -- I'll withdraw to the
13 question, the ultimate question that came out, but
14 the commentary before that I'd object to as
15 misstating the facts.

16 THE COURT: Well, I think, I think what
17 he's objecting to is he's saying that you said he
18 went back and forth from Curry to Gonzalez and I
19 think the testimony that I heard from Officer Tremel
20 was he went back and forth from Curry to the area of
21 the Gonzalez place.

22 MR. PIKE: Thank you.

23 THE COURT: I mean, is that a fair
24 statement, Mr. Pike? Are you okay with that?

25 MR. PIKE: Yes, I'm fine with that.

1 MS. LUZAICH: Okay. I'm gonna go back
2 to --
3 THE COURT: To the general area of the
4 enters of the Gonz -- yeah, to the Gonzalez
5 apartment.
6 BY MS. LUZAICH:
7 Q. When Juanita Curry spoke with police, she
8 didn't say that she saw him walk in Reina Gonzalez's
9 door, correct?
10 A. That is correct.
11 Q. Because you can't actually see Reina
12 Gonzalez's door and doorknob from Juanita Curry's
13 apartment, correct?
14 A. It's obstructed by a staircase.
15 Q. But the area that she described that he
16 walked to, is hers the only apartment that's right
17 there?
18 A. Yes.
19 Q. Okay. So now, we know now about that,
20 but back then did it take you -- you didn't know on
21 the date of her death that Norman Flowers was a
22 suspect. It took a while to develop that; is that
23 correct?
24 A. Correct.
25 Q. And you did that because you tied

1 everything together?
2 A. Yes.
3 MS. LUZAICH: Thank you.
4 THE COURT: Anything else, Mr. Pike?
5 MR. PIKE: Very briefly.
6 RECCROSS-EXAMINATION
7 BY MR. PIKE:
8 Q. In going through and trying to ascertain
9 who may have been involved in the Gonzalez case,
10 there were a number of items that were subject to
11 DNA examination; is that correct?
12 A. Yes.
13 Q. And in fact, there was -- besides the
14 swabs that we've indicated, there was some, let's
15 see, cigarette butts as a source of DNA, burnt piece
16 of paper and those items.
17 And at your request or at the Las
18 Vegas Metropolitan Police Department's request,
19 those were all examined to determine whose DNA was
20 on it and if it matches any profiles that were
21 known?
22 A. Yes.
23 Q. Okay. And specifically, indicates that
24 the DNA analysis performed on her rectal swabs which
25 there was a male DNA located in that, correct?

1 A. Yes.
2 Q. That Norman Flowers was excluded as the
3 source of that male component?
4 A. Yes.
5 MS. LUZAICH: I'm sorry. On the --
6 MR. PIKE: On the male swabs.
7 MS. LUZAICH: No, on, on --
8 THE COURT: On the rectal swabs.
9 MR. PIKE: On the anal.
10 BY MR. PIKE:
11 Q. All right. And in reference to the
12 cigarettes, there was also DNA that was located on
13 those?
14 A. Yes.
15 Q. Norman Flowers was excluded as the DNA
16 source on the cigarette butt also?
17 A. Yes.
18 Q. And as we've indicated before, the male
19 component that was on the ligature items, Norman
20 Flowers was specifically excluded as a source of
21 that DNA?
22 A. Yes.
23 MR. PIKE: All right. Nothing further.
24 THE COURT: Anything else?
25 MS. LUZAICH: No.

1 THE COURT: Thanks, detective.
2 Appreciate your time. Have a good day.
3 Okay. We'll go to lunch.
4 During this break, don't talk or
5 converse among yourselves or with anyone else on any
6 subject connected with this trial.
7 Don't read, watch or listen to any
8 report of or commentary on the trial or any person
9 connected with this trial by any medium of
10 information, including, without limitation,
11 newspapers, television, internet and radio.
12 Don't form or express any opinion on
13 any subject connected with the trial until the case
14 is finally submitted to you.
15 We'll pick up at 1 o'clock. And
16 we're doing just fine for time. Wear your badge if
17 you stay in the courthouse, take off if you don't.
18 (Whereupon, the jury exited the
19 courtroom.)
20 THE COURT: Okay. The jury's exited.
21 What have you got left? Victim impact, Pam, is that
22 it?
23 MS. WECKERLY: Yes. We just have Reina's
24 grandmother and father, Marilee's son if his plane
25 arrives.

1 THE COURT: Wait a minute. Why would he
2 be -- what's Reina's grandmother gonna say?

3 MS. WECKERLY: Just the impact of her
4 murder.

5 THE COURT: I don't think you can do
6 that. I think you can only put on the impact of the
7 murder on the person for whom he's been convicted
8 today.

9 I mean, I think you can put on that
10 conduct for whatever weight they want to ascribe it
11 to the extent that they might believe that he did it
12 and do that, but I'm not sure you can put on victim
13 impact for other murders for which he wasn't
14 convicted today.

15 I mean, if you have a case that says
16 he can, I'll let you.

17 MS. WECKERLY: Okay.

18 THE COURT: If we don't know, I'm gonna
19 say no just in an abundance of caution.

20 MS. WECKERLY: Okay. I'll try to find
21 one over the lunch hour.

22 THE COURT: If there's one, show me.

23 MS. WECKERLY: Okay.

24 THE COURT: Good to go. Otherwise,
25 victim impact for Quarles only.

1 MS. WECKERLY: Okay. One other thing
2 sort of on that note.

3 THE COURT: Yeah.

4 MS. WECKERLY: Is over the lunch hour,
5 I'm gonna read and I have a copy for the court the
6 Retiker case because in all candor, I think it might
7 affect whether or not a first-degree arson is a
8 crime of violence.

9 I think we have that aggravator
10 anyway in the robbery with use, but because it may
11 affect the instructions, I just want to review it
12 before we finalize the instructions because --

13 THE COURT: Fair enough.

14 MS. WECKERLY: -- we may strike that.

15 THE COURT: Fair enough. And I don't
16 even know what it says. My, my --

17 MR. PIKE: It says second-degree arson.
18 It is not an aggravator.

19 MS. LUZAICH: Right, but this is first --

20 MR. PIKE: I understand.

21 THE COURT: My recollection was is if you
22 burn down property and there was no real danger, it
23 wasn't, but arson can certainly be a crime of
24 violence if there's a person in there for example.

25 MS. WECKERLY: Right.

1 THE COURT: Maybe a dog. Listen, you
2 kill a dog, that's pretty damn devastating to
3 people.

4 MS. WECKERLY: It is. No, and I'm --

5 THE COURT: I'll look at it.

6 MS. WECKERLY: Yeah, I'm gonna look at
7 it, too. I just didn't want everyone to think that,
8 you know, I'm finalizing it. So I thought I'd bring
9 it to everybody's attention.

10 THE COURT: We'll look at it and I'll do
11 my best to --

12 MS. WECKERLY: Okay.

13 THE COURT: -- give you a reasonable
14 answer and again, on these kind of things, if push
15 comes to shove.

16 MS. WECKERLY: Right.

17 THE COURT: You tend to err on the side
18 of caution. So unless it looks like it's pretty
19 clear that you can and there's something here, then,
20 you know, again, I'd rather err on the side of
21 caution and make sure that we at least do it right.

22 MS. WECKERLY: Right.

23 THE COURT: It doesn't mean that they
24 can't consider it. It just means they can't
25 consider it at that aspect whether jurisdictionally

1 death can come into play.

2 MR. PIKE: Right. And it's part of the
3 narrowing process and it actually is cited in my
4 points and authorities that I filed in --

5 MS. WECKERLY: Right. I'll just look at
6 that and I'll look at the penalty thing.

7 THE COURT: All right. We'll discuss it
8 just for a second, but -- well, we'll discuss it
9 when -- they're not gonna, they're not gonna argue
10 the case today. We're gonna, we're gonna be done by
11 3 o'clock I'm thinking with all the evidence except
12 for the one witness Randy doesn't have until
13 tomorrow and any allocution statement the defendant
14 may make.

15 So we'll spend the next hour or two
16 after that, they go home, doing the instructions and
17 decide. We don't have to decide this before 1
18 o'clock. So this isn't a --

19 MS. WECKERLY: Right.

20 THE COURT: -- gonna put on their
21 testimony.

22 MS. WECKERLY: Right.

23 THE COURT: And I want to read it before
24 we sit down and talk about it.

25 MS. WECKERLY: Okay.

1 MR. PIKE: And in order to complete the
2 loop on the Crawford motion that I bought -- or
3 bought. Brought specifically regarding the hearsay,
4 and I understand that hearsay is admissible,
5 currently as the law reads, but in conjunction with
6 that completed, I bring a motion for a mistrial
7 based upon hearsay that is continuing to come in.

8 THE COURT: Okay. And you understand
9 that I have to deny it. But I'd, I'd be -- want to,
10 to believe -- I'd be very surprised if the supreme
11 court of the United States or Nevada extended that
12 to this kind of thing.

13 I mean, think about the context in
14 which this case is brought. You have serious
15 offenses that are 15 or 16 years old. He's been in
16 prison most of the time. I mean, a lot of those
17 people are gonna be unavailable, some of them may
18 have died.

19 It -- you know the idea is to be
20 fair to both. I mean, certainly the defense due
21 process rights are, are paramount to everything, but
22 the State also has an interest in this and it just
23 seems like if you applied Crawford to that, you
24 might tie the State's hands and not fairly let them
25 have a fair opportunity to put before the jury the

1 whole picture in cases where the evidence is, goes
2 back a number of years.

3 And I, I suppose if it went back 40
4 years, it would be even worse. I mean, you've got a
5 40-year history, how do they get that in front of a
6 jury other than having a police detective come in
7 and say well, 40 years ago he did this, that and the
8 other.

9 And, and in this particular case,
10 they were able to articulate that your client
11 confessed. And so that in and of itself wouldn't be
12 hearsay, his confession. I mean, even if they
13 didn't have the people to say well, we can put this
14 out and he said I did it. I mean, it seems to me
15 that this isn't a very factually case to argue that,
16 but I understand why you do it.

17 MR. PIKE: Right. The part that is
18 factually bizarre, he was, in reference to the
19 Gonzalez case. Because as the testimony developed,
20 it is a circumstantial case in placing him. They
21 place Mr. Flowers at the scene, they have the other
22 two murders, and I know that they're going to try
23 and complete the loop and say circumstantially, even
24 though the physical evidence doesn't put him
25 anywhere in there.

1 THE COURT: And I'm not sure that they
2 will or won't. And this argument was articulated by
3 you very thoroughly I thought when we had our bad
4 acts motion. And I was satisfied that, that the
5 strength of proof and the, you know, sort of overall
6 modus operandi was such that I denied the State's
7 motion as to that. I mean, it is what it is, but it
8 certainly isn't the strongest of the cases, that
9 case.

10 In and of itself, standing on its
11 own, it's a zero. I mean, if they happen to believe
12 that he was there and he did Coote and who else was
13 gonna do this and there's motive and there's
14 opportunity and so on, But if they had to just try
15 Gonzalez by itself, the State wouldn't even go
16 forward. They didn't have enough.

17 MR. PIKE: It's been dismissed once.

18 THE COURT: Well, you know, I understand,
19 but if you look at it in context, in fact, I'll give
20 you an example. If we'd have just tried the, the
21 Quarles case without the bad acts on the Coote case,
22 I'm not sure I could let the burglary go to the jury
23 because I don't think there's any way you can tell
24 whether he went in there and then developed his
25 motive to rape and kill or rape and then maybe kill

1 later or whether or not there was no forced entry.
2 But once you have the Coote case, then I think it's
3 reasonable for the jury to conclude that this is
4 what he does. He goes in there and this is what his
5 motive is.

6 So I don't think you can look at
7 everything in a vacuum. You have to look at it in
8 context.


9 Again, though, I'm not sure that the
10 State will get a conviction on that case. But, it's
11 charged case, you know, there are certainly some
12 evidence for which a jury could conclude that he did
13 it, and whatever weight they want to put on it, they
14 can.

15 Of course we all know that doesn't
16 even come into play until we get over the
17 jurisdictional hurdle and they've only got one and
18 maybe two aggravators.

19 I have no idea what weight the jury
20 is gonna put on that, but I can assure you I am
21 going explain to them in terms they will understand
22 exactly their obligation to do it, and the right
23 order to do what's necessary and to not look at the
24 big picture until they've done the weight of
25 process.

1 MS. WECKERLY: Well, s, we have --
2 I'm sorry. Even if you took out the arson, we have
3 two aggravators. Under sentence of imprisonment --
4 THE COURT: Yeah, I'm sorry.
5 MS. WECKERLY: And prior violent
6 felonies.
7 THE COURT: There was five and you're out
8 two and I left three and I --
9 MS. WECKERLY: Okay.
10 THE COURT: You're absolutely right.
11 MS. WECKERLY: Okay.

12
13 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
PROCEEDINGS.

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

OCT 24 2008 12:54 PM

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: *Tina Hurd*
TINA HURD, DEPUTY

C 228755

1 INST

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 NORMAN KEITH FLOWERS,

9 Defendant.

Case No.

C228755

Dept No.

VII

12 INSTRUCTIONS TO THE JURY
13 (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

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

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

1
2 If, in these instructions, any rule, direction or idea is repeated or stated in different
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that
4 reason, you are not to single out any certain sentence or any individual point or instruction
5 and ignore the others, but you are to consider all the instructions as a whole and regard each
6 in the light of all the others.
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The trial jury shall fix the punishment for every person convicted of murder of the first degree.

The jury shall fix the punishment at:

(1) A definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served; or,

(2) Life imprisonment with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served;

(3) Life imprisonment without the possibility of parole, which means exactly what it says, that the defendant shall not be eligible for parole;

(4) Death.

1
2 A prison term of fifty years with eligibility for parole beginning when a minimum of
3 twenty years has been served does not mean that the defendant would be paroled after
4 twenty years but only that he would be eligible for parole after that period of time.

5 Life imprisonment with the possibility of parole is a sentence to life imprisonment
6 which provides that the defendant would be eligible for parole after a period of twenty years.
7 This does not mean that he would be paroled after twenty years but only that he would be
8 eligible for parole after that period of time.

9 Life imprisonment without the possibility of parole means exactly what it says, that
10 the defendant shall not be eligible for parole.

11 If you sentence the defendant to death, you must assume that the sentence will be
12 carried out.
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2 In the penalty hearing, evidence may be presented concerning aggravating and
3 mitigating circumstances relative to the offense, and any other evidence that bears on the
4 Defendants' character.

5 Hearsay is admissible in a penalty hearing.
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The jury must find the existence of each aggravating circumstance, if any, unanimously and beyond a reasonable doubt.

The jurors need not find mitigating circumstances unanimously. In determining the appropriate sentence, each juror must consider and weigh any mitigating circumstance or circumstances which that juror finds.

The jury may impose a sentence of death only if:

(1) The jurors find unanimously and beyond a reasonable doubt that at least one aggravating circumstance exists;

(2) Each and every juror determines that the mitigating circumstance or circumstances, if any, which he or she has found do not outweigh the aggravating circumstance or circumstances; and

(3) The jurors unanimously determine that in their discretion a sentence of death is appropriate.

Each juror is entitled to individually determine the "weight" of each aggravating circumstance and mitigating circumstance and is entitled to individually determine whether the mitigating circumstance or circumstances outweigh the aggravating circumstance.

1
2 A reasonable doubt is one based on reason. It is not mere possible doubt, but is such
3 a doubt as would govern or control a person in the more weighty affairs of life. If the minds
4 of the jurors, after the entire comparison and consideration of all the evidence, are in such a
5 condition that they can say they feel an abiding conviction of the truth of the charge, there is
6 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
7 speculation.

1
2 In deciding on an appropriate sentence for the defendant, you will consider three
3 types of evidence: evidence relevant to the existence of aggravating circumstances, evidence
4 relevant to the existence of mitigating circumstances, and other evidence presented against
5 the defendant. You must consider each type of evidence for its appropriate purposes.

6 In determining unanimously whether any aggravating circumstance has been proven
7 beyond a reasonable doubt, you are to consider only evidence relevant to that aggravating
8 circumstance. You are not to consider other evidence against the defendant.

9 In determining individually whether any mitigating circumstance exists, you are to
10 consider only evidence relevant to that mitigating circumstance. You are not to consider
11 other evidence presented against the defendant.

12 In determining individually whether any mitigating circumstances outweigh any
13 aggravating circumstances, you are to consider only evidence relevant to any mitigating and
14 aggravating circumstances. You are not to consider other evidence presented against the
15 defendant.

16 If you find unanimously and beyond a reasonable doubt that at least one aggravating
17 circumstance exists and each of you determines that any mitigating circumstances do not
18 outweigh the aggravating, the defendant is eligible for a death sentence. At this point, you
19 are to consider all three types of evidence, and you still have the discretion to impose a
20 sentence less than death. You must decide on a sentence unanimously.

21 If you do not decide unanimously that at least one aggravating circumstance has been
22 proven beyond a reasonable doubt or if at least one of you determines that the mitigating
23 circumstances outweigh the aggravating, the defendant is not eligible for a death sentence.
24 Upon determining that the defendant is not eligible for death, you are to consider all three
25 types of evidence in determining a sentence other than death, and you must decide on such a
26 sentence unanimously.

INSTRUCTION NO. 9

1
2 The law does not require the jury to impose the death penalty under any
3 circumstances, even when the aggravating circumstances outweigh the mitigating
4 circumstances. Nor is the Defendant required to establish any mitigating circumstances in
5 order to be sentenced to less than death.
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You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

1. The murder was committed by a person under sentence of imprisonment.
2. The murder was committed by a person who has been convicted of a felony involving violence.

1
2 Mitigating circumstances are those factors which, while they do not constitute a legal
3 justification or excuse for the commission of the offense in question, may be considered, in
4 the estimation of the jury, in fairness and mercy, as extenuating or reducing the degree of the
5 Defendant's moral culpability.

6 You must consider any aspect of the Defendant's character or record and any of the
7 circumstances of the offense that the Defendant proffer as a basis for a sentence less than
8 death.

9 In balancing aggravating and mitigating circumstances, it is not the mere number of
10 aggravating circumstances or mitigating circumstances that controls.
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2 In determining whether mitigating circumstances exist, jurors have an obligation to
3 make an independent and objective analysis of all the relevant evidence. Arguments of
4 counsel or a party do not relieve jurors of this responsibility. Jurors must consider the totality
5 of the circumstances of the crime and the defendant, as established by the evidence presented
6 in the guilt and penalty phases of the trial. Neither the prosecution's nor the defendant's
7 insistence on the existence or nonexistence of mitigating circumstances is binding upon the
8 jurors.

1
2 The Defendant asserts that the following, amongst others, constitute mitigating
3 circumstances which should be considered by the jury in deciding punishment, even though
4 not sufficient to constitute a defense or reduce the degree of the crime. It is the jury's
5 responsibility to determine whether or not any of such constitute mitigating circumstances.

6 Mr. Flowers was raised in a dysfunctional family;

7 Mr. Flowers was abandoned in Central America (Belize) by his mother at an early
8 age;

9 Mr. Flowers lacked encouragement and support from parents;

10 Mr. Flowers was subjected to mental abuse by his father;

11 Mr. Flowers was exposed to gang violence by his brother;

12 Mr. Flowers was humiliated and made fun of during his adolescence;

13 Mr. Flowers was a witness to parents' affairs;

14 Mr. Flowers was a witness to parents' fights, arguments and separations;

15 Mr. Flowers is a loving father to his son;

16 Mr. Flowers was not treated for the sexual abuse he endured;

17 The impact Mr. Flowers' execution would have on his son and his twin Sister,
18 Norma.

19 Other mitigating circumstances found to exist by one or more of the jurors.
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2 The mitigating circumstances which I have read for your consideration are given only
3 as examples of some of the factors you may take into account as reasons for deciding not to
4 impose a sentence of death on Mr. Flowers. Any aspect of Mr. Flowers' character or record,
5 and any of the circumstances of the offense, including any desire you may have to extend
6 mercy to Mr. Flowers, which any juror believes is a basis for imposing a sentence less than
7 death may be considered a mitigating circumstance.

8 Any mitigating circumstance may be sufficient, standing alone, to support a decision
9 that death is not the appropriate punishment in this case.
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2 You are instructed that the following matters concern Mr. Flowers' character and may
3 not be considered by the jury in determining whether he is eligible for the death penalty:
4 that is, the jury may not consider these matters in determining the existence of the
5 aggravating circumstance, the existence of mitigating circumstances, or the weighing of the
6 aggravating and mitigating circumstances to determine eligibility for the death penalty.

7 The impact to the victim's family as a result of the death of their loved one;

8 Allegations of any non-violent felony convictions.

9 These may only be considered in determining what is the appropriate punishment
10 amongst the range of eligible punishments after that range is determined.
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You have evidence about the impact of this homicide on the family of the decedent. This evidence was presented to show the victim's uniqueness as an individual and the resultant loss by the decedent's death. You may not consider this evidence in determining the existence of aggravating circumstances or mitigating circumstances.

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The jury is instructed that in determining the appropriate penalty to be imposed in this case that it may consider all evidence introduced and instructions given at both the penalty hearing phase of these proceedings and at the trial of this matter.

1
2 In your deliberation you may not discuss or consider the subject of guilt or innocence
3 of a Defendant, as that issue has already been decided. Your duty is confined to a
4 determination of the punishment to be imposed.
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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

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

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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2 During your deliberation, you will have all the exhibits which were admitted into
3 evidence, these written instructions and forms of verdict which have been prepared for your
4 convenience.

5 Your verdict must be unanimous. When you have agreed upon your verdicts, they
6 should be signed and dated by your foreperson.
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2 The Court has submitted two sets of verdicts to you. One set of verdict forms reflects
3 the possible punishments which may be imposed. There are two alternative forms. The one
4 with four possibilities, including death, is to be used if you have determined the aggravating
5 circumstances outweigh the mitigating circumstances. The one with three possibilities,
6 excluding death, is to be used if at least one of you believes the mitigating circumstances
7 outweigh the aggravating circumstances. The other verdict forms are entitled special verdict.
8 They are to reflect your findings with respect to the presence or absence and weight to be
9 given any aggravating circumstances and any mitigating circumstances, regardless of which
10 outweighs the other.

1
2 Now you will listen to the arguments of counsel who will endeavor to aid you to
3 reach a proper verdict by refreshing in your minds the evidence and by showing the
4 application thereof to the law; but, whatever counsel may say, you will bear in mind that it is
5 your duty to be governed in your deliberation by the evidence as you understand it and
6 remember it to be and by the law as given to you in these instructions, with the sole, fixed
7 and steadfast purpose of doing equal and exact justice between the Defendant and the State
8 of Nevada.

GIVEN: 

DISTRICT JUDGE

OCT 24 2008

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CASE NO. C228755
DEPT. NO. VII

ORIGINAL

FILED

OCT 27 11 57 AM '08

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Bell
CLERK OF THE COURT

THE STATE OF NEVADA,)
Plaintiff,)

vs.)

NORMAN KEITH FLOWERS,)
aka NORMAN HAROLD)
FLOWERS, III,)
Defendant.)

Reporter's Transcript
of
Penalty Phase

Volume 8

BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

FRIDAY, OCTOBER 24, 2008

9:00 A.M.

APPEARANCES:

For the State: Pamela Weckerly, Esq.
Elissa Luzaich, Esq.
Deputies District Attorney

For the Defendant: Randall Pike, Esq.
Clark Patrick, Esq.
Deputies Public Defender

Reported by: JoAnn Orduna, CCR No. 370

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JIM ESTEN

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Verdict	118
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E X H I B I T S

<u>DEFENSE EXHIBIT</u>	<u>MARKED</u>	<u>OFFERED</u>	<u>ADMITTED</u>
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1 CASE NO. C228755
2 DEPT. NO. VII

3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)
7 Plaintiff,)
8 vs.) Reporter's Transcript
9) of
10 NORMAN KEITH FLOWERS,) Penalty Phase
11 aka NORMAN HAROLD)
12 FLOWERS, III,) Volume 8
13 Defendant.)

14 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

15 FRIDAY, OCTOBER 24, 2008

16 9:00 A.M.

17 APPEARANCES:

18 For the State: Pamela Weckerly, Esq.
19 Elissa Luzaich, Esq.
20 Deputies District Attorney

21 For the Defendant: Randall Pike, Esq.
22 Clark Patrick, Esq.
23 Deputies Public Defender

24 Reported by: JoAnn Orduna, CCR No. 370
25

3
1 LAS VEGAS, CLARK COUNTY, NV, FRI, OCT 24, 2008

2 9:00 A.M.

3 -oOo-

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

5
6 THE COURT: Okay. Let's go on the
7 record in Case C228755. State of Nevada versus
8 Norman Keith Flowers.

9 Let the record reflect the presence
10 of Mr. Flowers with his counsel, counsel for the
11 State, absence of the jury.

12 Mr. Flowers, yesterday I went over
13 with you your rights in regard to A, you can stand
14 silent, you don't have to make a statement today; B,
15 you can make a sworn statement subject to
16 cross-examination; or C, you could make an unsworn
17 statement, an allocution, limited to certain issues.

18 Have you had a chance to talk to
19 your lawyers about that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Any questions of
22 me or are you okay, you understand your rights?

23 THE DEFENDANT: I understand.

24 THE COURT: Okay. Anything else before
25 the jury comes in?

2
1 I N D E X

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3 WITNESSES FOR THE DEFENSE:

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11 Verdict 118

12 E X H I B I T S

13 DEFENSE EXHIBIT MARKED OFFERED ADMITTED

14 0-Z 9 9

4
1 MR. PIKE: No, Your Honor.

2 THE COURT: Okay.

3 (Whereupon, the jury entered the
4 courtroom.)

5 THE COURT: Okay. Let's go back on the
6 record in Case C228755, State of Nevada versus
7 Norman Keith Flowers.

8 Let the record reflect the presence
9 of the defendant with his counsel, counsel for the
10 State. All ladies and gentlemen of the jury are
11 back in the box.

12 Mr. Pike, you have at least one more
13 witness? Mr. Patrick.

14 MR. PATRICK: Yes, judge. Jim Esten.

15 (Whereupon, James Esten was duly
16 sworn to tell the truth, the whole
17 truth and nothing but the truth.)

18 THE CLERK: Thank you. You may be
19 seated.

20 THE COURT: State your name, sir, spell
21 your name for the court reporter.

22 THE WITNESS: James Esten. J-a-m-e-s.
23 E-s-t-e-n.

24 THE COURT: Go ahead.
25 ///

DIRECT EXAMINATION

1 BY MR. PATRICK:

2 Q. Good morning, Mr. Esten.

3 A. Good morning.

4 Q. Where are you living now?

5 A. Sacramento, California.

6 Q. And what's your occupation?

7 A. I'm work currently working as a
8 correctional consultant.

9 Q. Did you work for anybody prior to that?

10 A. I worked for the California Department of
11 Corrections from 1973 until 1922.

12 Q. Okay. And what were your duties with the
13 California Department of Corrections?

14 A. My initial assignment was as a vocational
15 instructor teaching inmates skills that would allow
16 them to become printers upon their parole.

17 I then became a supervising
18 correctional counselor two in which I held a variety
19 of assignments.

20 I then was promoted to a program
21 administrator where I ran a general population
22 inmate housing unit with level three and level four
23 inmates.

24 I then ran the correctional training

1 center in Galt, G-a-l-t, where all new correctional
2 officer cadets were trained.

3 And my final assignment was as an
4 inmate appeals investigator investigating inmate
5 complaints that were filed at the director's level
6 on behalf of the director of corrections.

7 Q. Now, these investigations, what kind of
8 investigations would you perform?

9 A. Inmates are permitted to file a grievance
10 if you will, on anything other than their commitment
11 offense or anything that the court has done to them.

12 For instance, they may be involved
13 in a fight and charged with participation in that
14 fight and they claim that they were elsewhere and
15 that they were not involved in the fight. That
16 would require an investigation. That was a more
17 serious kind of investigations.

18 Some of them were as minute as my
19 sack lunch was served to me today and the apple was
20 rotten.

21 Q. Okay. As part of those duties, would you
22 go to the correctional facilities and interview the
23 inmates?

24 A. I would go to the facility, to the
25 housing unit, the inmate would be brought to me in a

1 private room and we would have a one-on-one
2 discussion of the issues and then I would discuss
3 with other staff or inmates any tangential issues to
4 his argument.

5 Q. Okay. And I believe you said that you've
6 since retired from the California Department of
7 Corrections?

8 A. That is correct.

9 Q. And at the present time or since then
10 what have you been doing?

11 A. I have working as a correctional
12 consultant. As a consultant, I advise attorneys on
13 the status of their case, primarily those clients
14 who have had prior incarcerated history and review
15 that history and render an opinion for the attorney.

16 Q. And as a consultant, my office hired you
17 to come in and look at Norman's case?

18 A. Yes, you did.

19 Q. And you expect to get paid for that?

20 A. I do.

21 Q. Now, as a, as a consultant for
22 correctional facilities, have you become familiar
23 with the Nevada Department of Corrections?

24 A. I have.

25 Q. Have you visited any Nevada prisons?

1 A. I have.

2 Q. Which ones?

3 A. I have visited Ely, state prison in Ely,
4 on five occasions and I have visited Southern Desert
5 Correctional Center on one occasion.

6 Q. And during your business to Ely, have you
7 become acquainted with their warden Mr. McDaniels?

8 A. I have.

9 Q. And you've actually been inside Ely State
10 Prison?

11 A. I have been in what is identified as
12 phase one and phase two as well as all of the
13 administrative areas of Ely State Prison.

14 Q. Okay. So you -- have you been in any of
15 the actual cells?

16 A. I have been in cells in both phase one
17 and phase two.

18 Q. Okay. Was there a time when you worked
19 on a case where you went into Ely State Prison with
20 an attorney or investigator and were allowed to take
21 photographs of the facility?

22 A. Yes.

23 Q. Okay. I'm gonna show you what's been
24 marked defense -- I've already showed these to the
25 state. Would you -- several defense exhibits.

1 Would you look at those and see if
2 you recognize those photographs?

3 A. Yes, I do. I was present when each of
4 those photographs were taken.

5 Q. Let me just figure out -- court's
6 indulgence. I believe it's defense O through Z. I
7 move for admission.

8 MS. WECKERLY: No objection.

9 THE COURT: Admitted.

10 BY MR. PATRICK:

11 Q. Okay. Mr. Esten, I'm gonna show you
12 what's been marked as defense Exhibit W.

13 Can you explain to the jury what
14 we're seeing here?

15 A. What we're seeing here is a typical cell
16 in Ely State Prison. The green item on the left is
17 the bunk, the green item across the back is a shelf.
18 The lighted item vertical in the rear is the window
19 to the rear of the cell.

20 Q. What's the approximate size of that cell?

21 A. The approximate size is six feet, eight
22 inches wide by between 12 and 14 feet deep. The
23 variation is because it's angled where the toilet
24 sits.

25 Q. Okay. And is that typical of the cells

10

1 in Ely?

2 A. I am told by warden McDaniel that every
3 cell in Ely is identical other than the few
4 handicapped cells he has.

5 Q. Okay. Now, you pointed to the item that
6 you said was a window.

7 Is that a window that somebody could
8 actually look out and see the countryside?

9 A. That window allows you to look out and
10 see the fence line that is the perimeter of the Ely
11 State Prison. It's -- there's no view from the
12 window.

13 Q. Okay. I don't know how to erase that.
14 Okay. Oh, thank you. Okay. Now I'm gonna show you
15 what's been marked as defense Exhibit V.

16 Can you explain to the jury what
17 that is?

18 A. This is a typical sink, toilet, drinking
19 fountain, combination that is employed in all of the
20 more recently built prisons. It is made of
21 stainless steel.

22 There is a sink bowl at the top,
23 there are three plunger handles to control the water
24 and a drinking fountain spigot.

25 The toilet bowl at the bottom

1 without a toilet seat.

2 The large hole in the center is for
3 placement of a toilet paper roll.

4 Q. And how far is that unit located from the
5 inmate's bunk?

6 A. Approximately 10 inches.

7 Q. So if the inmate was laying in their
8 bunk, their head would be 10 inches away from the
9 toilet?

10 A. Or their feet. Depending which way
11 they're laying.

12 Q. I'm gonna show you now what's been marked
13 as defense Exhibit S.

14 Can you kind of explain that to the
15 jury, please?

16 A. This is the outside of that cell with a
17 cell door closed.

18 Again, the vertical opening is the
19 window for that cell.

20 This is a pull handle to open the
21 cell.

22 This trap door is used for feeding
23 inmates housed in that cell by opening the door
24 through this key slot and dropping the door down.

25 Q. Okay. Let's see. I'm gonna show you

12

1 defense R and that's kind of what you're explaining
2 there, the door opened?

3 A. That is a tray slot or cuff port door
4 opened. Because the inmate not only receives his
5 meal tray that way, when he's exiting the cell, he
6 places his back to the door, puts his hands through
7 the cell port or the tray port and is handcuffed
8 backwards by the correctional officer who remains
9 outside on the tear before the doors ever opened.

10 Q. Okay. So the inmates actually eat all
11 their meals in that same small cell?

12 A. Yes.

13 Q. And before they, before that main door's
14 opened, before they ever come out of that cell,
15 they're already handcuffed?

16 A. Correct.

17 Q. I'm gonna show you now what's been marked
18 as defense X.

19 Could you explain to the jury,
20 please?

21 A. That is what identifies the fact that
22 this housing unit has two tears. The bottom line
23 indicating where cells are on the first tear,
24 there's a railing and cells on the second tear with
25 a stairwell that goes up between the first and

1 second tear.

2 There's a table here that inmates
3 can use who have access to this entire area which is
4 considered the day room.

5 The majority of inmates housed in
6 Ely State Prison do not have access to the day room
7 or what is called tear exercise.

8 Q. So if they don't have access to the day
9 room or tear exercise, what does that mean to the
10 prisoners? Where do they spend their time?

11 A. They spend 23 hours a day in their cell.
12 They are released one hour per day five days a week
13 to go to a small exercise yard adjacent to the
14 housing unit itself.

15 Q. Okay. I'm gonna show you what's been
16 marked as defense Y.

17 Is this that exercise yard you were
18 just talking about?

19 A. Yes.

20 Q. And I'm gonna show you also defense Z.
21 Is this kind of the, the other side of that exercise
22 yard?

23 A. Yes, it is.

24 Q. From these pictures it would appear that
25 the exercise yard is completely surrounded by block

1 walls?

2 A. It is concrete block, filled concrete
3 block.

4 Q. On all four sides?

5 A. There is one side that is not in the
6 photograph that can, that is partial glass that
7 opens to the control booth, so the correctional
8 officer working in that control booth can monitor
9 the activity in the exercise yard.

10 Q. Okay. But none of the walls are chain
11 link or anything that the inmates can see outside
12 the prison?

13 A. Correct.

14 Q. So the only view that they would have
15 while they were in this exercise yard would be
16 straight up to the sky?

17 A. Yes.

18 Q. Now, you were talking about the two
19 different phases of cells in Ely.

20 Have you visited both of them?

21 A. Yes.

22 Q. And could you explain the difference
23 between I think what is phase one and phase two?

24 A. They are identified as phase one and
25 phase two because of the order in which they were

1 built. Phase one was built first. Phase two
2 second, a year later. Mr. McDaniel attributes that
3 to funding issues.

4 Q. Okay. But I think you already testified
5 that all the cells in both phases are consistent
6 with each other?

7 A. They are identical.

8 Q. Now --

9 A. Phase one, I think you want to know who
10 is housed where?

11 Q. Yeah.

12 A. Phase one houses the condemned men's
13 unit, disciplinary segregation inmates, disciplinary
14 detention inmates and inmates assigned to
15 administrative segregation.

16 Q. Okay. Now, the pictures we just looked
17 at, it seemed that that cell only had one bunk in
18 it?

19 A. Yes, it did.

20 Q. Are there other cells that have more than
21 one bunk in it?

22 A. Yes. Some of the cells were originally
23 made with two bunks, others have been retrofitted
24 with two bunks because of over-crowding issues.

25 Q. Now, the cells with two bunks, are they

1 larger than the single cell?

2 A. Identical to the ones we have seen. It
3 just has a second bunk above the bunk that we looked
4 at.

5 Q. And it would house then two inmates?

6 A. Correct.

7 Q. Have you actually physically been in one
8 of these cells with another person?

9 A. Yes.

10 Q. What's it like to try and move around in
11 there?

12 A. It's cramped. One has to zig while the
13 other zags quite honestly. And depending on the
14 size of the other person, it's maybe possible that
15 you can't get past one another without someone
16 moving to the toilet area and then you going to the
17 bunk area.

18 Q. Okay. So in your opinion from seeing the
19 cells, what kind of privacy is there in a two-man
20 cell?

21 A. There is no privacy in a two-man cell for
22 either inmate.

23 Q. And in your opinion, would that be
24 exacerbated by the fact that they could be in that
25 cell together for as much as 23 hours a day?

1 A. It certainly is exacerbated by the fact
2 that you have two individuals living in that
3 confined quarters for that extended period of time
4 with nowhere to go.

5 Q. Now, the cell that was in those pictures,
6 was there an inmate actually living in the cell at
7 that time?

8 A. Not at that time.

9 Q. Because I noticed that there was nothing
10 in there. I mean, there wasn't even a TV in there.

11 A. Everything was removed from that cell for
12 the purpose of photographing the cell. The
13 photographing was because of a homicide that had
14 taken place in that cell.

15 Q. Well, going back to the TVs for a minute,
16 are there cells in Ely that have TVs?

17 A. Yes. Inmates may purchase TVs and there
18 is a TV connection in each cell for that television
19 and a splitter provides it capability of servicing
20 two televisions if there are two inmates in the
21 cell.

22 Q. And could you kind of explain, I
23 understood that the inmate themselves have to pay
24 for the TV?

25 A. Yes.

1 Q. How big a TV are they allowed or what,
2 what type?

3 A. It's a television that is sold by
4 approved vendors. There are certain people who are
5 in the business of manufacturing appliances
6 specifically to meet the needs of correctional
7 facilities.

8 The entire case of the television is
9 transparent so that anything that has happened in
10 terms of tampering with a TV can easily be
11 determined by staff searching the TV.

12 The TV is no larger than 12 or 13
13 inches. It is a colored TV. I don't believe
14 they're even black and white TVs made anymore. The
15 TV has had its speakers removed to hold down the
16 volume of noise in the housing unit and inmates must
17 listen to the TV with earphones.

18 Q. Now, we're talking about men that have
19 been in prison for possibly long periods of time.

20 Why would you allow a TV in a
21 prison?

22 A. A TV has been proven to be one of the
23 best management tools from a correctional
24 prospective that can be used. It occupies the
25 inmate's time. It's important when an inmate is in

1 a cell 23 hours a day that there's something to
2 occupy him in as positive a manner as possible.

3 Inmates can make weapons. Inmates
4 can plan all kinds of things with idle time.

5 The television occupies their time
6 and keeps them busy and it also serves as a stick in
7 a carrot. If you don't have a carrot, the stick
8 doesn't work.

9 You can remove the TV for
10 non-compliance to rules and regulations of the
11 institution and hold that over the inmate as a
12 threat if you will. Misbehavior will result in loss
13 of your TV and they don't want to lose the TV.

14 Q. So I mean, what it seems like you're
15 saying is the TV is almost used as a baby-sitter?

16 A. Yes.

17 Q. What about other items that can be
18 considered privileges if the inmates would be
19 allowed?

20 A. Inmates can have radios, inmates can have
21 CD players, inmates can have various canteen items
22 that they will purchase from the canteen list that's
23 provided to them, inmates have telephone call
24 privileges.

25 And all of these privileges can be

1 taken away and all of these privileges are available
2 to inmates throughout the system regardless of their
3 status.

4 Condemned men get the same
5 privileges. They get a TV if they can purchase it,
6 as do inmates in various degrees of lock-up status.

7 Q. So you're talking about all these items
8 as privileges. So if the inmate's not behaving,
9 they're not doing what the correction facility
10 expects of them, then they can all be taken away?

11 A. That's why it's a privilege and not a
12 right. Once it's a right, you can't take it away.
13 Receiving mail is a right. Unless they violate it
14 and they're sending contraband in or out. But all
15 the rest are privileges and the institution can
16 control access to the privileges.

17 Q. How much of Ely State Prison would be
18 considered maximum security?

19 A. The entire institution is a maximum
20 security institution and is the only maximum
21 security institution in Nevada.

22 Q. Would you consider it a restrictive
23 environment?

24 A. It's one of the most restrictive
25 environments I've toured and I have been to all of

1 the maximum security facilities in California as
2 well as Arizona and New Mexico.

3 Q. Going over the prisons that you've been
4 familiar with in your career, is the -- is there any
5 racial tension in the prisons?

6 A. There is always racial tension in prison.
7 Prison and racial prison go together one-on-one.

8 Q. And is the forming and joining of prison
9 gangs a result of that tension?

10 A. It is a contributor to -- the tension is
11 a contributor to the joining of prison gangs.
12 Inmates will join a prison gang if they feel that
13 they need protection, if they feel that they are
14 vulnerable to other inmates and need a cadre of
15 people like themselves for protection.

16 Q. Now, if you're locked in a cell for 23
17 hours 5 five days a -- 23 hours a day, 7 days a
18 week, would, how -- how do you get the interaction
19 with the other prisoners to form a gang or join a
20 gang?

21 A. There's very little interaction in those
22 facilities that are 23 hours a day lock down. Now,
23 inmates have a means of passing notes and
24 communicating with one another regardless of where
25 they are housed. This has been going on for years.

1 In Nevada, the means for passing
2 information or material is called a cadillac. You
3 take a fine thread from the end of your sheet or you
4 unravel some of the elastic from your underwear and
5 you create a line that you can throw down several
6 cells or even from the top tear to the second tear
7 and fish or cadillac to another inmate what you want
8 to convey or get back from him.

9 Q. So but that's not actual physical contact
10 with other inmates?

11 A. That is not physical contact. It's a
12 violation of the rules. If a cadillac is found in a
13 cell, the inmate will receive a write-up and it will
14 be confiscated.

15 Q. Now, you're familiar with this case that
16 Norman's just been convicted on the other day?

17 A. Yes.

18 Q. And you're familiar with the time that
19 Norman has spent in prison previously?

20 A. Yes.

21 Q. And you're aware that he has another case
22 that he's going to trial on?

23 A. Yes.

24 Q. Based on all this, is there in your
25 opinion a place that Norman can be safely housed in

1 Nevada prisons.

2 A. Norman will be processed at the reception
3 center and he will be sent to Ely State Prison where
4 he will be placed in administrative segregation
5 because of the pending cases that he has and their
6 need to control him, make sure that he is safe for
7 arrival back in Clark County for those trials and
8 that they can guarantee that he will be able to
9 stand trial.

10 Q. Now, the administrative segregation, is
11 that one of the cells where he would be locked down
12 23 hours a day?

13 A. That is a 23 hours a day, out five days a
14 week for one hour only, locked up the other two, fed
15 in the cell in phase one of Ely State Prison.

16 Q. Now, on the hour a day, five days a week
17 that he'd be able to come out, could you kind of
18 explain the process and what kind of protective gear
19 or restraints he would have to wear and how that
20 would work?

21 A. Two to three correctional officers would
22 appear at the cell. They would tell him, Mr.
23 Flowers, it's yard time, do you want yard. He would
24 respond yes. They would ask him to pass his yard
25 clothing out through that door port and they would

1 search that clothing. They would then ask him to
2 submit to an unclothed body search as thorough as
3 can be without being invasive.

4 Following a clear unclothed body
5 search, he would put on the clothing he's wearing to
6 the yard, they would put a waist chain around him
7 which has handcuffs attached to it. They would cuff
8 his hands to the waist chain, they would then chain
9 his ankles together and walk him to the yard.

10 Q. Is there any time that he would come out
11 of this cell without this waist chain or ankle
12 chains?

13 A. Not in administrative segregation.

14 Q. So then he'd get to spend the one hour in
15 that yard that we showed with the walls all the way
16 around it?

17 A. Correct.

18 Q. What how is the administration --
19 administrative segregation determined by the
20 Department of Corrections in Nevada? Who gets put
21 there?

22 A. The inmates who have needs based on their
23 commitment offense, based on detainers which would
24 be what would accompany him to Ely because of the
25 forthcoming case. Inmates who have had problems in

1 the past are placed in administrative segregation.

2 Unlike other states that have a time
3 limit on administrative segregation, the
4 classification committee, and these are the people
5 who make the determinations on who goes where, have
6 the ability at Ely to keep an inmate in
7 administrative segregation as long as they deem it
8 appropriate. They must see him a minimum of 180
9 day -- every 180 days. But at each of those hundred
10 and 80 day reviews, they can say you're going to be
11 continued on administrative segregation for 180 days
12 more when we'll review you again.

13 In this case because of the pending
14 cases, he would be continued on administrative
15 segregation until he came back to Clark County.

16 Q. Who, who makes up the committee that does
17 that?

18 A. The committee is made up typically of an
19 associate warden, a psychologist, the case worker
20 for the inmate, the warden himself may sit in and
21 has on occasion, the unit manager. It's a variety
22 of people, typically no less than five.

23 Q. Okay. Now, you just, in your previous
24 answer, you said that he'd be in administrative
25 segregation until he came back to the next trial.

1 At the end of that trial and he's
2 going back to Ely, where would he been housed then
3 in your opinion?

4 A. In my view, he would be returned to
5 administrative segregation because that's where he
6 left from. And corrections always plays things
7 cautiously and conservatively.

8 If you left administrative
9 segregation and had no transition from that to
10 another phase, then you're going to go back to
11 administrative segregation until you can go through
12 a transition area phase to prepare you for the next
13 kind of housing.

14 Q. Okay. In your opinion, what does prison,
15 and especially administrative segregation, what will
16 that do it a person's life expectancy?

17 A. That's kind of an unknown quantity.
18 There are --

19 MS. WECKERLY: I'm gonna object then.

20 THE COURT: And I don't, I'm not sure he
21 would know, he would be in a position to know.

22 MR. PATRICK: That's fine. I'll withdraw
23 it.

24 THE COURT: Sustained.

25 MR. PATRICK: Thank you. That's all I

1 have, judge.

2 THE COURT: Questions?

3 MS. WECKERLY: Yes.

4 CROSS-EXAMINATION

5 BY MS. WECKERLY:

6 Q. Mr. Esten, how many times have you
7 testified for the Public Defenders Office in Clark
8 County?

9 A. I believe five or six.

10 Q. Five or six. You testified in the Dante
11 Johnson case?

12 A. Yes.

13 Q. Kristin Lobato?

14 A. Yes.

15 Q. Butler?

16 A. Yes. Twice.

17 Q. Twice. Yes? What are the other ones?

18 A. I, I don't know.

19 Q. Okay. Each time you've testified for
20 their office, obviously you've been paid?

21 A. Correct.

22 Q. And you review the client's file and then
23 I assume you're paid for your in-court testimony as
24 well?

25 A. Yes.

1 Q. And what's the total that you're paid for
2 this case?

3 A. There was a \$5,000 authorization for my
4 services for this case.

5 Q. Okay. And that includes your testimony?

6 A. Yes.

7 Q. You talked about the fact that you toured
8 Ely.

9 When was it that you went on your --
10 or when was it that you were last at Ely?

11 A. I believe summer before last is when
12 these photographs were taken.

13 Q. Okay. And was that when you went on the
14 tour with the warden?

15 A. I had been on previous tours with the
16 warden as well.

17 Q. Okay. And so the pictures that we say
18 see are maybe a year and a half old?

19 A. Approximately, yes.

20 Q. Okay. Now, you mentioned that Mr.
21 Flowers will be headed to Ely as a result of this
22 conviction, correct?

23 A. And the pending cases.

24 Q. Assuming there's a conviction. He
25 doesn't go straight to Ely though, right?

1 A. No. He goes to the reception center.
 2 Q. I'm sorry?
 3 A. He goes to the reception center.
 4 Q. Well, he actually gets classified down
 5 here before he goes up to Ely, correct?
 6 A. Down here meaning Southern Desert.
 7 Q. Yes. And then once he gets to Ely, you
 8 said he'd be placed in administrative segregation?
 9 A. Following a classification process at Ely
 10 as well.
 11 Q. And when he's in administrative
 12 segregation, is he entitled to visitation from his
 13 family?
 14 A. Yes.
 15 Q. And how often would he be entitled to
 16 that visitation?
 17 A. Those inmates visit two days a week.
 18 Q. And how long during the day -- or how
 19 long is the visitation hours?
 20 A. 8:30 to 3:30.
 21 Q. Okay. So several hours two days a week
 22 he'd be allowed to visit with his family members?
 23 A. Correct.
 24 Q. And obviously that's out of the cell?
 25 A. Yes.

1 Q. And so that's in person contact that he
 2 would have with people who'd choose to visit him?
 3 A. It can be in person contact visits. Some
 4 administrative segregation inmates must visit behind
 5 glass. Because of the pending case, I'm not certain
 6 and I can't answer how Ely will handle his visits.
 7 Q. Okay. But it's possible that it would be
 8 an in-person visit and maybe that would be altered
 9 or changed by the outcome of the pending case, but
 10 once that case is over, he'd be allowed the
 11 in-person contact?
 12 A. No, it's actually the other way around.
 13 He could be placed on non-contact visits upon
 14 reception at Ely following this case.
 15 Q. Uh-huh.
 16 A. Because of the pending case.
 17 Q. Right.
 18 A. Following resolution of the pending case,
 19 he could be granted contact visits.
 20 Q. Okay. And those are in-person visits?
 21 A. I'm sorry?
 22 Q. Those are in-person contact visits?
 23 A. Yes.
 24 Q. Is he allowed to use the phone and call
 25 or speak to family members from the prison?

1 A. The phone is a portable phone like we all
 2 have in our homes. It is brought to the cell, again
 3 put through the tray slot. The inmate places a call
 4 to preauthorized numbers who have agreed to accept
 5 collect calls from the prison. And once the call is
 6 completed, the phone is passed to another inmate.
 7 Q. Okay. And you mentioned that at the
 8 prison that people are classified or they go through
 9 this administrative segregation period. But that's
 10 sort of an initial evaluation, right?
 11 I mean you can get off of
 12 administrative segregation?
 13 A. You being the generic you, yes.
 14 Q. Okay.
 15 A. In this case because of the pending case,
 16 he would be retained in administrative segregation.
 17 Q. Once that case is over though, he would
 18 have the potential of getting off administrative
 19 segregation?
 20 A. Yes.
 21 Q. And he would have the right to be
 22 reviewed, at least as to whether he could get off
 23 administrative segregation, once every hundred and
 24 80 days?
 25 A. Correct.

1 Q. So at least twice a year he could be
 2 evaluated and taken off administrative segregation?
 3 A. Correct.
 4 Q. Once he's off administrative segregation,
 5 would he still be in that 23 hours lock-down
 6 situation or would he be granted more freedom?
 7 A. He would move from phase one to phase
 8 two. He is considered not an administrative
 9 segregation inmate, but he is given a cell partner,
 10 he is allowed out of his cell one hour a day, five
 11 days a week. And instead of going to the yard
 12 alone, he goes to the yard with a cell partner.
 13 He is still fed in his cell, he has
 14 a few more items of canteen that he may purchase,
 15 but for all intent and purposes, the living
 16 conditions are basically the same except you now are
 17 absolutely double celled because that's what phase
 18 two, level two is. And eating arrangements are the
 19 same, the yard is the same except you have somebody
 20 on the yard with you. Visiting is three days a week
 21 because there are more of those inmates, but all the
 22 other constraints from ad seg remain. You're just
 23 not called ad seg.
 24 Q. So fair to say if you're taken off
 25 administrative segregation, you have more privileges

1 than you did when you were on it.

2 A. A few.

3 Q. And is it possible if you're under a life

4 sentence in the State of Nevada to be moved out of

5 Ely into a medium security prison?

6 A. There are -- are we talking or life

7 without?

8 Q. Either.

9 A. Okay. There are life-term inmates who

10 have started in Ely who are now at High Desert, but

11 those inmates have had 10 to 12 years or more

12 invested in the system.

13 Q. And so once they get to the medium

14 security prison at High Desert, things are a lot

15 less restrictive than they are at Ely?

16 A. I've not been to High Desert, but I am

17 told that, yes.

18 Q. Oh. But I thought you said you toured

19 that?

20 A. No, Southern Desert.

21 Q. Southern Desert. Well, in your

22 experience in the corrections field, I would imagine

23 a medium security prison is quite a bit different?

24 A. Medium inmates have more freedoms than do

25 maximum inmates.

1 Q. And whether or not you're on

2 administrative segregation, you can get the

3 television that you talked about?

4 A. Yes.

5 Q. And someone could purchase that for you,

6 right, the inmate doesn't have to pay for it?

7 A. That is typically the process.

8 Q. Okay.

9 A. Someone buys the television for the

10 inmate.

11 Q. Okay. And a family member could do what

12 we call put money on their books?

13 A. Correct.

14 Q. And they could use that to buy candy and

15 other food items?

16 A. Correct.

17 Q. And a radio you said they got?

18 A. Yes.

19 Q. Okay. Now, you mentioned that Mr.

20 Flowers can be housed safely at Ely?

21 A. Yes.

22 Q. The picture that you showed us though was

23 a picture taken because there was a homicide

24 actually that occurred at Ely, correct?

25 A. Correct.

1 Q. So certainly there is violence within the

2 prison system?

3 A. There is always violence in any prison

4 environment, even minimum custody.

5 Q. And you mentioned that regardless of what

6 the staffing does -- or what the staff does at Ely,

7 there are ways that the inmates always communicate

8 with each other?

9 A. Yes.

10 Q. And that always poses a danger to staff

11 members working at the prison?

12 A. Well, communication isn't necessarily

13 anti-staff. It can be just communication between

14 inmates. But inmates have means of communicating

15 with one another.

16 Q. Well, why is there a rule against the

17 cadillac communication?

18 A. Because cadillacs are used not so much

19 for communications means, but the movement of items

20 from inmate to inmate. Items which may be

21 contraband.

22 Q. And that could pose a danger to staff,

23 couldn't it?

24 A. Yes.

25 Q. And so even at Ely where it's a very

1 controlled environment, inmates can pose a danger to

2 staff, to staff members and other inmates I guess?

3 A. Ely has the most stringent precautions

4 I've seen in any maximum security facility, but

5 there are always issues where staff have to be on

6 the alert that nothing is going to happen untoward

7 to them.

8 MS. WECKERLY: Thank you.

9 THE COURT: Anything else?

10 MR. PATRICK: Just briefly, judge.

11 REDIRECT EXAMINATION

12 BY MR. PATRICK:

13 Q. Mr. Esten, I think you said it was about

14 a year and a half since you took those pictures?

15 A. That's my recollection.

16 Q. In your opinion has much changed in Ely

17 Prison in that year and a half?

18 A. I spoke with Warden McDaniel before

19 coming down for this case, asked him that question.

20 I prefaced it with whether or not he was working on

21 this case because I didn't want to compromise him.

22 He was not working on Flowers and he

23 indicated to me that everything was the same since I

24 had been there last.

25 Q. So in the last year and a half Warden

1 McDaniels didn't go in and put plasma TVs in all
2 these cells?

3 A. He did not.

4 Q. He didn't put king size beds in all these
5 cells?

6 A. He did not.

7 Q. Now, there was some questions about the
8 classification process when you first go to prison
9 and you go to High Desert. Every prisoner in Nevada
10 Department of Corrections, that is what they do?

11 A. Correct.

12 Q. And there was a lot of talk about
13 visitation days. Two days a week?

14 A. Correct. For administrative segregation.

15 Q. Are you familiar with how far Ely is from
16 Las Vegas?

17 A. I have driven it.

18 Q. How long did it take to you drive it?

19 A. About four-and-a-half hours.

20 Q. So even though it's possible that Norman
21 could have visitation two days a week, he'd only get
22 that if somebody actually made that drive?

23 A. That's correct. And if they wanted to
24 visit both days, they would be required to stay over
25 and then visit the second day because you can't make

1 the round trip. It would be physically impossible.

2 Q. And if nobody made that round trip to go
3 up and visit him, what would happen with him with
4 his visitation days?

5 A. It's not like it's his day. It's just
6 available for administrative segregation inmates.

7 The visitor has to be preapproved and arrive. You
8 know, he doesn't build up a visitation bank and lose
9 it. He wouldn't have visits.

10 Q. So -- and if nobody visited him, he'd be
11 in his cell that 23 hours that day?

12 A. That's correct.

13 Q. Now, even if somebody made the trip up
14 for a visit, I think you said that they may not even
15 get an in-person visit?

16 A. I don't know how Ely is going to handle
17 visits for Mr. Flowers based on the pending case,
18 whether they are going to consider it such that he
19 should be behind glass or not. I can't make that
20 call.

21 Q. Can you kind of explain what you mean by
22 behind glass visit?

23 A. There are two kinds of visits in any
24 state prison. A face-to-face visit where the inmate
25 sits on one side of the table, the visitor sits on

1 the other side of the table. They are not allowed
2 to touch but they are allowed to converse.

3 The other visit is an inmate sits in
4 a chair with a telephone on the wall, there's a
5 glass partition between the two. The visit visitor
6 sits on the other side of the glass with a telephone
7 and they visit over the phone looking at each other
8 through the glass.

9 Q. Also there was some talk about, you know,
10 I mean, it's possible at some point in the future
11 that Norman could get off administrative
12 segregation?

13 A. Yes. And he would go to level two, phase
14 two.

15 Q. But I think you testified, and correct me
16 if I'm wrong, that the only difference between level
17 one and level two is if he goes to level two off ad
18 seg, now he has a roommate?

19 A. One more day of visiting and he goes to
20 the yard with the roommate.

21 Q. And the cell's the same size?

22 A. Correct.

23 Q. So he you put twice as many people in the
24 cell the same size?

25 A. Yes.

1 Q. And that's supposed to be a privilege?

2 A. That's the way it's set up.

3 Q. So basically you were talking about how
4 big the cells were at Ely.

5 I mean, they're no more than a small
6 bathroom?

7 A. Correct.

8 MS. WECKERLY: Objection. Asked and
9 answered.

10 THE COURT: Yeah. I mean if you get
11 redirect, it means to deal with the cross.

12 MR. PATRICK: That's fine.

13 BY MR. PATRICK:

14 Q. And finally, Mr. Esten, you were asked a
15 question about the possibility of moving from Ely to
16 High Desert with life sentence.

17 In your experience and in your
18 opinion, does that happen to people who have life
19 without sentences?

20 A. E.G. McDaniel has told me that there are
21 life without inmates other than in Ely, but they
22 have been his cream of the crop inmates. The very
23 best of the best that he has had during his stay as
24 warden there.

25 MR. PATRICK: Thank you. That's all I

1 have, judge.

2 MS. WECKERLY: Nothing.

3 THE COURT: Thanks, Mr. Esten. You're
4 excused.

5 THE WITNESS: Thank you.

6 THE COURT: Anything else, Mr. Pike?

7 MR. PIKE: No, Your Honor.

8 THE COURT: Does the defendant wish to
9 make a statement in allocution?

10 MR. PIKE: Yes, he does, Your Honor.

11 THE COURT: Okay. Ladies and gentlemen,
12 every person that's in a situation as Mr. Flowers
13 has a right to make what we make a statement, an
14 allocution.

15 That is a statement that he's going
16 to make where he can talk about any remorse he
17 feels, any plans he has for the future. It's brief.

18 You wish to ask him questions or is
19 he just going to make it?

20 MR. PIKE: He'll just make it.

21 THE COURT: Okay. Mr. Flowers, you know
22 the rules. And I'll let you go -- you can just
23 stand or sit.

24 THE DEFENDANT: I'll stands.

25 THE COURT: I'll let you go as long as

1 you stay within the rules.

2 THE DEFENDANT: I'm kind of nervous so I
3 just wrote down what I had to say. This is how I
4 truly feel.

5 I'd just like to say I'm sincerely
6 sorry for the pain that Pooka's death has caused her
7 family, especially what this has done to Debra.

8 I apologize for the heartache my
9 family has also endured.

10 I'd like to be able to keep in
11 contact with my son. And my wife has another son
12 who looks at me as a dad. I hope that if nothing
13 else I could at least offer advice if they're acting
14 up or remind them why they should do everything
15 possible to do what's right.

16 And I apologize to everybody who's
17 felt any type of heartache.

18 THE COURT: Thank you. Anything else,
19 Mr. Pike?

20 MR. PIKE: No, Your Honor.

21 THE COURT: Anything else, Ms. Weckerly?

22 MS. WECKERLY: No.

23 THE COURT: Okay. Just like in the guilt
24 phase, the next thing is I tell you what the law is.
25 Exactly the same way. It's a little, a little

1 narrower.

2 When I read it, it's gonna sound
3 pretty complicated. After the lawyers have argued,
4 I'm gonna kind of walk you through it step by step,
5 and I think you'll find it isn't all that
6 complicated once I give you a separate explanation.

7 It's now my duty as judge to
8 instruct you in the law that applies to this penalty
9 hearing. It's your duty as jurors to follow these
10 instructions and to apply the rules of law to the
11 facts as you find them from the evidence.

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

19 Two. If in these instructions any
20 rule, direction or idea is repeated or stated in
21 different ways, no emphasis thereon is intended by
22 me and none may be inferred by you.

23 For that reason, you are not to
24 single out any certain sentence or any individual
25 point or instruction and ignore the others, but you

1 are to consider all the instructions as a whole and
2 regard each in the light of all the others.

3 Three. The trial jury shall fix the
4 punishment for every person convicted of murder in
5 the first degree.

6 The jury shall fix the punishment
7 at: One, a definite term of 50 years, with
8 eligibility for parole beginning when a minimum of
9 20 years has been served; or two, life imprisonment
10 with the possibility of parole, with eligibility for
11 parole beginning when a minimum of 20 years has been
12 served; three, life imprisonment without the
13 possibility of parole, which means exactly what it
14 says, that the defendant shall not be eligible for
15 parole; four, death.

16 Four. A prison term of 50 years
17 with eligibility for parole beginning when a minimum
18 20 years has been served does not mean that the
19 defendant would be paroled after 20 years, but only
20 that he would be eligible for parole after that
21 period of time.

22 Life imprisonment with the
23 possibility of parole is a sentence to life
24 imprisonment which provides that the defendant would
25 be eligible for parole after a period of 20 years.

1 This does not mean that he would be paroled after 20
2 years, but only that he would be eligible for parole
3 after that period of time.

4 Life imprisonment without the
5 possibility of parole means exactly what it says,
6 that the defendant shall not be eligible for parole.

7 If you sentence the defendant to
8 death, you must assume that the sentence would be
9 carried out.

10 Five. In the penalty hearing,
11 evidence may be presented concerning aggravating and
12 mitigating circumstances relative to the offense and
13 any other evidence that bears on the defendant's
14 character.

15 Hearsay evidence is admissible in a
16 penalty hearing.

17 Six. The jury must find the
18 existence of each aggravating circumstance, if any,
19 unanimously and beyond a reasonable doubt.

20 The jurors need not find mitigating
21 circumstances unanimously. In determining the
22 appropriate sentence, each juror must consider and
23 weigh any mitigating circumstance or circumstances
24 which that juror finds.

25 The jury may impose a death sentence

1 of death only if: One, the jurors find unanimously
2 and beyond a reasonable doubt that at least one
3 aggravating circumstance exists; two, each and every
4 juror determines that the mitigating circumstance or
5 circumstances, if any, which he or she has found do
6 not outweigh the aggravating circumstance or
7 circumstances; and three, the jurors unanimously
8 determine that in their discretion a sentence of
9 death is appropriate.

10 Each juror is entitled to
11 individually determine the weight of each
12 aggravating circumstance and mitigating circumstance
13 and is entitled to individually determine whether
14 the mitigating circumstance or circumstances
15 outweigh the aggravating circumstance.

16 Seven. A reasonable doubt is one
17 based on reason. It is not mere possible doubt, but
18 is such a doubt as would govern a person in the more
19 weighty affairs of life. If the minds of the
20 jurors, after the entire comparison and
21 consideration of all the evidence, are in such a
22 condition that they can say they feel an abiding
23 conviction of the truth of the charge, there is not
24 a reasonable doubt. Doubt to be reasonable must be
25 actually, not mere possibility or speculation.

1 light. In deciding on an
2 appropriate sentence for the defendant, you will
3 consider three types of evidence: Evidence relevant
4 to the existence of aggravating circumstances,
5 evidence relevant to the existence of mitigating
6 circumstances, and other evidence presented against
7 the defendant. You must consider each type of
8 evidence for its appropriate purposes.

9 In determining unanimously whether
10 any aggravating circumstance has been proven beyond
11 a reasonable doubt, you are to consider only
12 evidence relevant to that aggravating circumstance.
13 You're not to consider other evidence against the
14 defendant.

15 In determining individually whether
16 any mitigating circumstance exists, you're to
17 consider only evidence relevant to that mitigating
18 circumstance. You are not to consider other
19 evidence presented against the defendant.

20 In determining individually whether
21 any mitigating circumstances outweigh any
22 aggravating circumstances, you are to consider only
23 evidence relevant to any mitigating and aggravating
24 circumstances. You are not to consider other
25 evidence presented against the defendant.

1 If you find unanimously and beyond a
2 reasonable doubt that at least one aggravating
3 circumstance exists, and each of you determines that
4 any mitigating circumstances do not outweigh the
5 aggravating, the defendant is eligible for a death
6 sentence.

7 At this point you're to consider all
8 three types of evidence and you still have the
9 discretion to impose a sentence less than death.
10 You must decide on a sentence unanimously.

11 If you do not decide unanimously
12 that at least one aggravating circumstance has been
13 proven beyond a reasonable doubt, or if at least one
14 of you determines that the mitigating circumstances
15 outweigh the aggravating, the defendant is not
16 eligible for a death sentence. Upon determining
17 that the defendant is not eligible for death, you
18 are to consider all three types of evidence in
19 determining a sentence other than death, and you
20 must decide on such a sentence unanimously.

21 Nine. The law does not require the
22 jury to impose the death penalty under any
23 circumstances, even when the aggravating
24 circumstances outweigh mitigating circumstances.
25 Nor is the defendant required to establish any

1 mitigating circumstances in order to be sentenced to
2 less than death.

3 10. You're instructed that the
4 following factors are circumstances by which murder
5 of the first degree may be aggravated:

6 One, the murder was committed by a
7 person under sentence of imprisonment; two, the
8 murder was committed who has been convicted of a
9 felony involving violence.

10 11. Mitigating circumstances are
11 those factors which, while they do not constitute a
12 legal justification or excuse for the commission of
13 the offense in question, may be considered, in the
14 estimation of the jury, in fairness and mercy, as
15 extenuating or reducing the degree of the
16 defendant's moral capability.

17 You must consider any aspect of the
18 defendant's character or record and any of the
19 circumstances of the offense that the defendant
20 proffer as a basis for a sentence less than death.

21 In balancing aggravating and
22 mitigating circumstances, it is not the mere number
23 of aggravating circumstances or mitigating
24 circumstances that controls.

25 12. In determining whether

1 mitigating circumstances exist, jurors have an
2 obligation to make an independent and objective
3 analysis of all the relevant evidence. Arguments of
4 counsel or a party do not relieve jurors of this
5 responsibility. Jurors must consider the totality
6 of the circumstances of the crime and the defendant,
7 as established by the evidence presented in the
8 guilt and penalty phases of the trial. Neither the
9 prosecution's nor the defendant's insistence on the
10 existence on the existence or nonexistence of
11 mitigating circumstances is binding upon the jurors.

12 13. The defendant asserts that the
13 following, amongst others, constitute mitigating
14 circumstances which should be considered by the jury
15 in deciding punishment, even though not sufficient
16 to constitute a defense or reduce the degree of the
17 crime. It's the jury's responsibility to determine
18 whether or not any of such constitute mitigating
19 circumstances.

20 Mr. Flowers was raised in a
21 dysfunctional family.

22 Mr. Flowers was abandoned in Central
23 America, Belize, by his mother at an early age.

24 Mr. Flowers lacked encouragement and
25 support from his parents.

1 Mr. Flowers was subjected to mental
2 abuse by his father.

3 Mr. Flowers was exposed to gang
4 violence by his brother.

5 Mr. Flowers was humiliated and made
6 fun of during his adolescence.

7 Mr. Flowers was a witness to his
8 parents' affairs.

9 Mr. Flowers was a witness to his
10 parents' fights, arguments and separation.

11 Mr. Flowers is a loving father to
12 his son.

13 Mr. Flowers was not treated for the
14 sexual abuse he endured.

15 The impact of Mr. Flowers' execution
16 would have on his son and his twin sister Norma.

17 Other mitigating factors found to
18 exist by one or more of the jurors.

19 14. The mitigating circumstances
20 which I have read for your consideration are given
21 only as examples of some of the factors you may take
22 into account as reasons for deciding not to impose a
23 sentence of death on Mr. Flowers.

24 Any aspect of Mr. Flowers' character
25 or record, and any of the circumstances of the

1 offense, including any desire you may have to extend
2 mercy to Mr. Flowers, which any juror believes is a
3 basis for imposing a sentence less than death may be
4 considered a mitigating circumstance.

5 Any mitigating circumstance may be
6 sufficient, standing alone, to support a decision
7 that death is not the appropriate punishment in this
8 case.

9 15. You are instructed that the
10 following matters concern Mr. Flowers' character and
11 may not be considered by the jury in determining
12 whether he's eligible for the death penalty: That
13 is, the jury may not consider these matters in
14 determining the existence of the aggravating
15 circumstance, the existence of mitigating
16 circumstances, or the weighing of the aggravating
17 and mitigating circumstances to determine
18 eligibility for the death penalty.

19 The impact of the victim's family as
20 a result of the death of their loved one.

21 Allegations of any nonviolent felony
22 convictions.

23 These may only be considered in
24 determining what is the appropriate punishment
25 amongst the range of eligible punishments after that

1 range is determined.

2 16. You have evidence about the
3 impact of this homicide on the family of the
4 decedent. This evidence was presented to show the
5 victim's uniqueness as an individual and the
6 resultant loss by the decedent's death. You may not
7 consider this evidence in determining the existence
8 of aggravating circumstances or mitigating
9 circumstances.

10 17. The jury is instructed that in
11 determining the appropriate penalty to be imposed in
12 this case that it may consider all evidence
13 introduced and instructions given at both the
14 penalty hearing phase of these proceedings and at
15 the trial of this matter.

16 18. In your deliberation you may
17 not discuss or consider the subject of guilt or
18 innocence of a defendant as that issue has already
19 been decided. Your duty is confined to a
20 determination of the punishment to be imposed.

21 19. The credibility or
22 believability of a witness should be determined by
23 his manner upon the stand, his relationship to the
24 parties, his fears, motives, interests or feelings,
25 his opportunity to have observed the matter to which

1 he testified, the reasonableness of his statements
2 and the strength or weakness of his recollections.

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

8 20. Although you are to consider
9 only the evidence in the case in reaching a verdict,
10 you must bring to the consideration of the evidence
11 your everyday common sense and judgment as
12 reasonable men and women. Thus, you are not limited
13 solely to what you see and hear as the witnesses
14 testify.

15 You may draw reasonable inferences
16 from the evidence which you feel are justified in
17 the light of common experience, keeping in mind that
18 such inferences should not be based on speculation
19 or guess.

20 A verdict may never be influenced by
21 sympathy, prejudice or public opinion. Your
22 decision should be the product of sincere judgment
23 and sound discretion in accordance with these rules
24 of law.

25 21. During your deliberations, you

1 will have all the exhibits which are admitted into
2 evidence, these written instructions and forms of
3 verdict which have been prepared for your
4 convenience.

5 Your verdict must be unanimous.
6 When you've agreed upon your verdicts, it should be
7 signed and dated by your foreperson.

8 22. The court has submitted two
9 sets of verdicts to you. One set of verdict forms
10 reflects the possible punishments which may be
11 imposed. There are two alternative forms. The one
12 with four possibilities, including death, is to be
13 used if you have determined the aggravating
14 circumstances outweigh the mitigating circumstances.

15 The one with three possibilities,
16 excluding death, is to be used if at least one of
17 you believes the mitigating circumstances outweigh
18 the aggravating circumstances.

19 The other verdict forms are entitled
20 special verdict. They are to reflect your findings
21 with respect to the presence or absence and weight
22 to be given any aggravating circumstances and any
23 mitigating circumstances, regardless of which
24 outweighs the other.

25 23. Now you will listen to the

1 arguments of counsel who will endeavor to aid you to
2 reach a proper verdict by refreshing in your minds
3 the evidence and by showing the application thereof
4 to the law. But whatever counsel may say, you'll
5 bear in mind that it is your duty to be governed in
6 your deliberation by the evidence as you understand
7 it and remember it to be and by the law as given to
8 you in these instructions with the sole, fixed and
9 steadfast purpose of doing equal and exact justice
10 between the defendant and the State of Nevada.

11 Who's up?

12 MS. LUZAICH: Can we just have five
13 minutes. My computer froze a minute ago and I just
14 want to make sure it's okay.

15 THE COURT: Okay. We'll take a
16 five-minute break. Get the computer ready, go to
17 the rest room, get a drink of water and we'll just
18 hear all the arguments.

19 During this break, don't talk or
20 converse among yourselves or with anyone else on any
21 subject connected with this trial.

22 Don't read, watch or listen to any
23 report of or commentary on the trial or any person
24 connected with this trial by any medium of
25 information, including, without limitation,

1 newspapers, television, internet and radio.

2 Don't form or express any opinion on
3 any subject connected with the trial until the case
4 is finally submitted to you.

5 Five minutes.

6 (Whereupon, a recess was had.)

7 THE COURT: Okay. Back on the record in
8 Case C228755. State of Nevada versus Norman Keith
9 Flowers.

10 Let the record reflect the presence
11 of Mr. Flowers with his counsel, counsel for the
12 State. All ladies and gentlemen of the jury are
13 back in the box.

14 Ms. Luzaich.

15 MS. LUZAICH: A long time ago, William
16 Shakespeare said, The evil that men do lives after
17 them. The good is often interred with their bones.

18 What kind of person brutally rapes
19 and strangles an 18 year old girl? By finding the
20 defendant guilty of first-degree murder, you have
21 necessarily found that he did in fact brutally kill
22 Sheila Quarles.

23 Now it's time to decide what to do
24 about it. To make that decision, first you have to
25 answer two questions. One, can you legally consider

1 the death penalty, then you will decide what is the
2 appropriate sentence.

3 Under the law in Nevada, before you
4 can consider the death penalty, you must find, all
5 twelve of you must agree and you must agree beyond a
6 reasonable doubt that at least one aggravating
7 circumstance exists.

8 You are also gonna determine whether
9 or not any mitigating circumstances exist. You do
10 not need to be unanimous about that. If all twelve
11 of you agree that twelve aggravating circumstances
12 exist, but only one of you believes that a
13 mitigating circumstance exists, that's enough, and
14 you can still find that the mitigators outweigh the
15 aggravators.

16 What you are going to do is before
17 you can even consider the death penalty, you must
18 find unanimously beyond a reasonable doubt at least
19 one aggravating circumstance exists and that the
20 mitigating circumstances, if you find any exist, and
21 you don't have to, but if you do, if any of them
22 outweigh the aggravating circumstance.

23 If they do not outweigh the
24 aggravating circumstance, then you can consider the
25 death penalty.

1 In this particular case, hum,
2 ah-hah, in this particular case, the murder of
3 Sheila Quarles, there are two aggravating
4 circumstances that have been presented for your
5 consideration.

6 First, that the murder was committed
7 by a person Norman Flowers who was at the time of
8 the murder under a sentence of imprisonment. And
9 the State has proven to you beyond a reasonable
10 doubt that the defendant was under a sentence of
11 imprisonment at the time that he committed the
12 murder of Sheila Quarles.

13 And we know that because he was
14 still on parole for robbery with a deadly weapon at
15 the time he committed that offense.

16 You heard from his parole officer,
17 Officer Mehalko. He would not have a parole officer
18 if he were not on parole at the time of the murder.
19 If you are on parole, you are therefore necessarily
20 under a sentence of imprisonment.

21 And we know that he was because he
22 was released back on to parole, the parole board let
23 him out of prison back on to parole 20 days before
24 Sheila was murdered.

25 So the State has proven to you

1 beyond a reasonable doubt that the defendant was
2 under a sentence of imprisonment.

3 The second aggravating circumstance
4 in this case, the murder was committed by a person
5 who is or has been convicted of a felony involving
6 violence.

7 Again, the State has proven to you
8 beyond a reasonable doubt that the defendant was
9 committed -- I'm sorry. Convicted of a felony
10 involving violence. There is a judgment of
11 conviction that you're gonna be able to hold in your
12 hand, a piece of paper that shows you that he was in
13 fact previously convicted of robbery with use of a
14 deadly weapon.

15 And you heard the testimony from
16 Detective Long about how the defendant committed
17 that offense. How he entered a vehicle with a gun
18 in his possession and when Ramsey Rambert, the poor
19 car salesman, is driving with him, he pulls out the
20 gun, points it at Mr. Rambert and says get out of
21 the car. And he takes the car and he leaves Mr.
22 Rambert behind. Robbery about use of a deadly
23 weapon.

24 How much more violent does it get
25 than when a gun is pointed in your face?

1 So the State has proven to you
2 beyond a reasonable doubt that two aggravating
3 circumstances exist.

4 Now, this is not a numbers game.
5 You don't simply count how many aggravating
6 circumstances has the State proven to us and how
7 many mitigating circumstances do we find based on
8 the evidence and say hum, more aggravators therefore
9 aggravators win and I have to find death. You don't
10 say that.

11 You don't say hum, more mitigators,
12 they have to win because there's more than
13 aggravators. That's not it.

14 What you do is you weigh. You look
15 at the aggravating circumstances and you look at the
16 mitigating circumstances and you see which one
17 outweighs. That is a personal opinion, a personal
18 decision.

19 Now, in this particular case, the
20 defense has provided you with their list of
21 mitigators. And you know what, you're not bound by
22 that. You can find more if you choose.

23 The ones that they have offered you,
24 for example, that he was raised in a dysfunctional
25 family. Well, you know what, he had a father who

1 doesn't hug him and who used the belt now and then.
2 Who doesn't?

3 That he was abandoned in Central
4 America in Belize by his mother and father. Well,
5 you know, the defense spent half the day yesterday
6 trying to point out that his mother and his father
7 were pretty terrible people. So was his life a
8 little better for a time while he was in Belize and
9 didn't have to deal with his mother and his father?

10 That he was subject to mental abuse
11 by his father. His father was mean to him. Who
12 doesn't have a father that periodically is not very
13 nice.

14 That he was exposed to gang violence
15 by his brother. Well, you know, he was exposed to
16 gang violence by his brother, but he saw where that
17 got his brother. Remember, we heard that he was 14
18 when his brother was shot in a gang shooting or some
19 such thing. And since the defendant was 14, his
20 brother was paralyzed because of that. So is that a
21 mitigating circumstance or does that actually
22 demonstrate that hum, he should have thought better.

23 But he was humiliated and made fun
24 of during his adolescence. Well, you know, we heard
25 about him playing football and doing things like

1 that. So obviously not a wallflower. That didn't
2 keep him down. He believe able to do things when he
3 was younger.

4 They are offering you that he was
5 witnessed to his parents' affairs. Your
6 recollection is what counts, but I don't believe
7 there was any testimony about that. Cherrett Ramos,
8 his sister, testified that she had witnessed things
9 along those lines, but that was what the testimony
10 was, that she did, only she did.

11 That he witnessed fights, arguments
12 and separations of his parents. Well, first of all,
13 who of us haven't. But second, again, your
14 recollection is what counts. But I believe it was
15 Cherrett who testified that she was the one who
16 witnessed that. She never said that he did.

17 That he is a loving father to his
18 son. Well, you know, let's think about this. When
19 was his son born, when did he go to prison and get
20 out and get paroled and when did he go back to
21 prison? How much time did he actually spend with
22 his son that he was able to be such a loving father?
23 So how much of a mitigator is that.

24 That he was not treated for sexual
25 abuse he endured. Well, on the contrary we heard

1 that in fact he was treated when he was twelve, when
2 his parents -- or at least his mother found out.
3 She couldn't treat him until she knew. And when she
4 found out, he was in fact sent for counseling.

5 Finally, Mr. Flowers' execution
6 would have a severe impact on his son and his twin
7 sister. Now, I recognize that would be a mitigating
8 circumstance, however, did that enter his mind when
9 he killed Sheila Quarles? Was he thinking about
10 what is this act that I am committing, what impact
11 is this gonna have on my son that I want to be with
12 and my twin sister.

13 MR. PIKE: Objection, Your Honor. That's
14 misuse of -- misstatement of what mitigators are
15 used for. It's a misstatement of the law.
16 Misapplication, inappropriate factual application.

17 THE COURT: At the juncture you're gonna
18 be in when you're considering this, ladies and
19 gentlemen, you just consider whether it exists and
20 whether it's a mitigating factor.

21 If later you determine that the
22 aggravators outweigh the mitigators, at that
23 juncture, Ms. Luzaich's argument can be considered.

24 So you're both sort of right, but at
25 this juncture where I think she is, I'd sustain the

1 objection.

2 MR. PIKE: Thank you.

3 MS. LUZAICH: Thank you. So you look at
4 the mitigators, you decide. Are they in fact
5 mitigating evidence or are they not, and then you
6 way.

7 On parole for robbery with a deadly
8 weapon at the time. He can't even stay clean from
9 parole. And what's offered to you. And I would
10 submit that there is no way that the mitigating
11 circumstances outweigh the aggravators.

12 So you can consider the death
13 penalty. It doesn't mean that you have to impose
14 it. Just that once you decide that the aggravators
15 do outweigh the mitigators, you are allowed to
16 consider the death penalty.

17 So the law in the State of Nevada
18 gives you four options in a case of first-degree
19 murder. Obviously the death penalty, life without
20 the possibility of parole, life with the possibility
21 of parole after 20 years has been served, or just a
22 50 year sentence where he would be eligible for
23 parole after 20 years have been served.

24 To help you make this decision, over
25 several hours yesterday, the State presented to you

1 some witnesses to share with you some aspects of the
2 defendant's life and his personality.

3 What you will have noticed during
4 that time and those witnesses is that there's a
5 definite pattern to the defendant's life and the
6 conduct in the 13 years or so that the State shared
7 with you.

8 First, why earn it yourself when you
9 can take from others? Second, if they don't just
10 give it to you, take it by force.

11 What better predictor of future
12 behavior than past behavior. You heard and, you
13 know, it's not getting any better with the computer
14 here. Sorry it's so small. But you heard yesterday
15 of the defendant when he was 18 years old, rather
16 than get a job, earn money and live like the rest of
17 us, he terrorized his neighborhood, just taking what
18 he wanted whenever he wanted it.

19 I mean, remember specifically when
20 he was talking to the police at the end of his
21 little crime spree, he was talking about the car and
22 carjacking, and he said well, yeah, he took the car
23 and he was gonna use it to commit other cars as
24 well, but the police got to back too soon.

25 So what do you notice from all of

1 those events in his little crime spree? That's a
2 period of 30 days. But what you notice is that his
3 behavior escalates.

4 He starts out just ransacking a home
5 and taking a bunch of property. The next thing you
6 know, he's burning down a home and killing a dog.
7 Then he graduates to taking guns and using those
8 guns during the commission of crimes. Actually
9 pointing guns at people.

10 Then in May of 1993, he's sentenced
11 to prison for the first time. He's fortunate enough
12 to serve not quite 11 years in custody, 11 of an 18
13 year sentence, before he is released on parole. So
14 he's released on parole, eight years are hanging
15 over his head waiting to be imposed if he violates
16 his parole and still he can't keep himself clean.

17 In November of 2004, he gets nasty
18 with Katrina who's just given him a son. This light
19 of his life, his son. He's so nasty with her and
20 threatening that she feels the need to get a
21 protective order.

22 So when he is served with a
23 protective order on one day -- and this is an order
24 from the court saying you cannot have contact with
25 this lady. It's not a suggestion. It's an order.

1 He is handed that order by a police officer, don't
2 have contact with her.

3 Shortly thereafter, within what,
4 hours, he tracks her down, refusing to take no for
5 an answer when she says she does not want to talk to
6 him. Repeatedly cuts her off when she attempts to
7 get away.

8 Now she tells you yesterday that
9 well, you know, it wasn't so bad. And then she read
10 to you the statement that she wrote when it happened
11 where she's describing how terrified she was, how
12 she's crying no, please no.

13 This is while he's on parole, barely
14 out of custody. So he's arrested for violating that
15 protective order just like he violated his parole.
16 Five weeks -- he goes into custody, he goes before
17 the parole board and five weeks later the parole
18 board decides to reinstate him.

19 Now I recognize that violating a
20 temporary protective order is not crime the century.
21 And do they need to put him back in for the rest of
22 his eight years? Well, you know what, probably not.
23 But five weeks. He can't follow orders, he can't
24 follow direction, he can't follow authority. That
25 is what he's showing you.

1 So he gets out. And actually it
2 takes the parole department a little while to get
3 him out of custody because they want to investigate
4 where he's leaving.

5 And remember what you hear, the very
6 first contact he has with his parole officer is a
7 challenge. His poor attitude obviously hasn't
8 improved any. And when he is reminded that a
9 condition of his release is you cannot have contact
10 with Katrina, he says that's bullshit. His attitude
11 is so poor with Officer Mehalko that the sergeant
12 has to intervene. No ability to respect authority,
13 no ability to follow authority.

14 And then you hear from Officer
15 Mehalko that over the next three months, he tries to
16 visit the defendant at the place that he says that
17 he's staying, but it takes six tries to ever find
18 him there. Is he being honest with his officer, is
19 he really staying there or is he where he's not
20 supposed to be, yet again, with Katrina.

21 20 days. 20 days after being
22 released on parole a second time -- and remember,
23 parole is a privilege. 20 days after being released
24 on parole for the second time, he rapes and kills
25 Sheila Quarles.

1 And look at the action from that
2 day; violent, violent, brutal, mean. His conduct is
3 escalating further. Ransacking houses, prying
4 opened windows, grabbing guns, pointing guns. Not
5 shooting but pointing guns, burning down houses,
6 killing dogs. Now he's raping and killing the
7 community.

8 And he gets away with it. He gets
9 better at avoiding detection you find out because
10 five weeks later, five weeks is when he sexually
11 assaults and strangles Marilee Coote.

12 And he's getting better at avoiding
13 detection. He burns her body to get rid of
14 evidence. He cleans her apartment. He gets rid of
15 fingerprints. He tries to get rid of the stain
16 beneath her vagina.

17 But does Rena Gonzalez see him
18 leaving Marilee's apartment? Rena who is friends
19 with his girlfriend at the time, because remember,
20 he's got another girlfriend, not just Katrina. He's
21 got Mawoose Ragland. Marilee Coote is friends with
22 Mawoose Ragland.

23 Does Rena see him leaving Marilee's
24 apartment in the morning when she's walking her kids
25 to the bus stop? Is that why she too is sexually

1 assaulted so violently. Is that why she too is
2 strangled?

3 Is he hot and needing water and
4 having to go to Juanita Curry's apartment repeatedly
5 because he is spending that whole time cleaning
6 Rena's apartment?

7 Look at those pictures of Rena
8 Gonzalez's apartment. Nobody with two small
9 children has an apartment that clean. It was
10 immaculate, it was perfect.

11 And look at how her body was found.
12 Look at that picture. Her body which was bruised
13 all over and strangled and had been violently
14 sexually assaulted is laying over the bed that is
15 completely perfectly made. There's not a wrinkle on
16 that bed.

17 Did he clean the entire apartment,
18 make the bed just like he did Marilee Coote's? How
19 bold is he getting? As time goes by, he's getting
20 bolder and bolder.

21 This is the person that you have to
22 decide what is the appropriate punishment for. So
23 let's take a slightly deeper look at his mitigating
24 circumstances that are offered.

25 A poor childhood. How many people

1 do you know have a poor childhood? How many people
2 do you know that have poor childhoods, rape and
3 kill? One. Probably nobody else that you know.

4 Many people who are abused as
5 children become productive citizens in society.
6 They get jobs, they hold jobs, they raise their
7 children. They don't rape and kill.

8 Many people don't bond with their
9 parents. It's unfortunate but it's true. Not
10 everybody has June Cleaver for a mother or Ward
11 Cleaver for a father. Some people have terrible
12 parents, but they are still able to get and maintain
13 jobs, to raise their children and not go out raping
14 and murdering.

15 Lots of people feel worthless for
16 whatever reason, but they don't go burglarizing and
17 terrorizing their own entire neighborhood, kicking
18 in doors, prying opened windows, stealing jewelry
19 and family heirlooms.

20 Lots of people are depressed. But
21 do they burn down someone else's home intentionally
22 leaving the dog locked in a bathroom? He could have
23 let Pebbles out anyone of the doggy doors. He
24 intentionally locked Pebbles in that bathroom.
25 Intentional burned that dog. That is the kind of

1 person you're gonna sentence.

2 Now, we heard from his sister. And
3 we heard it was his sister that took the brunt of
4 the bad stuff that happened in that family. His
5 sister turned out okay. She's raising her kids.

6 In opening and all week long, the
7 defense has asked you spare Norman's life. Why?
8 Why should you spare Norman's life? Did he spare
9 Sheila's life? Sheila's family has to live without
10 her for the rest of their lives.

11 Did he spare Marilee's life?
12 Marilee's family has to live without her for the
13 rest of their lives.

14 Did he spend spare Rena Gonzalez's
15 life? Angel and Vanessa, the two little children,
16 walked in the door and found their mother lying down
17 on her bed.

18 His mother told you life in prison.
19 Give him life in prison, it gives her hope. He'd
20 still be in her life. She could write to him, she
21 could visit him, she could see him. She would know
22 he is alive.

23 Is Debra Quarles ever gonna get to
24 see Sheila again? Is she ever gonna get to write to
25 her, talk to her, visit her? Sheila's brothers, are

1 they gonna get to visit her, write to her, see her,
2 talk to her? Never again.

3 Katrina McKenna told you she wants
4 the defendant in her son's life. Why? Because he's
5 such a great role model? Someone for Gabriel to be
6 proud of, to look up to? What has he done to
7 deserve that beautiful child? Why should you reward
8 him by allowing him to have a long-term relationship
9 with that innocent and appreciation believe child?

10 I expect that they're gonna stand up
11 here and they're gonna ask you to give him a chance,
12 to give the parole board a chance, to trust the
13 parole board.

14 Look at what the parole board has
15 done for us. They let him out not once, but twice.
16 Of his 18 year sentence, he served less than 11
17 years, he went back, they let him out again.

18 How are they gonna explain that to
19 Debra Quarles? Trust the parole board, are you
20 kidding me?

21 Capital punishment folks is reserved
22 for the worst of the worst. You all said that there
23 are circumstances you can envision where capital
24 punishment is appropriate. The worst possible
25 crime, the worst possible person.

1 strangled with his hands the life
2 out of Sheila. Anybody can pick up a gun and shoot
3 and somebody dies. But what does it take, what kind
4 of person does it take to stand there with your
5 hands around somebody's neck squeezing until they
6 are no longer alive? It takes a person with no
7 soul. It takes a person who is evil. It is a
8 person who is not redeemable.

9 Who's he fooled so far? He's fooled
10 his mom. She says that's not the person I know.
11 Well, you saw pictures, you heard the testimony.
12 That's him.

13 He fooled his sister.

14 He fooled Debra. She brought him
15 into her life, into her family's life.

16 He fooled Katrina. She wants him to
17 be part of Gabriel's life.

18 Don't let him fool you. You know
19 what the appropriate penalty is in this case. Thank
20 you.

21 MR. PIKE: Let me switch over from --

22 THE COURT: If you're wondering why she
23 doesn't know the equipment, this isn't what she
24 does.

25 We normally have a lady named Renee

1 who actually operates this equipment and we use it
2 in most cases. But the law provides that in a case
3 of this serious nature, you have to have what's
4 called daily copy, meaning each lawyer gets an exact
5 transcript of what happened the day before on a
6 daily basis.

7 So actually we bring in two court
8 reporters than court recorders. Each one works a
9 half a day and transcribes a half a day while the
10 other one's working. They transcribe and they
11 deliver this stuff to the lawyers literally as soon
12 as it's off the press.

13 So she's really working on this
14 machine and she doesn't have anything to do with
15 this equipment. She isn't generally familiar with
16 it. That's why officer Moon's come to the rescue.

17 Go ahead, Mr. Pike.

18 MR. PIKE: Thank you. While we set this
19 up, Your Honor, why don't we take a five-minute
20 break.

21 THE COURT: Five minutes. You can leave,
22 stay, you can do whatever you want.

23 During this break, don't talk or
24 converse among yourselves or with anyone else on any
25 subject connected with this trial.

1 Don't read, watch or listen to any
2 report of or commentary on the trial or any person
3 connected with this trial by any medium of
4 information, including, without limitation,
5 newspapers, television, internet and radio.

6 Don't form or express any opinion on
7 any subject connected with the trial until the case
8 is finally submitted to you.

9 When they're ready, we'll get
10 started.

11 (Whereupon, a recess was had.)

12 THE COURT: Back on the record in Case
13 C227855. State of Nevada versus Norman Keith
14 Flowers.

15 Let the record reflect the presence
16 of the defendant, his counsel, counsel for the
17 State, all the ladies and gentlemen --

18 MR. PATRICK: I think we're missing some
19 jurors, judge.

20 THE COURT: Still one. And all members
21 of the jury are present. Go ahead, Mr. Pike.

22 MR. PIKE: Okay. Thank you very much,
23 Your Honor. May it please the court, ladies and
24 gentlemen of the jury, representatives of the State,
25 Clark and Norman.

1 This is a hard time. The first
2 thing the State did when they came in and started to
3 talk with you is to talk about emotion and why is it
4 so bad.

5 And there was a beautiful young girl
6 who is dead and I'm sorry about that.

7 If we come in and just let emotion
8 take us over, we forgo all that the constitution is,
9 we forgo all that this trial is about and we forgo
10 everything that you swore that you'd do. And so I'm
11 trying to ask all of us to sit down and reason
12 together and to make the right decision. And it's
13 your decision. All I can do is try and guide you.

14 The State talked about justice is to
15 give every man his due. Well, every man is not just
16 who we're talking about. We're talking about what
17 we're going to do to one man. And that's to Norman.

18 And that one man and the mitigators
19 that you're gonna find out about are to educate you,
20 let you know who that man is. It's not to just set
21 up the defendant. We don't just call him the
22 defendant. We don't just put a sack over his head
23 so that you don't know him. And you need to know
24 who it is that the State is seeking to have you
25 execute and how he got here.

1 Aristotle said something else. He

2 said that the virtue of justice consists in
3 moderation as regulated by wisdom.

4 We have all felt this death touch
5 us. It is a hard thing to sit as a juror on a death
6 penalty case. You were strong enough to do it. We
7 appreciate that. We're lucky that we have
8 professional prosecutors that come in and handle
9 these cases in a professional and zealous manner.
10 We hope as defense attorneys that we share that same
11 professionalism, same compassion and same
12 zealousness for what we want to do.

13 The execution of Norman Flowers
14 won't affix, it won't ameliorate or heal any of that
15 pain. That's not what we're seeking in this case.

16 But for a moment let me go over and
17 plead for what is left of Norman's life. This is --
18 his life rests in your hands. We have you make this
19 decision because death is different. It ends, it's
20 irrevocable.

21 So the process, the reasoning
22 process that we deal with is with aggravators. And
23 those -- and we can really do this in two trials
24 instead of just one. Maybe it would have been
25 better, but you have to mentally now do two trials

1 if your mind and you have to evaluate what has been
2 presented to you.

3 The aggravators that have been
4 brought in this case are two. One, that he, Norman
5 was under a sentence of imprisonment, the State
6 pointed that out; and two, that he has a prior
7 felony conviction that for a crime of violence, the
8 robbery with use of a deadly weapon.

9 The other crimes that were elicited
10 from 1992 when Norman was 18, when he was with other
11 young men, when he was, was involved in that, well,
12 they're asking you to consider that aggravator from
13 that young man in determining whether he's death
14 qualified.

15 Well, did they prove those? Those
16 are part of the record. Not really the question,
17 but of what value are they? That was an 18 year old
18 man, young man. And then we talk about mitigators,
19 to decide what mitigators are.

20 The State went through great pains
21 to say, to minimize, to say well, we don't know
22 what, what are these, these things. Everybody's had
23 a tough life. Yeah, we've all had some tough things
24 happen in our lives, but we don't end up going to
25 prison, well, we don't end up being in gangs, we

1 don't end up being beaten.

2 And maybe we were spanked when we
3 were kids and the State seeks to minimize that, but
4 none of us was hung upside down in a garage nude and
5 whipped. None of us -- and I don't know. Maybe,
6 maybe some of it us did, have our sisters and our
7 siblings whipped until they bled.

8 A mitigator is just something that
9 helps you understand what happened, why and who
10 Norman is. And then you go through the weighing
11 process of the mitigators versus the aggravators.

12 Death is never mandatory. This
13 State has gone over this with you. The State hasn't
14 proven all of those, death penalty is not to be
15 considered an option.

16 And that's the first step of this,
17 this trial that you're doing within the death
18 eligibility. Well, we have these two, two status.
19 They're almost just like status aggravators. And
20 they've proven beyond a reasonable doubt as part of
21 the record. I'm not really going to contest that.
22 But how much weight are they to be given, just those
23 two?

24 The mitigating circumstances is the
25 other part of that equation. As the judge has

1 indicated, you take all of those.

2 Now, we've suggested a number of
3 mitigators and those were some of the ones that the
4 State read to you. They're not just bad things that
5 may have happened.

6 A mitigator is something that as
7 I've indicated could explain. Who was this young
8 man that was sent to prison when he was 18, who was
9 he educated by? Where were you when you were 18?
10 Were you still in high school? Were you getting
11 ready to go to college? Were you getting ready to
12 go into the military?

13 Were you getting ready to move on
14 with your life or were you up in prison as an 18
15 year old man being educated, being housed and being
16 placed in prison and put there with the same type of
17 people that Dr. Esten indicated. Who are, who are
18 the mentors during that period of time?

19 Who was your first employer when you
20 were employed at 18, 19, 20? Who were the people
21 that took you in and brought you up? Were they
22 proffers, thugs? And what happens in prison?

23 Well, so that's a bag -- a bad
24 aggravator. Well -- or mitigator. Excuse me.

25 What's a good mitigator? A good

1 mitigator is that there is absolutely no evidence
2 that's been presented before you that Norman had any
3 problems in prison, that he was -- wasn't able to be
4 housed safely, that he prepared, developed, made any
5 weapons, that he did anything else. In fact, he
6 performed well enough to get paroled.

7 The evidence or lack of that shows a
8 good mitigator, and that's a mitigator that you can
9 say I know that he can be handled safely, I know
10 that he works well under structured supervision, I
11 know that he can program in the prison.

12 And unfortunately if that is all you
13 had known, if that is all you had been trained to,
14 if that's all you've been brought up in, then it
15 reaches a point where all you can do is, is function
16 in the society where you've been trained, you've
17 been brought up, and that in Norman's case is
18 prison.

19 Send him back there. Send him where
20 he's not a danger to anybody, he's not a danger to
21 himself, and put him in a society where he can
22 function.

23 During part of the mitigators, the
24 State kind of grazed the affect of the death of the
25 execution, excuse me, of Norman on his part, on his

1 son. That is a mitigator that doesn't directly
2 affect Norman. If he's executed, he's gone. His,
3 his concerns are not of this world.

4 Katrina has to raise a son and has
5 to deal with explaining to her son why Norman, why
6 his dad is not there and how he died. And that,
7 that talk is better coming from a man in prison
8 saying why he's in prison and why his son shouldn't
9 be in prison. This killing Norman's stop that, he
10 does, it doesn't help.

11 You have the list of ones that we've
12 given. And this, I don't think that the State is,
13 is saying that those things didn't happen. They're
14 just saying, you know, there's no weight, there's no
15 moment, there's no consequence.

16 I was never abandoned in another
17 country. A third world country. I have been on the
18 streets of Watts. I haven't been shot at, I haven't
19 had a brother in a wheelchair because he was out
20 being part of a gang.

21 What does the impact upon being
22 sexually assaulted do to a young man? You have a
23 mitigator when one person believes the mitigation
24 exists. The majority is never required in this.
25 Two people are not required. Just one of you. So

1 only one of you has to go through that list and find
 2 I believe that that happened, and check it.
 3 And then you have an entire page to
 4 fill with the other things like I've suggested. No
 5 history of any difficulties in prison, no history
 6 that he doesn't program well, that he can be secured
 7 safely in prison, he is programmed well enough to
 8 get out on parole. Anything like that.

9 That obviously at 18 when he went to
 10 prison, he didn't have any job skills. There's no
 11 evidence that they ever trained him in there, that
 12 he had any ability that he's ever been trained to
 13 function outside of society.

14 So if you go to prison and the sole
 15 purpose of going to prison was to punish you and not
 16 to rehabilitate you, then that, that incarceration
 17 has failed the individual retaining or preparing as
 18 opposed to simply punishing them and putting them in
 19 with, with career criminals, older criminals.
 20 People then that he has to look up to because that's
 21 the only people that he's got. And Lord knows what
 22 happens if you're trying to be friends with a guard
 23 in prison.

24 So each one of you goes through that
 25 list. And it only takes one of you to say that

1 exists, and it only takes one of you to write down
 2 each and every mitigator that you believe has been
 3 developed or shown things that are important to know
 4 either good or bad about what happened to Norman and
 5 how he got there.

6 His ability to reconcile with
 7 Katrina. She had problems with him. And then the
 8 temporary protective order, she never said that it
 9 was -- he yelled, she was frightened, she got a
 10 temporary protective order and yet she still has
 11 contact with him, she still wants to take not only
 12 their son, but her son, Norman's stepson. And so
 13 how would that affect Norman's stepson? You can put
 14 that in as a mitigator.

15 And during this part of the trial,
 16 this mental first trial that you're doing, you have
 17 to stop thinking about what you went through in the
 18 first trial.

19 It's not a consensus, it's not a
 20 group decision. It's an individually weighing the
 21 mitigator against the aggravators. Those two status
 22 type aggravators and the list that you'll prepare.
 23 And that's an individual event for each of you.
 24 That is not a collective process.

25 And any one of you can stop the

1 process by choosing life. By saying I am, I am
 2 convinced that by even slightest of weight that
 3 those, all that has been described as opposed to
 4 these mitigators is not enough for this jury at this
 5 time to consider death as an option.

6 And that doesn't mean that that
 7 might not happen in the future. Because as you've
 8 learned from the process that we have to this point,
 9 a prior conviction of a violent felony of a murder
 10 of which sexual assault, those are, those become
 11 aggravators in any subsequent trials.

12 And if you go through that process
 13 then death penalty is not an option. And that --
 14 and then and only then can you consider the penalty.

15 And to give you -- that is some of
 16 the proposed lists that have been provided for you.
 17 You'll look at that and you don't have to find that
 18 it is the single controlling mitigating factors.
 19 All you have to do is find that it exists to make a
 20 determination that it exists and then to take it in.

21 And when you're back in the jury
 22 room, when you go in -- to just give you an example
 23 of what happens, you go in with a consensus or with
 24 a group and then mentally you have to go into your
 25 own separate deliberation room and say do they, do

1 they outweigh that at this trial, at this time, and
 2 is death going to be an option. You do that alone,
 3 with the door closed. And that's an internal
 4 deliberation. And then you bring that back out to
 5 the group.

6 And as you, as we talked about
 7 during the jury selection process, you are going to
 8 take, you're going to honor each other during the
 9 deliberation process, you're going to honor their
 10 decisions, you're going to discuss, encourage,
 11 reason together, but you'll stand firm if you
 12 believe that and you'll honor the other juror if
 13 they disagree with you.

14 This is a family. We've explained
 15 this is Norman's father. Norman. The family tree.
 16 Where the three children -- or the children come
 17 from the three different marriages.

18 And Cherrett the family historian.
 19 Cherrett who had to be a mother to these children
 20 and Cherrett who was the one that could come forward
 21 and tell you what it was like behind those doors.
 22 Doors that you wouldn't want to go behind.

23 And why is that important? Well,
 24 we'll go over each and every thing that occurred or
 25 the testimony that's been given, but in the book,

1 The Five People that You're Going to Meet in Heaven,
 2 the author talks about what children are like.
 3 They're like little pieces of glass. You remember
 4 the fingerprints expert came in and said you touch
 5 glass and it leaves fingerprints. You leave
 6 smudges, you leave marks. And children are like
 7 that glass. Parents injure their children. It's
 8 pristine glass when we get them. And sometimes we
 9 just smudge them and sometimes we just mark them,
 10 but there are some families that take that piece of
 11 glass and break it into so many chards, so many
 12 jagged pieces that it can't be put back together and
 13 it's dangerous to walk on. And you can't fix that,
 14 but you can make it safe for other people.

15 The term while in the home, Eleanor
 16 would leave the children, she'd go out, have
 17 affairs. Cherrett would be the mother that would
 18 come in and do that. The children were getting
 19 punished for that. They were being kept inside.

20 Norman, Sr., abusive to the
 21 children, in turmoil with his wife in, in every way.
 22 It was bad enough that Eleanor had to abandon the
 23 children. She didn't have to, but she did, she
 24 chose to, abandon the children, and then ultimately
 25 have the children face or pay the price for this

1 family.

2 The emotional turmoil within the
 3 home when she came back, then as Cherrett testified
 4 there was, one of the lovers was stalking them,
 5 causing them problems. She took the kids to Belize.
 6 Brought everybody back but Norman. And inexplicably
 7 so.

8 The physical abuse. Corporal
 9 punishment. Now, corporal punishment is fine. A
 10 child needs guidance, they need directions, they
 11 need discipline. They don't need beatings, they
 12 don't need demeaning actions, they don't -- they
 13 deserve encouragement.

14 Eleanor wouldn't intervene. Never
 15 any testimony that she'd intercede on his behalf.
 16 She didn't intervene or intercede with the sexual
 17 assault by the neighbor.

18 The question about that is well, she
 19 didn't find out about it until later. But what was
 20 going through Norman's mind during that sexual
 21 abuse? We know that during the physical abuse he
 22 was beaten with belts, leaving welts to the body.

23 Tortured, humiliation, constant
 24 degradation, lack of affection, lack of
 25 participation of a nature and of extent that Norman

1 believed that his mother was punishing him. That
 2 his own mother would send him over to be sexually
 3 abused by a neighbor because it's what they did.
 4 And to carry that part and carry that, especially
 5 for a young man through his formative and puber --
 6 and the years in which he went through puberty.

7 Lived in Watts. Older brother
 8 Warren involved as a gang member, paralyzed at the
 9 age of 18 due to gang related shooting. And he
 10 exposed Norman to that.

11 My big brother, everybody's big
 12 brother is your hero. Who trains you? Who do you
 13 aspire to be like? And Warren gave him that
 14 example. Warren for a long time learned from his
 15 life sentence through a wheelchair.

16 And you heard some testimony about
 17 that that every day of his life he sits in that
 18 chair and it reminds him of what happened, why he
 19 was there, what he was doing wrong at the time that
 20 that happened until at, at a time in his life when
 21 he is much older now that he came to accept all of
 22 these consequences.

23 Mitigator. It's a joy of having
 24 children, it's a joy to have a son. And if you, if
 25 you grow up and know and are taught how to be a good

1 father, well, you can be a good father. If you're
 2 not taught how to be a good father, at least you can
 3 try and have a safe relationship with your son.

4 And incarceration will allow a safe
 5 relationship with his son that will be monitored by
 6 Katrina. That would be meaningful to the Katrina
 7 and she believes it would be meaningful to Gabriel
 8 as well.

9 We go through all of these because
 10 those are all -- you have to take more than just the
 11 statement and say is that a mitigator. You have to
 12 take that and, and say what impact did it have, why
 13 is it important, why is it here, why are we even
 14 talking about this. It's because the weighing
 15 process requires that.

16 And once you've done that and once
 17 you've taken all these mitigators and not apply them
 18 against all the facts of the case, all the bad
 19 things that came out about everything else, you're
 20 only to take all of this, all of this and compare it
 21 against those two status aggravators and do the
 22 weighing and then death isn't an option.

23 It's not, it's not a game. This is
 24 far from a game. This is life. And this is death.
 25 It's not -- it's too to ensure that this process is

1 meaningful and it is complete and that you will
2 fulfill your sworn duty to do that.

3 After that is done, has been done,
4 you go into, to determine what the proper penalties
5 are left. And what the choices that you have?

6 They've gone -- the State has gone
7 through and indicated the four of them. I think it
8 would be safe to eliminate the term of years. Do
9 we, based upon the evidence that you now can
10 consider all of it. Is Norman someone that you want
11 out on the streets without life-time supervision?
12 Well, no.

13 Now you've heard from Ms. Bass.
14 Life with possibility of parole means that they
15 would be supervised the rest of their life if they
16 ever get out. And they may never get out.

17 Life without the possibility of
18 parole means that they'll never get out. That, that
19 is really a sentence of death in a prison. Death
20 while incarcerated. I can't make it any clearer
21 than that. The only way you sentence Norman to life
22 without the possibility of parole, the only way
23 he'll ever get out of prison is in a coffin.

24 Death, if it survives the weighing
25 process, that happens only if you decide that that's

1 an option that's left.

2 But is it necessary to put him to
3 prison to protect us, to deter anybody? You know,
4 honestly, I think that if, if the deterrence would
5 be that parents won't do this to their children,
6 that prisons might be changed. If there was a
7 purpose other than sheer retribution for death,
8 there may be a reason for it. But can we house him
9 safely?

10 Look at these prisons. Look at the
11 prison cell. As you look down at it without a view
12 of anything that is, is meaningful; fences, sleeping
13 on that mat, a mat sitting on that metal cot, your
14 head or your feet up against a toilet.

15 You're going to sentence Norman to a
16 place that is so much like, like the bathroom in
17 which Ms. Quarles was found. That for every day he
18 sits in there, he'll be forced to think about it,
19 he'll be forced to have his head against the toilet,
20 to be in a room as small like that.

21 And, and I don't think that even,
22 even Dante could have created a more appropriate
23 hell or a more appropriate punishment than to live
24 and feel that every single day of the rest your
25 life.

1 You, you won't eat with anybody
2 else. There won't be the big cafeterias where you
3 can sit around and talk with the other inmates.
4 You're fed through a slot. Before you leave, you
5 put your clothes out, take all your clothes off,
6 you're searched.

7 And then you remember the, the
8 inmate that came in and he was shackled. Remember
9 he had those chains in his arms and he walked out
10 from there and he was escorted by the guards. Those
11 are the chains, the chains that are forged to hold
12 prisoners and specifically to inhibit their movement
13 and you're chained up when you're walked like that.
14 And you're walked out through that area to there.

15 You don't see trees, you don't see
16 mountains, you don't scenic. You look up and you
17 see the sky. And unless you have a cell mate, I
18 don't see anybody else.

19 Because that's what life is max --
20 that's what life is like at max.

21 And maybe that one hope of a
22 relationship with his son is enough. Maybe it's
23 necessary to have him walk down that Green Mile and
24 have him strapped down and have the poison that
25 flows through a needle placed into his body.

1 Because even one person in their mercy can stop it.
2 So now you've considered the
3 mitigators once for the weighing and now you take
4 the same ones for the penalty phase of it and, and
5 set them up like a tile here; the dysfunctional
6 family, the abandonment, the lack of encouragement,
7 support, the mental abuse, physical abuse, the gang
8 violence, all of those.

9 As they go through and as you
10 consider all of these; the fights, separations and
11 the good ones, his relationship with his mother,
12 Gabriel, the things that he's done, the fact that he
13 was not treated for that sexual abuse, and you come
14 across the impact and any other mitigator that you
15 may find or just for the sheer mercy that it's not
16 appropriate in this case, this isn't the absolute
17 worst of the worst, this case.

18 Death is never mandatory. Because
19 if, if you lay those out and even if you feel that
20 the State somehow has knocked those over, it always
21 comes back to the decision that death is never
22 mandatory, it's never a requirement. It is, it is a
23 personal and individual choice as the individual
24 juror that you must make. As individual jurors that
25 you must make.

1 Now I'm gonna sit down. And that's
2 really an hard thing to do, for a lawyer to do
3 because we talk and talk.

4 Because I know that a well-trained
5 and well-spoken prosecutor is gonna get up here and
6 she's going to have some very harsh things to say
7 and she's going to eloquently try to attack each and
8 every argument that I've brought. But this is the
9 only chance I get. I don't get to speak again. I
10 could -- if I had the chance, I would get up and
11 address the things that she will say. I would once
12 again encourage you, reason with you, plead with you
13 if I had to, to stop the killing now, to stop death
14 now.

15 But since I can't do that, I have to
16 trust that when you go back into the jury room that
17 the argument that you know I'd make will sound in
18 your ears, that the arguments that with the
19 pleadings, that the inversion of what I'm referring
20 to would ring in your ear.

21 And now you've heard enough from
22 this lawyer. I'm gonna ask you hear from one more.
23 While Norman's life rests in your hands, remember it
24 was Abraham Lincoln who wanted to heal a country.
25 Said that he always found that mercy bears richer

1 fruit. And it does and it will and it always will,
2 and in this case choose life. Thank you.

3 MS. WECKERLY: Now, Mr. Pike started and
4 ended with the suggestion or by telling you that
5 Norman Flowers' life is in your hands. And there's
6 certainly no doubt about that.

7 But it's not because of some quirk
8 or accident of fate that you get to decide Norman
9 Flowers' sentence in this case. He is here because
10 of his actions and no one else's. He made decisions
11 his entire life that brought him to this place. He
12 had free will in every decision he made that brings
13 him here sitting before you, awaiting your decision
14 on his sentence.

15 Now, Ms. Luzaich talked to you about
16 the death penalty and suggested or spoke about how
17 the death penalty is for the worst of the worst.
18 And when you think about that, you might think about
19 who might qualify as the worst of the worst.
20 Someone who commits murder, certainly that puts you
21 in that category, someone who puts -- or who commits
22 sexual assaults, someone whose committed robberies,
23 burglaries.

24 I mean, the only crime he's missed
25 right now in terms of severe crimes is kidnapping.

1 He's hit all the other ones.

2 Mr. Flowers' history is actually
3 sort of interesting because he actually committed
4 five residential burglaries as you heard. Some
5 people may think that when you commit five
6 residential burglaries that alone means you should
7 never get out of prison. That alone means that you
8 shouldn't get parole eligibility ever.

9 But Mr. Flowers actually got a break
10 in the criminal justice system as you heard. Those
11 five burglaries reduced in negotiations to just one.
12 He pled to one count of burglary. That's a
13 forgiving system. That's a system that showed him
14 mercy.

15 And when you look at the judgment of
16 conviction that's in evidence, the sentence he got
17 on that burglary ran at the same time as his robbery
18 sentence. So he got another break as well. A
19 forgiving and merciful sentence for Mr. Flowers.

20 And what about the arson? The
21 McGowans, the couple that testified or explained to
22 you what happened, they had stuff stolen from them,
23 that was a burglary, their property was taken, their
24 dog was killed. Mr. Flowers set the fire on their
25 house and they had to deal with the consequences of

1 that.

2 And again, what sentence did Mr.
3 Flowers get on that? He got a concurrent system --
4 sentence. That means his sentence ran at the same
5 time as the robbery. He didn't do an extra day on
6 those burglaries and he didn't do any extra time on
7 the arson. He got all that credit in the sentence
8 he did on the robbery case. So the system hasn't
9 been harsh to Mr. Flowers.

10 Then there's the robbery incidents.
11 There was the attempted robbery of Nina Delacourt
12 where he asked to use the phone. She let's him in
13 being a nice person, and he pulls a gun on her and
14 demands her car.

15 And then he commits the robbery
16 where he pulls a gun on the Carr Store employee and
17 steals the car, a full robbery with use of a deadly
18 weapon.

19 He didn't have to plead to both.
20 His case was negotiated. He got a lenient treatment
21 his case and he got one 18 year sentence for the
22 robbery with use of a deadly weapon.

23 The arson ran at the same time, the
24 burglary ran at the same time. He got one sentence.
25 Mr. Pike spent time talking to you about how he was

1 sent to prison at 18. It was for all of those
2 crimes.

3 What was the expectation that you
4 can do several residential burglaries, commit an
5 arson and two robbery type crimes with a gun and
6 what, get probation? Was that somehow
7 inappropriate?

8 And what happens when the parole
9 board gives him leniency one more time? He gets
10 out. He doesn't do the 18 years. He gets out and
11 he meets up with Katrina McKenna. She seems like a
12 nice lady, they have a child together and he
13 violates the conditions of his parole.

14 But the system shows him leniency
15 one more time. He's let out or re -- his parole is
16 reup'd and he gets in trouble again.

17 He somehow convinced that parole
18 board on the second occasion to ignore the fact that
19 he had committed a series of burglaries, ignore the
20 arson and ignore the other attempt robbery that he
21 did, that he could be someone else when he got on
22 the outside, that he was someone who could conform
23 his behavior.

24 He didn't just trick I would say the
25 parole board. He's shown you and you have heard

1 over the time you spent as jurors in this case that
2 he is an expert at manipulating people.

3 One of the first burglaries that he
4 did, the one with the victim by the name of Betty
5 Bell, what did he tell her? Oh, I'm just helping
6 get my brother out of your house, I'm here to help
7 you, ma'am, I made sure he didn't take anything.

8 Nina Delacourt the attempt murder
9 victim, he was just there to use the phone. He
10 wasn't gonna harm her. And what happens when he
11 gets inside? He pulls a gun on her.

12 You heard from Juanita Curry in the
13 trial phase of this case he wanted to use her phone,
14 too.

15 He's good at manipulating people.

16 He made Debra Quarles think that he
17 was actually concerned about her emotional well
18 being after the murder of her daughter. I'll take
19 you to the psychologist, Debra, I'm concerned about
20 your grief.

21 That should tell you a lot about
22 him. He's smart and he's manipulative. And as
23 such, he is a danger to anyone who ever comes in
24 contact with him.

25 Now, I don't think Mr. Pike disputed

1 that we have established that the aggravating
2 circumstances exist in this case. He was clearly
3 under sentence of imprisonment when he committed
4 this crime and he's clearly been convicted of a
5 prior violent felony, the robbery with use of a
6 deadly weapon.

7 You know a lot more about his priors
8 before that, but those are two the aggravating
9 circumstances. And I don't believe the defense
10 disputes that those actually exist. It's just that
11 they, don't believe that they had outweigh the
12 mitigating circumstances.

13 But it's interesting in this case to
14 note that it took him just 20 days, just 20 days on
15 parole for the robbery case when he commits the
16 worst of the worst type of crimes at a time when
17 he's supposed to be showing that parole board that
18 he can conform his behavior, that he doesn't need to
19 be permanently institutionalized.

20 He commits a sexual assault and a
21 murder 20 days after the parole board deems him fit
22 to go out in society.

23 I respectfully disagree with Mr.
24 Pike. The State is not trying to denigrate or even
25 minimize the mitigating circumstances that the

1 defense has illustrated in this case. We're just
2 arguing to you what weight we feel that you should
3 give them.

4 Mr. Flowers apparently came from a
5 dysfunctional family. His parents had affairs, his
6 parents had fights. To me, although it's listed on
7 the verdict form and definitely it's your decision,
8 those all seem like the same thing under the heading
9 of dysfunctional family. That really didn't put him
10 in a very unique category. I don't think anyone
11 comes from a perfect background. It's not
12 particularly surprising or even noteworthy to come
13 from a background where your parents maybe had a
14 troubled marriage, where things weren't perfect.

15 But is that -- I mean does that
16 account for what he did? His parents had a bad
17 relationship so it's okay to pull a gun on someone
18 and demand their car? I mean, do those have any
19 connection whatsoever having parents who didn't get
20 along means it's okay to rob people?

21 MR. PIKE: Objection, Your Honor. It
22 misstates the purpose of it. It's not a defense.
23 It's just to be considered in sentencing.

24 THE COURT: I think though that what
25 she's saying now is that you have in essence agreed

1 that they've proved they're aggravators. So she's
2 talking about the weighing process. So I think --

3 MR. PIKE: And I agree with that. And I
4 just think that it's --

5 THE COURT: And I think she's saying --

6 MR. PIKE: -- that it implies it's a
7 defense. It's not a defense.

8 THE COURT: I think she's saying that in
9 her opinion or her argument is that the things that
10 you have raised don't have the same make weight as
11 the things she's raised. And I think she's entitled
12 to that. Overruled. Go ahead.

13 MR. PIKE: Thank you, sir.

14 MS. WECKERLY: What about the fact that
15 Mr. Flowers was left in Belize when he was a young
16 child? It sounds like his sisters were left at a
17 certain point up here in the United States. And I
18 guess I'm missing the cause and affect relationship
19 of that. His sister grew up in that same abusive
20 household and she's a functioning, productive member
21 of society.

22 So I respectfully suggest that that
23 incident which occurred over 20 years before he
24 committed this crime really has nothing to do with
25 it.

1 He was on parole when he murdered
2 Sheila Quarles. He wasn't thinking about or
3 suffering through some childhood experience when he
4 threw her on the ground, raped her and then put his
5 hands around her and squeezed the life out of her.
6 That didn't have anything to do with what happened
7 when he was in Central America. He was on parole
8 and he wasn't conforming to any rules when he
9 committed this crime.

10 His abusive parents, I mean the
11 abuse in this case certainly is significant. I
12 didn't recollect it to be the same way that Mr. Pike
13 described it in his closing argument, but certainly
14 your recollection controls. Is this the best type
15 of environment to raise a child in? Certainly not.
16 Does it at all account for what he's done and what
17 you know about him pulling guns on people, being on
18 parole and not conforming his behavior? Is that
19 okay because -- or is that minimize or somehow less
20 because his parents treated him badly?

21 And who did he have in his life?
22 You heard his sister testify, you saw her. She was
23 obviously someone who cared a great deal about her
24 brother. She showed up here, she spent time here.
25 She was the one who was raising him. No doubt that

1 she provided love and support for her brother. He
2 wasn't totally abandoned in this world.

3 And the fact that his brother was a
4 gang member and he was exposed to that, that
5 occurred when he was 14, okay. He was on parole
6 committing this crime in his 30's.

7 I mean, at what point are you making
8 your own decisions? At what point do you have free
9 will in the decisions you make? At what point is it
10 not okay to victimize people even though you happen
11 to be a victim of abuse when you were a child?

12 Mr. Pike pointed out that a possible
13 mitigating circumstance, or he doesn't even consider
14 it possible, but a mitigating circumstance is the
15 affect that it would have on Mr. Flowers' son. And
16 I, I echo what Ms. Luzaich said. Obviously he's a
17 beautiful child. There's no question about that.

18 What I quibble with is whether or
19 not it should be considered a mitigating
20 circumstance by you.

21 I mean, Mr. Flowers threatened to
22 break the neck of that child's mother. Is he the
23 loving father? I mean, is this really something
24 that is meaningful to him? His daycare records
25 reflect that he picked him up four times in a

1 three-month period. How come he gets to claim
2 credit or suggest to you that somehow his violent
3 felony or his parole violation is less because this
4 child exists?

5 I don't have no doubt that it's
6 Katrina who's supporting this child, it's Katrina
7 who provided this child a stable home. Why does Mr.
8 Flowers get credit for that?

9 Mr. Pike also suggested to you that
10 a mitigating circumstance was that he endured sexual
11 abuse as a child. Being a victim of sexual abuse
12 does not mean it's okay to point a gun at someone.
13 Being a victim of sexual abuse doesn't mean it's any
14 less serious when you point a gun at someone and say
15 get out of the car. Being a victim of sexual abuse
16 when you're a child doesn't mean years later that
17 it's okay for you to violate the conditions of your
18 parole.

19 None of that is connected. There's
20 no connection between that, otherwise everyone who
21 is a victim of such abuse would find themselves in
22 the situation of Mr. Flowers. And we all know from
23 our common sense and life experience that that is
24 not the case.

25 He made choices the whole way

1 through and all of his choices were wrong, but
2 that's where they -- and he is the one that caused
3 himself to be in this situation.

4 I also respectfully take issue with
5 Mr. Pike suggesting to you that the State is somehow
6 playing on your emotions in this case.

7 You saw the crime scene photos.
8 Those are static. Those are mild. That shows
9 Sheila just laying on a bathroom floor. How do you
10 think it was really like? What was it really like
11 for her? What was it really like when she suddenly
12 had someone's hands around her neck? You didn't see
13 a photo of that. There's no movie of that, but you
14 know it occurred. What was it like for her as she's
15 laying there having someone sexually assault her?
16 There's no photo of that. There's no way to depict
17 that.

18 And the suggestion that we're
19 playing on emotion when they put up a photo of Mr.
20 Flowers when he's 14 years old. Make no mistake
21 about it. The person you're sentencing today isn't
22 some teenager. It's a man who committed a series of
23 burglaries, it's a man who committed a robbery with
24 a weapon, it's a man who committed an arson, and
25 it's a man who committed a murder and a sexual

1 assault. It's not some teenage boy, a photo from
2 over 15 years ago.

3 Now, the defense that Mr. Pike
4 suggests to you is that he should be given a lesser
5 sentencing or a leniency because of the concept of
6 mercy. And that's certainly something that is asked
7 for in all capital cases. And it is an appealing
8 concept.

9 And also he suggested to you well,
10 maybe you shouldn't make the ultimate decision right
11 now because you know there's that other trial out
12 there. So the combination of mercy and the specter
13 of the other trial, that may seem like an easy way
14 out.

15 And it's interesting to me that
16 someone would suggest to you that mercy was
17 appropriate for someone like Mr. Flowers when he
18 clearly for over a decade has never given an ounce
19 of it to anyone else. He certainly didn't show
20 Sheila any mercy when she drowned in a bathtub and
21 he left out the door.

22 And I would suggest to you that the
23 question before you as jurors is slightly different.
24 It's not if you can find it in yourself to be
25 merciful to Mr. Flowers, and it certainly isn't if

1 you -- the question isn't can you pass this ultimate
2 decision on to a jury who you know will decide his
3 next day case.

4 Your duty as a juror in this case is
5 more complicated than that. And you've all heard
6 the jury instructions in this case. You don't owe
7 just Mr. Flowers the consideration of whether or not
8 you can give him mercy. The instructions tell you
9 that as jurors it is your responsibility to do equal
10 and exact justice between the parties in this case.

11 Can you consider mercy? Absolutely.
12 Are you supposed to consider the totality of what
13 you know about this case? Absolutely.

14 The question isn't simply one way,
15 can I be merciful. Your duty is to impose a just
16 sentence for Mr. Flowers based on everything you
17 know about him.

18 And what sentence is justice for Mr.
19 Flowers? What sentence accounts for him pushing
20 Sheila down? What sentence accounts for him
21 squeezing the life out of an 18 year old girl,
22 someone whose barely old -- barely past being a
23 teenager. What sentence is justice for him
24 thrusting his penis in her against her will as he's
25 probably choking her out at the time. What takes

1 account for all of that?

2 What sentence takes account for him
3 taking away everything this 18 year old was ever
4 gonna be and everything she was ever gonna
5 experience? What kind of sentence accounts for
6 that?

7 Well, what about the loss to her
8 family? They took away someone who was clearly
9 loved. Or he did, in Flowers. What punishment --
10 remember Debra? What punishment accounts for her
11 change in her relationship with her children? What
12 did she say, they don't -- she's close to them. But
13 they don't, they don't trust her now because of who
14 she brought into their lives.

15 What kind of loss is that for her?
16 What punishment accounts for the guilt that Debra
17 feels undeniably, you saw her testify, for bringing
18 him into their world. Or what about her suicidal
19 thoughts of this mother? What sentence accounts for
20 that?

21 The defense suggests that any
22 sentence that you impose will make him accountable,
23 but what has this crime cost him at this point? He
24 has contact with his family, he has contact with his
25 son. He didn't have to move out of an apartment

1 because it was too hard for him to stay there
 2 because his child died there. He didn't have to
 3 deal with the emotional inability to work anymore.
 4 He surely didn't have to bury a teenager.

5 That's stuff Debra's family had to
 6 endure, not Mr. Flowers.

7 And what about her other siblings?
 8 They get to watch their mother feel guilty. They
 9 get to watch their mother suffer and they never get
 10 to see their sister again. What sentence accounts
 11 for that?

12 There haven't been a lot of
 13 consequences really in the criminal justice system
 14 for Mr. Flowers so far. He's always gotten the
 15 minimum, he's gotten leniency, and he's gotten
 16 chance after chance after chance and he's still
 17 found himself in this situation.

18 And the reality is that what
 19 happened on March the 24th of 2005 so treacherous
 20 and violent that no matter what sentence you impose,
 21 it is never going to be equal and exact justice for
 22 what happened to Sheila.

23 He's not gonna be attacked in his
 24 own home, he's not gonna be sexually assaulted, he's
 25 not gonna be violently strangled and he's certainly

1 not gonna be drowned.

2 And most importantly, whatever
 3 sentence you impose, it will not be unjustified.
 4 When you impose a sentence, it will be because of
 5 decisions and choices he made. He chose to go over
 6 there, he chose to go in that apartment, he chose to
 7 rape her, and he chose to kill her.

8 He dictated the final minutes of
 9 Sheila Quarles's life and he decided that she isn't
 10 here anymore. She wasn't gonna here for her family.

11 But now he's not the decision maker
 12 anymore. It's your decision. And the decision that
 13 you make in this case should take fully into account
 14 everybody he's victimized, everything he's done and
 15 everything he's chosen to disregard.

16 And the sentence shouldn't be
 17 anything less than what justice requires and what
 18 you all know that he deserves.

19 THE COURT: Thanks. Okay. You've gotten
 20 the instructions about -- Ms. Luzaich and Mr. Pike
 21 both did a good job kind of explaining it to you,
 22 but maybe if I take a minute or two, I think it will
 23 help you go through the process.

24 There's four pieces of paper.
 25 There's two entitled special verdict and two

1 entitled verdict. And I've got them in the order
 2 that you need to deal with them.

3 And Mr. Foreman, I guess I'm mostly
 4 talking to you. The first thing you have to do is
 5 take this first piece of paper that says special
 6 verdict and it goes to aggravating circumstances.

7 And there are two that the State has
 8 alleged and you have to ask yourself as a group
 9 collectively has the State proven this aggravator
 10 beyond a reasonable doubt, Has the State proven that
 11 he was under sentence of imprisonment. And they
 12 have to prove it beyond a reasonable doubt and it
 13 has to be unanimous.

14 If it is, you check the box. If it
 15 isn't, you leave the box blank as to each of those
 16 two.

17 Once you've dealt with those two,
 18 date it and sign it, Mr. Foreperson, and just place
 19 it over here.

20 Now we go to mitigating
 21 circumstances. And the mitigating circumstances are
 22 different. If the -- the defense has raised a
 23 number that you can consider, you can consider any
 24 others, you don't have to consider these mitigators.
 25 It has to be the case that at least one person

1 thinks that it has been proved and that it is a
 2 mitigator.

3 For example, if the defense said
 4 because our client has red hair, that's a mitigator,
 5 you may find that it's proved and you may find that
 6 it has nothing to do with anything so you don't
 7 check it. But if you find that any of these or any
 8 others have been proven and at least one person
 9 thinks that it's mitigation or some reason to give
 10 some make weight to consideration in favor of Mr.
 11 Flowers, you check it.

12 And you go through this, it's a
 13 two-page form. And as long as one person thinks
 14 that it was proved and is in mitigation, you check
 15 it. And you list others and you check them. After
 16 you've got all that done, you date it and sign it.

17 Now then, take number one and number
 18 two, the aggravators and mitigators, and you put
 19 them on sort of the mythical scales of justice. If
 20 the aggravators over all have more weight in your
 21 decision than the mitigators, the aggravators
 22 outweigh the mitigators, then you work off of form
 23 three which has four possibilities including death.

24 On the other hand, if the mitigators
 25 outweigh the aggravators, then you work off the form

1 four which is only three possibilities and it
2 doesn't include death.
3 So this whole process is to decide
4 whether you're choosing amongst three or amongst
5 four.

6 But we still -- you have to go
7 through this process and we have to have this as a
8 matter of record, so that we have the benefit of
9 your thinking. You decide one of these to work on
10 based upon that process, the other one, forget it,
11 so you're only gonna work on three.

12 And at that point and at that point
13 only, you now consider everything. You take into
14 consider everything you've heard in the guilt phase,
15 everything you've heard in the penalty phase,
16 everything you can glean with your common sense and
17 you say what is the right punishment for this crime
18 amongst the ones we have to choose.

19 And so you'll check one box. It
20 will be dated and signed by the foreman and the
21 other one of course you haven't used so it's just
22 blank. That's the way it works.

23 So I've got them lined up top to
24 bottom.

25 Ms. Clerk, will you swear the

1 officer to take charge of the jury, please.

2 (Whereupon, the officer was sworn to
3 take charge of the jury.)

4 THE COURT: All right. Is there lunch
5 here? Okay. Lunch is ready. Just like a couple of
6 days ago, when you're done, you let the marshall
7 know and we'll reassemble.

8 (Whereupon, the jury exited the
9 courtroom to deliberate.)

10 THE COURT: Okay. Let's go on the record
11 in Case C228755. State of Nevada versus Norman
12 Keith Flowers. Let the record reflect the presence
13 of the defendant, his counsel, counsel for the
14 State. All ladies and gentlemen of the jury are
15 back in the box.

16 Mr. Pierson, have you reached a
17 verdict as to the penalty.

18 THE FOREPERSON: Yes, we have, Your
19 Honor.

20 THE COURT: Would you give it to the
21 marshall, please?

22 Ms. Clerk.

23 THE CLERK: District court, Clark County,
24 Nevada. The State of Nevada, plaintiff, versus
25 Norman Keith Flowers, defendant. Case No. C228755.

1 Department No.

2 Special verdict. We the jury in the
3 above-entitled case having found the defendant
4 Norman Keith Flowers guilty of Count II, murder of
5 the first degree, designate that the aggravating
6 circumstance or circumstances which have been
7 checked below have been established beyond a
8 reasonable doubt.

9 The murder was committed by a person
10 under sentence of imprisonment; the murder was
11 committed by a person who is or has been convicted
12 of a felony involving the use or threat of violence
13 to the person of another, robbery with use of a
14 deadly weapon.

15 Dated at Las Vegas, Nevada this 24
16 day of October 2008. Todd Pierson, foreperson.

17 Eighth Judicial District Court,
18 Clark County, Nevada. The State of Nevada,
19 plaintiff, versus Norman Keith Flowers, defendant.
20 Case No. C228755. Department No. 7.

21 Special verdict. Mitigating
22 circumstances. We the jury in the above-entitled
23 case designate that one or more of the jurors have
24 found mitigating circumstance or circumstances which
25 have been checked below:

1 Mr. Flowers was raised in a
2 dysfunctional family;

3 Mr. Flowers was abandoned in Central
4 America, Belize, by his mother at an early age;

5 Mr. Flowers was physically abused as
6 a child;

7 Mr. Flowers was sexually abused as a
8 child;

9 Mr. Flowers was subjected to mental
10 abuse by his father;

11 Mr. Flowers was exposed to gang
12 violence by his brother;

13 Mr. Flowers was humiliated and made
14 fun of during his adolescence;

15 Mr. Flowers is a loving father to
16 his son;

17 Mr. Flowers was not treated for the
18 sexual abuse he endured.

19 Mr. Flowers' execution to have
20 severe impact on his son and his twin sister Norma.

21 Additional mitigators found by the
22 jury:

23 No prior problems in prison; no
24 positive influence in life; all adult life in
25 prison.

1 Dated at Las Vegas, Nevada, this 24
2 day of October 2008. Todd Pierson, foreperson.
3 District Court, Clark County,
4 Nevada. The State of Nevada, plaintiff, versus
5 Norman Keith Flowers, defendant. Case No. C228755.
6 Department No. 7.

7 Verdict. We the jury in the
8 above-entitled case having found the defendant
9 Norman Keith Flowers guilty of Count II, murder of
10 the first degree, and having found that the
11 aggravating circumstance or circumstances outweigh
12 any mitigating circumstance or circumstances impose
13 a sentence of life in the Nevada State Prison
14 without the possibility of parole.

15 Dated at Las Vegas, Nevada this 24
16 day of October 2008. Todd Pierson, foreperson.

17 Ladies and gentlemen of the jury,
18 are those yours verdicts so say you one, so say you
19 all?

20 THE JURY: Yes.

21 THE COURT: Does either side desire to
22 have the jury polled?

23 MR. PIKE: No. Defense does not, Your
24 Honor.

25 THE COURT: Okay. It's been a long week

1 and a half. It's not an easy task, but I've got to
2 tell you, I mean, I always think every jury -- I
3 can't tell you how impressed I am with this jury.

4 It's obvious to me from the time
5 that you took and the verdicts that you rendered
6 that you took your job very seriously, that you
7 really did apply the law to the facts and you just
8 did a terrific job.

9 It's very important. It's the way
10 we solve problems in this community, in this
11 country. When we have the government bring a charge
12 against a citizen, we don't have the government
13 decide. We have a collection of citizens decide.
14 It's the best system in the history of the world.

15 I know you're tired, I know it was a
16 tough go, but you did gentlemen's work.

17 Anybody have any questions?

18 Something I did you didn't understand or why this or
19 why that or anything?

20 Well, you did a great work. You can
21 be very proud of the contribution you made to
22 justice these last couple of weeks. It's tough
23 business.

24 It what's we do every day. Ms.
25 Weckerly's in charge of the whole part of the DA's

1 office that do this day in and day out. And she's
2 got another one here in a couple of weeks and
3 another one here in a couple of weeks. This is what
4 Mr. Pike and -- that's what we do for a living.

5 That's all they do is one of these
6 after another. Pretty much all I do. But if you're
7 not used to it, it's a different story.

8 Probably learned a little bit about
9 prison. Probably learned a little bit about the
10 parole system and people being on parole and
11 probation. Hopefully that will be of some benefit
12 to you.

13 We've made advanced arrangements for
14 your pay. If you go with Officer Moon he'll take
15 you down. You get a whole day's pay here for only
16 half a day's work just because we like you.

17 Have a nice weekend. Thanks very
18 much. You did a great job.

19 (Whereupon, the jury exited the
20 courtroom.)

21 THE COURT: Okay. Ms. Clerk, we need a
22 date for sentencing since he's already held without
23 bail.

24 THE CLERK: December 9th, 8:30.

25 THE COURT: December 9th, 8:30 for

1 sentencing. Gonna be held without bail until then.

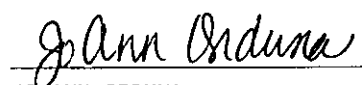
2 MR. PIKE: Thank you, Your Honor.

3 MS. WECKERLY: Thank you.

4 MS. LUZAICH: Thank you. Okay.

5 THE COURT: Very nice job on all the
6 lawyers.

7
8 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
PROCEEDINGS.

9
10 
JO ANN ORDUNA
CCR NO. 370

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